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REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

FEBRUARY 18, 2013 TO FEBRUARY 26, 2013

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MANILA
2015

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by

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 7350. February 18, 2013]

PATROCINIO V. AGBULOS, *complainant, vs.* **ATTY. ROSELLER A. VIRAY,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; A NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE PERSON WHO SIGNED THE SAME IS THE VERY SAME PERSON WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND THE TRUTH OF WHAT ARE STATED THEREIN; PURPOSE OF THE REQUIREMENT.— [R]espondent admits that not only did he prepare and notarize the subject affidavit but he likewise notarized the same without the affiant's personal appearance. He explained that he did so merely upon the assurance of his client Dollente that the document was executed by complainant. In notarizing the document, respondent contented himself with the presentation of a CTC despite the Rules' clear requirement of presentation of competent evidence of identity such as an identification card with photograph and signature. With this indiscretion, respondent failed to ascertain the genuineness of the affiant's signature which turned out to be a forgery. In failing to observe the requirements of the Rules, even the CTC presented, purportedly owned by complainant, turned out to belong to somebody else. A notary public should not notarize a document

unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed. As aptly observed by the Court in *Dela Cruz-Sillano v. Pangan*: The Court is aware of the practice of not a few lawyers commissioned as notary public to authenticate documents without requiring the physical presence of affiants. However, the adverse consequences of this practice far outweigh whatever convenience is afforded to the absent affiants. Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be. A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.

2. ID.; ID.; FAILURE OF THE LAWYER COMMISSIONED AS A NOTARY PUBLIC TO PERFORM HIS DUTY UNDERMINES THE INTEGRITY OF A NOTARY PUBLIC AND DEGRADES THE FUNCTION OF NOTARIZATION, THUS, MAKING HIM LIABLE FOR NEGLIGENCE; LAWYERS COMMISSIONED AS NOTARIES PUBLIC ARE MANDATED TO DISCHARGE WITH FIDELITY THE DUTIES OF THEIR OFFICES, SUCH DUTIES BEING DICTATED BY PUBLIC POLICY AND IMPRESSED WITH PUBLIC INTEREST.— The Court has repeatedly emphasized in a number of cases the important role a notary public performs, to wit: x x x [N]otarization is not an empty, meaningless routinary act but one invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarized document is, by law, entitled to full faith and credit

upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined. Respondent's failure to perform his duty as a notary public resulted not only damage to those directly affected by the notarized document but also in undermining the integrity of a notary public and in degrading the function of notarization. He should, thus, be held liable for such negligence not only as a notary public but also as a lawyer. The responsibility to faithfully observe and respect the legal solemnity of the oath in an acknowledgment or *jurat* is more pronounced when the notary public is a lawyer because of his solemn oath under the Code of Professional Responsibility to obey the laws and to do no falsehood or consent to the doing of any. Lawyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest.

3. ID.; ID.; WHEN A LAWYER COMMISSIONED AS A NOTARY PUBLIC FAILS TO DISCHARGE HIS DUTIES AS SUCH, HE IS METED THE PENALTIES OF REVOCATION OF HIS NOTARIAL COMMISSION, DISQUALIFICATION FROM BEING COMMISSIONED AS A NOTARY PUBLIC FOR A PERIOD OF TWO YEARS, AND A SUSPENSION FROM THE PRACTICE OF LAW FOR ONE YEAR.— As to the proper penalty, the Court finds the need to increase that recommended by the IBP which is one month suspension as a lawyer and six months suspension as notary public, considering that respondent himself prepared the document, and he performed the notarial act without the personal appearance of the affiant and without identifying her with competent evidence of her identity. With his indiscretion, he allowed the use of a CTC by someone who did not own it. Worse, he allowed himself to be an instrument of fraud. Based on existing jurisprudence, when a lawyer commissioned as a notary public fails to discharge his duties as such, he is meted the penalties of revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years, and suspension from the practice of law for one year.

D E C I S I O N

PERALTA, *J.*:

The case stemmed from a Complaint[1] filed before the Office of the Bar Confidant (OBC) by complainant Mrs. Patrocinio V. Agbulos against respondent Atty. Roseller A. Viray of Asingan, Pangasinan, for allegedly notarizing a document denominated as Affidavit of Non-Tenancy[2] in violation of the Notarial Law. The said affidavit was supposedly executed by complainant, but the latter denies said execution and claims that the signature and the community tax certificate (CTC) she allegedly presented are not hers. She further claims that the CTC belongs to a certain Christian Anton.[3] Complainant added that she did not personally appear before respondent for the notarization of the document. She, likewise, states that respondent's client, Rolando Dollente (Dollente), benefited from the said falsified affidavit as it contributed to the illegal transfer of a property registered in her name to that of Dollente.[4]

In his Comment,[5] respondent admitted having prepared and notarized the document in question at the request of his client Dollente, who assured him that it was personally signed by complainant and that the CTC appearing therein is owned by her.[6] He, thus, claims good faith in notarizing the subject document.

In a Resolution[7] dated April 16, 2007, the OBC referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation or decision.

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[1] *Rollo*, pp. 1-4.

[2] *Id.* at 5.

[3] *Id.* at 1.

[4] *Id.*

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

[6] *Id.* at 7.

[7] *Id.* at 10.

After the mandatory conference and hearing, the parties submitted their respective Position Papers.[8] Complainant insists that she was deprived of her property because of the illegal notarization of the subject document.[9] Respondent, on the other hand, admits having notarized the document in question and asks for apology and forgiveness from complainant as a result of his indiscretion.[10]

In his report, Commissioner Dennis A. B. Funa (Commissioner Funa) reported that respondent indeed notarized the subject document in the absence of the alleged affiant having been brought only to respondent by Dollente. It turned out later that the document was falsified and the CTC belonged to another person and not to complainant. He further observed that respondent did not attempt to refute the accusation against him; rather, he even apologized for the complained act.[11] Commissioner Funa, thus, recommended that respondent be found guilty of violating the Code of Professional Responsibility and the 2004 Rules on Notarial Practice, and that he be meted the penalty of six (6) months suspension as a lawyer and six (6) months suspension as a Notary Public.[12]

On April 15, 2008, the IBP Board of Governors issued Resolution No. XVIII-2008-166 which reads:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification,** the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's violation of the Code of Professional Responsibility

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[8] *Id.* at 40-42 and 44.

[9] *Id.* at 41.

[10] *Id.* at 44.

[11] Report and Recommendation of the Commissioner, pp. 4-5.

[12] *Id.* at 5.

and 2004 Rules on Notarial Practice, Atty. Roseller A. Viray is hereby **SUSPENDED** from the practice of law for one (1) month.[13]

Respondent moved for the reconsideration of the above decision, but the same was denied. The above resolution was further modified in Resolution No. XX-2012-117, dated March 10, 2012, to read as follows:

RESOLVED to DENY Respondent's Motion for Reconsideration, and unanimously MODIFY as it is hereby MODIFIED Resolution No. XVIII-2008-166 dated April 15, 2008, in addition to Respondent's **SUSPENSION** from the practice of law for one (1) month, Atty. Roseller A. Viray is hereby **SUSPENDED** as Notary Public for six (6) months. (Emphasis in the original)

The findings of the IBP are well taken.

Section 2 (b) of Rule IV of the 2004 Rules on Notarial Practice emphasizes the necessity of the affiant's personal appearance before the notary public:[14]

x x x x x x x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document –

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

Moreover, Section 12,[15] Rule II, of the 2004 Rules on Notarial Practice defines the "competent evidence of identity" referred to above.

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[13] Vol. III, p. 1. (Emphasis in the original).

[14] *Dela Cruz-Sillano v. Pangan*, A.C. No. 5851, November 25, 2008, 571 SCRA 479, 483.

[15] Section 12. *Competent Evidence of Identity.* - The phrase "competent evidence of identity" refers to the identification of an individual based on:

In this case, respondent admits that not only did he prepare and notarize the subject affidavit but he likewise notarized the same without the affiant's personal appearance. He explained that he did so merely upon the assurance of his client Dollente that the document was executed by complainant. In notarizing the document, respondent contented himself with the presentation of a CTC despite the Rules' clear requirement of presentation of competent evidence of identity such as an identification card with photograph and signature. With this indiscretion, respondent failed to ascertain the genuineness of the affiant's signature which turned out to be a forgery. In failing to observe the requirements of the Rules, even the CTC presented, purportedly owned by complainant, turned out to belong to somebody else.

To be sure, a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein.[16] Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed.[17]

As aptly observed by the Court in *Dela Cruz-Sillano v. Pangan*:[18]

(a) At least one current identification document issued by an official agency bearing the photograph and signature of the individual; or

(b) The oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

[16] *Legaspi v. Landrito*, A.C. No. 7091, October 15, 2008, 569 SCRA 1, 5; *Dela Cruz v. Dimaano, Jr.*, A.C. No. 7781, September 12, 2008, 565 SCRA 1, 5-6.

[17] *Dela Cruz v. Dimaano, Jr.*, *supra*, at 6.

[18] *Supra* note 14.

The Court is aware of the practice of not a few lawyers commissioned as notary public to authenticate documents without requiring the physical presence of affiants. However, the adverse consequences of this practice far outweigh whatever convenience is afforded to the absent affiants. Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be. A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.[19]

The Court has repeatedly emphasized in a number of cases[20] the important role a notary public performs, to wit:

x x x [N]otarization is not an empty, meaningless routinary act but one invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.[21]

Respondent's failure to perform his duty as a notary public resulted not only damage to those directly affected by the notarized document but also in undermining the integrity of a notary public and in degrading the function of notarization.[22] He should, thus, be held liable for such negligence not only as a notary public

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[19] *Dela Cruz-Sillano v. Pangan, supra* note 14, at 487-488.

[20] *Id.* at 488; *Legaspi v. Landrito*, *supra* note 16; *Dela Cruz v. Dimaano, Jr., supra* note 16, at 7-8.

[21] *Lustestica v. Bernabe*, A.C. No. 6258, August 24, 2010, 628 SCRA 613, 619-620.

[22] *Dela Cruz-Sillano v. Pangan*, *supra* note 14, at 488.

but also as a lawyer.[23] The responsibility to faithfully observe and respect the legal solemnity of the oath in an acknowledgment or *jurat* is more pronounced when the notary public is a lawyer because of his solemn oath under the Code of Professional Responsibility to obey the laws and to do no falsehood or consent to the doing of any.[24] Lawyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest.[25]

As to the proper penalty, the Court finds the need to increase that recommended by the IBP which is one month suspension as a lawyer and six months suspension as notary public, considering that respondent himself prepared the document, and he performed the notarial act without the personal appearance of the affiant and without identifying her with competent evidence of her identity. With his indiscretion, he allowed the use of a CTC by someone who did not own it. Worse, he allowed himself to be an instrument of fraud. Based on existing jurisprudence, when a lawyer commissioned as a notary public fails to discharge his duties as such, he is meted the penalties of revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years, and suspension from the practice of law for one year.[26]

WHEREFORE, the Court finds respondent Atty. Roseller A. Viray **GUILTY** of breach of the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for one (1) year; **REVOKES** his incumbent commission, if any; and

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[23] *Id.*

[24] *Legaspi v. Landrito*, *supra* note 16, at 6.

[25] *Dela Cruz v. Dimaano, Jr.*, *supra* note 16, at 7.

[26] *Isenhardt v. Real,* A.C. No. 8254, February 15, 2012, 666 SCRA 20, 28; *Linco v. Lacebal*, A.C. No. 7241, October 17, 2011, 659 SCRA 130, 136; *Lanuzo v. Bongon*, A.C. No. 6737, September 23, 2008, 566 SCRA 214, 218.

PROHIBITS him from being commissioned as a notary public for two (2) years, effective immediately. He is **WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

Let all the courts, through the Office of the Court Administrator, as well as the IBP and the Office of the Bar Confidant, be notified of this Decision and be it entered into respondent's personal record.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 157086. February 18, 2013]

LEPANTO CONSOLIDATED MINING COMPANY, *petitioner, vs.* **THE LEPANTO CAPATAZ UNION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TIMELY FILING OF MOTION FOR RECONSIDERATION ASSAILING THE RULING OF THE DOLE SECRETARY IS A PRECONDITION TO THE FILING OF A PETITION FOR *CERTIORARI* IN THE COURT OF APPEALS.— [T]he requirement of the timely filing of a motion for reconsideration as a precondition to the filing of a petition for *certiorari* accords with the principle of exhausting administrative remedies as a means to afford every opportunity to the respondent agency to resolve the matter and correct itself if need be. [T]he ruling in *National Federation of Labor v. Laguesma* reiterates *St.*

Martin's Funeral Home v. National Labor Relations Commission, where the Court has pronounced that the special civil action of *certiorari* is the appropriate remedy from the decision of the National Labor Relations Commission (NLRC) in view of the lack of any appellate remedy provided by the *Labor Code* to a party aggrieved by the decision of the NLRC. Accordingly, any decision, resolution or ruling of the DOLE Secretary from which the *Labor Code* affords no remedy to the aggrieved party may be reviewed through a petition for *certiorari* initiated only in the CA in deference to the principle of the hierarchy of courts. x x x. Indeed, the Court has consistently stressed the importance of the seasonable filing of a motion for reconsideration prior to filing the *certiorari* petition. In *SMC Quarry 2 Workers Union-February Six Movement (FSM) Local Chapter No. 1564 v. Titan Megabags Industrial Corporation and Manila Pearl Corporation v. Manila Pearl Independent Workers Union,* the Court has even warned that a failure to file the motion for reconsideration would be fatal to the cause of the petitioner. Due to its extraordinary nature as a remedy, *certiorari* is to be availed of only when there is no appeal, or any plain, speedy or adequate remedy in the ordinary course of law. There is no question that a motion for reconsideration timely filed by Lepanto was an adequate remedy in the ordinary course of law in view of the possibility of the Secretary of Justice reconsidering her disposition of the matter, thereby according the relief Lepanto was seeking. Under the circumstances, Lepanto's failure to timely file a motion for reconsideration prior to filing its petition for *certiorari* in the CA rendered the September 17, 2002 resolution of the DOLE Secretary beyond challenge.

2. ID.; APPEALS; FACTUAL FINDINGS OF BOTH THE DOLE SECRETARY AND THE COURT OF APPEALS, BEING SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE ACCORDED GREAT RESPECT AND FINALITY, AND CANNOT BE MADE THE SUBJECT OF THE COURT'S REVIEW; RATIONALE.— We cannot undo the affirmance by the DOLE Secretary of the correct findings of her subordinates in the DOLE, an office that was undeniably possessed of the requisite expertise on the matter in issue. In dealing with the matter, her subordinates in the DOLE fairly

and objectively resolved whether the Union could lawfully seek to be the exclusive representative of the bargaining unit of *capatazes* in the company. Their factual findings, being supported by substantial evidence, are hereby accorded great respect and finality. Such findings cannot be made the subject of our judicial review by petition under Rule 45 of the *Rules of Court*, because: x x x [T]he office of a petition for review on *certiorari* under Rule 45 of the Rules of Court requires that it shall raise only questions of law. The factual findings by quasi-judicial agencies, such as the Department of Labor and Employment, when supported by substantial evidence, are entitled to great respect in view of their expertise in their respective field. Judicial review of labor cases does not go far as to evaluate the sufficiency of evidence on which the labor official's findings rest. It is not our function to assess and evaluate all over again the evidence, testimonial and documentary, adduced by the parties to an appeal, particularly where the findings of both the trial court (here, the DOLE Secretary) and the appellate court on the matter coincide, as in this case at bar. The Rule limits that function of the Court to review or revision of errors of law and not to a second analysis of the evidence. Here, petitioners would have us re-calibrate all over again the factual basis and the probative value of the pieces of evidence submitted by the Company to the DOLE, contrary to the provisions of Rule 45. Thus, absent any showing of whimsical or capricious exercise of judgment, and unless lack of any basis for the conclusions made by the appellate court may be amply demonstrated, we may not disturb such factual findings.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; UNIONS; CAPATAZES CAN FORM THEIR OWN UNION BECAUSE THEY ARE NOT RANK-AND-FILE EMPLOYEES BUT AN EXTENSION OF THE MANAGEMENT.— [W]e note that Med-Arbiter Lontoc found in her Decision issued on May 2, 2000 that the *capatazes* were performing functions totally different from those performed by the rank-and-file employees, and that the *capatazes* were "supervising and instructing the miners, mackers and other rank-and-file workers under them, assess[ing] and evaluat[ing] their performance, mak[ing] regular

> reports and recommend[ing] new systems and procedure of work, as well as guidelines for the discipline of employees." Hence, Med-Arbiter Lontoc concluded, the *capatazes* "differ[ed] from the rank-and-file and [could] by themselves constitute a separate bargaining unit." x x x. [W]e affirm that *capatazes* or foremen are not rank-and- file employees because they are an extension of the management, and as such they may influence the rank-and-file workers under them to engage in slowdowns or similar activities detrimental to the policies, interests or business objectives of the employers.

APPEARANCES OF COUNSEL

Ronald Rex S. Recidoro for petitioner.
Domogan & Partners Law Office for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Capatazes are not rank-and-file employees because they perform supervisory functions for the management; hence, they may form their own union that is separate and distinct from the labor organization of rank-and-file employees.

The Case

Lepanto Consolidated Mining Company (Lepanto) assails the Resolution promulgated on December 18, 2002,[1] whereby the Court of Appeals (CA) dismissed its petition for *certiorari* on the ground of its failure to first file a motion for reconsideration against the decision rendered by the Secretary of the Department of Labor and Employment (DOLE); and the resolution promulgated on January 31, 2003,[2] whereby the CA denied Lepanto's motion for reconsideration.

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[1] *Rollo*, pp. 23-24; penned by Associate Justice Amelita G. Tolentino, with Associate Justice Eubulo G. Verzola (retired/deceased) and Associate Justice Candido V. Rivera (retired/deceased), concurring.

[2] *Id.* at 25.

Antecedents

As a domestic corporation authorized to engage in large-scale mining, Lepanto operated several mining claims in Mankayan, Benguet. On May 27, 1998, respondent Lepanto Capataz Union (Union), a labor organization duly registered with DOLE, filed a petition for consent election with the Industrial Relations Division of the Cordillera Regional Office (CAR) of DOLE, thereby proposing to represent 139 *capatazes* of Lepanto.[3]

In due course, Lepanto opposed the petition,[4] contending that the Union was in reality seeking a certification election, not a consent election, and would be thereby competing with the Lepanto Employees Union (LEU), the current collective bargaining agent. Lepanto pointed out that the *capatazes* were already members of LEU, the exclusive representative of all rank-and-file employees of its Mine Division.

On May 2, 2000, Med-Arbiter Michaela A. Lontoc of DOLE-CAR issued a ruling to the effect that the *capatazes* could form a separate bargaining unit due to their not being rank-and-file employees,[5] *viz*:

x x x x x x x x x

We agree with petitioner that its members perform a function totally different from the rank-and-file employees. The word capataz is defined in Webster's Third International Dictionary, 1986 as "a boss", "foreman" and "an overseer". The employer did not dispute during the hearing that **the *capatazes* indeed take charge of the implementation of the job orders by supervising and instructing the miners, mackers and other rank-and-file workers under them, assess and evaluate their performance, make regular reports and recommends (sic) new systems and procedure of work, as well as guidelines for the discipline of employees. As testified to by petitioner's president, the *capatazes* are neither**

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[3] CA *rollo*, pp. 21-22.

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

[5] *Id.* at 37-40.

rank-and-file nor supervisory and, more or less, fall in the middle of their rank. In this respect, we can see that indeed the *capatazes* differ from the rank-and-file and can by themselves constitute a separate bargaining unit.

While it is claimed by the employer that historically, the *capatazes* have been considered among the rank-and-file and that it is only now that they seek a separate bargaining unit such history of affiliation with the rank-and-file association of LEU cannot totally prevent the *capatazes* from disaffiliating and organizing themselves separately. The constitutional right of every worker to self-organization essentially gives him the freedom to join or not to join an organization of his own choosing.

The fact that petitioner seeks to represent a separate bargaining unit from the rank-and-file employees represented by the LEU renders the contract bar rule inapplicable. While the collective bargaining agreement existing between the LEU and the employer covering the latter's rank-and-file employee covers likewise the *capatazes*, it was testified to and undisputed by the employer that the *capatazes* did not anymore participate in the renegotiation and ratification of the new CBA upon expiration of their old one on 16 November 1998. Their nonparticipation was apparently due to their formation of the new bargaining unit. Thus, while the instant petition was filed on 27 May 1998, prior to the freedom period, in the interest of justice and in consonance with the constitutional right of workers to self-organization, the petition can be deemed to have been filed at the time the 60-day freedom period set in. After all, the petition was still pending and unresolved during this period.

WHEREFORE, the petition is hereby granted and a certification election among the capataz employees of the Lepanto Consolidated Mining Company is hereby ordered conducted, subject to the usual pre-election and inclusion/exclusion proceedings, with the following choices:

1. Lepanto Capataz Union; and
2. No Union.

The employer is directed to submit to this office within ten (10) days from receipt hereof a copy of the certified list of its capataz employees and the payroll covering the said bargaining unit for the last three (3) months prior to the issuance hereof.

SO DECIDED.[6]

Lepanto appealed to the DOLE Secretary.[7]

On July 12, 2000, then DOLE Undersecretary Rosalinda Dimapilis-Baldoz (Baldoz), acting by authority of the DOLE Secretary, affirmed the ruling of Med-Arbiter Lontoc,[8] pertinently stating as follows:

x x x x x x x x x

The bargaining unit sought to be represented by the appellee are the capataz employees of the appellant. There is no other labor organization of *capatazes* within the employer unit except herein appellant. Thus, appellant is an unorganized establishment in so far as the bargaining unit of *capatazes* is concerned. In accordance with the last paragraph of Section 11, Rule XI, Department Order No. 9 which provides that "in a petition filed by a legitimate labor organization involving an unorganized establishment, the Med-Arbiter shall, pursuant to Article 257 of the Code, automatically order the conduct of certification election after determining that the petition has complied with all requirements under Section 1, 2 and 4 of the same rules and that none of the grounds for dismissal thereof exists", the order for the conduct of a certification election is proper.

Finally, as to the issue of whether the Med-Arbiter exhibited ignorance of the law when she directed the conduct of a certification election when appellee prays for the conduct of a consent election, let it be stressed that appellee seeks to be recognized as the sole and exclusive bargaining representative of all capataz employees of appellant. There are two modes by which this can be achieved, one is by voluntary recognition and two, by consent or certification election. Voluntary recognition under Rule X, Department Order No. 9 is a mode whereby the employer voluntarily recognizes the union as the bargaining representative of all the members in the bargaining unit sought to be represented. Consent and certification election under Rules XI and XII of Department Order No. 9 is a mode whereby the members of the bargaining unit decide whether

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[6] *Id.* at 39-40 (bold emphasis supplied).

[7] *Id.* at 41-51.

[8] *Id.* at 53-57.

they want a bargaining representative and if so, who they want it to be. The difference between a consent election and a certification election is that the conduct of a consent election is agreed upon by the parties to the petition while the conduct of a certification election is ordered by the Med-Arbiter. In this case, the appellant withdrew its consent and opposed the conduct of the election. Therefore, the petition necessarily becomes one of a petition for certification election and the Med-Arbiter was correct in granting the same.[9]

x x x x x x x x x

In the ensuing certification election held on November 28, 2000, the Union garnered 109 of the 111 total valid votes cast.[10]

On the day of the certification election, however, Lepanto presented an opposition/protest.[11] Hence, on February 8, 2001, a hearing was held on Lepanto's opposition/protest. Although the parties were required in that hearing to submit their respective position papers, Lepanto later opted not to submit its position paper,[12] and contended that the issues identified during the hearing did not pose any legal issue to be addressed in a position paper.[13]

On April 26, 2001, Med-Arbiter Florence Marie A. Gacad-Ulep of DOLE-CAR rendered a decision certifying the Union as the sole and exclusive bargaining agent of all *capatazes* of Lepanto.[14]

On May 18, 2001, Lepanto appealed the decision of Med-Arbiter Gacad-Ulep to the DOLE Secretary.

By her Resolution dated September 17, 2002,[15] DOLE Secretary Patricia A. Sto. Tomas affirmed the decision dated April 26, 2001, holding and disposing thus:

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[9] *Id.* at 56.

[10] *Id.* at 18.

[11] *Id.* at 58.

[12] *Id.* at 59-61.

[13] *Id.*

[14] *Id.* at 18.

[15] *Id.* at 18-20.

Appellant accused Med-Arbiter Ulep of grave abuse of discretion amounting to lack of jurisdiction based on her failure to resolve appellant's motion to modify order to submit position papers and on rendering judgment on the basis only of appellee's position paper.

We deny.

Section 5, Rule XXV of Department Order No. 9, otherwise known as the New Rules Implementing Book V of the Labor Code, states that "in all proceedings at all levels, incidental motions shall not be given due course, but shall remain as part of the records for whatever they may be worth when the case is decided on the merits".

Further, the motion to modify order to submit position papers filed by appellant is without merit. Appellant claimed that the issues over which Med-Arbiter Ulep directed the submission of position papers were: (1) failure to challenge properly; (2) failure (especially of LEU) to participate actively in the proceedings before the decision calling for the conduct of certification election; and (3) validity of earlier arguments. According to appellant, the first issue was for appellee LCU to reply to in its position paper, the second issue was for the LEU and the third issue for appellant company to explain in their respective position paper. It was the position of appellant company that unless the parties filed their position paper on each of their respective issues, the other parties cannot discuss the issues they did not raise in the same position papers and have to await receipt of the others' position paper for their appropriate reply.

Section 9, Rule XI of Department Order No. 9, which is applied with equal force in the disposition of protests on the conduct of election, states that "the Med-Arbiter shall in the same hearing direct all concerned parties, including the employer, to simultaneously submit their respective position papers within a non-extendible period of ten days". The issues as recorded in the minutes of 28 February 2001 hearing before the Med-Arbiter are clear. The parties, including appellant company were required to submit their respective positions on whether there was proper challenge of the voters, whether LEU failed to participate in the proceedings, if so, whether it should be allowed to participate at this belated stage and whether the arguments raised during the pre-election conferences and in the protests are valid. The parties, including appellant company were apprised of these issues and they agreed thereto. The minutes of the hearing even contained the statement that "no order will issue" and that "the parties are informed accordingly". If there is any matter that had

to be clarified, appellant should have clarified the same during the said hearing and refused to file its position paper simultaneously with LCU and LEU. It appears that appellant did not do so and acquiesced to the filing of its position paper within fifteen days from the date of said hearing.

Neither is there merit in appellant's contention that the Med-Arbiter resolved the protest based solely on appellee LCU's position paper. Not only did the Med-Arbiter discuss the demerits of appellant's motion to modify order to submit position papers but likewise the demerits of its protest. We do not, however, agree with the Med-Arbiter that the protest should be dismissed due to appellant's failure to challenge the individual voters during the election. We take note of the minutes of the pre-election conference on 10 November 2000, thus:

> "It was also agreed upon (by union and management's legal officer) that all those listed will be allowed to vote during the certification election subject to challenge by management on ground that none of them belongs to the bargaining unit". (Underscoring supplied)

It is therefore, not correct to say that there was no proper challenge made by appellant company. The challenge was already manifested during the pre-election conference, specifying that all listed voters were being challenged because they do not belong to the bargaining unit of *capatazes*. Likewise, the formal protest filed by appellant company on the day of the election showed its protest to the conduct of the election on the grounds that (1) none of the names submitted and included (with pay bracket 8 and 9) to vote qualifies as capataz under the five-point characterization made in 02 May 2000 decision calling for the conduct of certification election; (2) the characterization made in the 02 May 2000 decision pertains to shift bosses who constitutes another union, the Lepanto Local Staff Union; and (3) the names listed in the voters' list are members of another union, the Lepanto Employees Union. This constitutes proper challenge to the eligibility of all the voters named in the list which includes all those who cast their votes. The election officer should have not canvassed the ballots and allowed the Med-Arbiter to first determine their eligibility.

Notwithstanding the premature canvass of the votes, we note that appellant company failed to support its grounds for challenge with

sufficient evidence for us to determine the validity of its claim. No job description of the challenged voters was submitted by appellant from which we can verify whether the said voters are indeed disqualified from the alleged five-point characterization made in the 02 May 2000 decision, either before the Med-Arbiter or on appeal. Neither was the job description of the shift bosses whom appellant company claims pertain to the alleged five-point characterization submitted for our perusal. The challenge must perforce fail for lack of evidence.

As to the alleged membership of appellee LCU's member with another union LEU, the issue has been resolved in the 02 May 200[0] decision of Med-Arbiter Lontoc which we affirmed on 12 July 2000.

WHEREFORE, the appeal is hereby **DENIED** for lack of merit and the decision of the Med-Arbiter dated 26 April 2001, certifying Lepanto Capataz Union as the sole and exclusive bargaining agent of all capataz workers of Lepanto Consolidated Mining Company, is **AFFIRMED**.

SO RESOLVED.[16]

Ruling of the CA

Still dissatisfied with the result, but without first filing a motion for reconsideration, Lepanto challenged in the CA the foregoing decision of the DOLE Secretary through a petition for *certiorari*.

On December 18, 2002, the CA dismissed Lepanto's petition for *certiorari*, stating in its first assailed resolution:

Considering that the petitioner failed to file a prior motion for reconsideration of the Decision of the public respondent before instituting the present petition as mandated by Section 1 of Rule 65 of the 1997 Rules of Civil Procedure, as amended, the instant "*Petition for Certiorari Under Rule 65 with Prayer for Temporary Restraining Order and Injunction*" is hereby **DISMISSED**.

> Well-settled is the rule that the "*filing of a petition for certiorari under Rule 65 without first moving for reconsideration of the assailed resolution generally warrants the petition's outright dismissal. As we consistently held in numerous cases, a motion for reconsideration by a concerned*

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

party is indispensable for it affords the NLRC an opportunity to rectify errors or mistakes it might have committed before resort to the courts can be had.

It is settled that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against acts of public respondents. Here, the plain and adequate remedy expressly provided by law was a motion for reconsideration of the impugned resolution, based on palpable or patent errors, to be made under oath and filed within ten (10) days from receipt of the questioned resolution of the NLRC, a procedure which is jurisdictional. Further, it should be stressed that without a motion for reconsideration seasonably filed within the ten-day reglementary period, the questioned order, resolution or decision of NLRC, becomes final and executory after ten (10) calendar days from receipt thereof." **(Association of Trade Unions (ATU), Rodolfo Monteclaro and Edgar Juesan vs. Hon. Commissioners Oscar N. Abella, Musib N. Buat, Leon Gonzaga, Jr., Algon Engineering Construction Corp., Alex Gonzales and Editha Yap. 323 SCRA 50).**

SO ORDERED.[17]

Lepanto moved to reconsider the dismissal, but the CA denied its motion for reconsideration through the second assailed resolution.[18]

Issues

Hence, this appeal by Lepanto based on the following errors, namely:

I

THE COURT OF APPEALS ERRED IN SUMMARILY DISMISSING THE PETITION FOR *CERTIORARI* ON THE GROUND THAT NO PRIOR MOTION FOR RECONSIDERATION WAS FILED. THE DECISION OF THE SECRETARY BEING FINAL AND EXECUTORY, A MOTION FOR RECONSIDERATION WAS NOT AN AVAILABLE REMEDY FOR PETITIONER.

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

[18] *Id.* at 25.

II

ON THE MERITS, THE SECRETARY OF LABOR ACTED WITHOUT OR IN EXCESS OF JURISDICTION, [O]R WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUNG THE DECISION DATED SEPTEMBER 17, 2002, WHEN SHE DELIBERATELY IGNORED THE FACTS AND RULED IN FAVOR OF THE RESPONDENT UNION, DESPITE HER OWN FINDING THAT THERE HAD BEEN A PREMATURE CANVASS OF VOTES.[19]

Lepanto argues that a motion for reconsideration was not an available remedy due to the decision of the DOLE Secretary being already classified as final and executory under Section 15, Rule XI, Book V of Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 9, series of 1997;[20] that the Union's petition for consent election was really a certification election; that the Union failed to give a definite description of the bargaining unit sought to be represented; and that the *capatazes* should be considered as rank-and-file employees.

The issues to be resolved are, *firstly*, whether a motion for reconsideration was a pre-requisite in the filing of its petition for *certiorari*; and, *secondly*, whether the *capatazes* could form their own union independently of the rank-and-file employees.

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[19] *Id.* at 9.

[20] Section 15. *Appeal*; *finality of decision*.—The decision of the Med-Arbiter may be appealed to the Secretary within ten (10) days from receipt by the parties of a copy thereof, only on the grounds of violation of Section 9 hereof or of serious errors of fact or law in the resolution of a protest.

The appeal shall be under oath and shall consist of a memorandum of appeal specifically stating the grounds relied upon by the appellant with the supporting arguments and evidence. The appeal shall be deemed not filed unless accompanied by proof of service thereof to appellee. The decision of the Secretary on the appeal shall be final and executory.

Where no appeal is filed within the ten-day period, the decision shall become final and executory and the Med-Arbiter shall enter this fact into the records of the case.

Ruling

The petition for review has no merit.

I.

The filing of the motion for reconsideration is a pre-requisite to the filing of a petition for *certiorari* to assail the decision of the DOLE Secretary

We hold to be untenable and not well taken Lepanto's submissions that: (1) a motion for reconsideration was not an available remedy from the decision of the DOLE Secretary because of Section 15, Rule XI, Book V of the Omnibus Rules Implementing the Labor Code, as amended; and (2) the ruling in *National Federation of Labor v. Laguesma*[21] (recognizing the remedy of *certiorari* against the decision of the DOLE Secretary to be filed initially in the CA) actually affirms its position that an immediate recourse to the CA on *certiorari* is proper even without the prior filing of a motion for reconsideration.

To start with, the requirement of the timely filing of a motion for reconsideration as a precondition to the filing of a petition for *certiorari* accords with the principle of exhausting administrative remedies as a means to afford every opportunity to the respondent agency to resolve the matter and correct itself if need be.[22]

And, secondly, the ruling in *National Federation of Labor v. Laguesma* reiterates *St. Martin's Funeral Home v. National Labor Relations Commission,*[23] where the Court has pronounced that the special civil action of *certiorari* is the appropriate remedy from the decision of the National Labor Relations Commission (NLRC) in view of the lack of any appellate remedy provided

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[21] G.R. No. 123426, March 10, 1999, 304 SCRA 405.

[22] *Teng v. Pahagac*, G.R. No. 169704, November 17, 2010, 635 SCRA 173, 185.

[23] G.R. No. 130866, September 16, 1998, 295 SCRA 494, 507-508.

by the *Labor Code* to a party aggrieved by the decision of the NLRC. Accordingly, any decision, resolution or ruling of the DOLE Secretary from which the *Labor Code* affords no remedy to the aggrieved party may be reviewed through a petition for *certiorari* initiated only in the CA in deference to the principle of the hierarchy of courts.

Yet, it is also significant to note that *National Federation of Labor v. Laguesma* also reaffirmed the dictum issued in *St. Martin's Funeral Homes v. National Labor Relations Commission* to the effect that "the remedy of the aggrieved party is to timely file a motion for reconsideration as a precondition for any further or subsequent remedy, and then seasonably avail of the special civil action of *certiorari* under Rule 65 x x x."[24]

Indeed, the Court has consistently stressed the importance of the seasonable filing of a motion for reconsideration prior to filing the *certiorari* petition. In *SMC Quarry 2 Workers Union-February Six Movement (FSM) Local Chapter No. 1564 v. Titan Megabags Industrial Corporation*[25] and *Manila Pearl Corporation v. Manila Pearl Independent Workers Union*,[26] the Court has even warned that a failure to file the motion for reconsideration would be fatal to the cause of the petitioner.[27] Due to its extraordinary nature as a remedy, *certiorari* is to be availed of only when there is no appeal, or any plain, speedy or adequate remedy in the ordinary course of law.[28] There is no question that a motion for reconsideration timely filed by Lepanto was an adequate remedy in the ordinary course of law in view

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[24] *Id.* at 500-501.

[25] G.R. No. 150761, May 19, 2004, 428 SCRA 524.

[26] G.R. No. 142960, April 15, 2005, 456 SCRA 258.

[27] *SMC Quarry 2 Workers Union-February Six Movement (FSM) Local Chapter No. 1564 v. Titan Megabags Industrial Corporation, supra* at 527; *Manila Pearl Corporation v. Manila Pearl Independent Workers Union, id.* at 262.

[28] Section 1, Rule 65, *Rules of Court*.

of the possibility of the Secretary of Justice reconsidering her disposition of the matter, thereby according the relief Lepanto was seeking.

Under the circumstances, Lepanto's failure to timely file a motion for reconsideration prior to filing its petition for *certiorari* in the CA rendered the September 17, 2002 resolution of the DOLE Secretary beyond challenge.

II.

Capatazes are not rank-and-file employees; hence, they could form their own union

Anent the second issue, we note that Med-Arbiter Lontoc found in her Decision issued on May 2, 2000 that the *capatazes* were performing functions totally different from those performed by the rank-and-file employees, and that the *capatazes* were "supervising and instructing the miners, mackers and other rank-and-file workers under them, assess[ing] and evaluat[ing] their performance, mak[ing] regular reports and recommend[ing] new systems and procedure of work, as well as guidelines for the discipline of employees."[29] Hence, Med-Arbiter Lontoc concluded, the *capatazes* "differ[ed] from the rank-and-file and [could] by themselves constitute a separate bargaining unit."[30]

Agreeing with Med-Arbiter Lontoc's findings, then DOLE Undersecretary Baldoz, acting by authority of the DOLE Secretary, observed in the resolution dated July 12, 2000, thus:[31]

> The bargaining unit sought to be represented by the appellee are the capataz employees of the appellant. There is no other labor organization of *capatazes* within the employer unit except herein appellant. Thus, appellant is an unorganized establishment in so far

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[29] CA *rollo*, pp. 37-40.

[30] *Id.*

[31] *Id.* at 53-57.

as the bargaining unit of *capatazes* is concerned. In accordance with the last paragraph of Section 11, Rule XI, Department Order No. 9 which provides that "in a petition filed by a legitimate labor organization involving an unorganized establishment, the Med-Arbiter shall, pursuant to Article 257 of the Code, automatically order the conduct of certification election after determining that the petition has complied with all requirements under Section 1, 2 and 4 of the same rules and that none of the grounds for dismissal thereof exists", the order for the conduct of a certification election is proper.[32]

We cannot undo the affirmance by the DOLE Secretary of the correct findings of her subordinates in the DOLE, an office that was undeniably possessed of the requisite expertise on the matter in issue. In dealing with the matter, her subordinates in the DOLE fairly and objectively resolved whether the Union could lawfully seek to be the exclusive representative of the bargaining unit of *capatazes* in the company. Their factual findings, being supported by substantial evidence, are hereby accorded great respect and finality. Such findings cannot be made the subject of our judicial review by petition under Rule 45 of the *Rules of Court*, because:

> x x x [T]he office of a petition for review on *certiorari* under Rule 45 of the Rules of Court requires that it shall raise only questions of law. The factual findings by quasi-judicial agencies, such as the Department of Labor and Employment, when supported by substantial evidence, are entitled to great respect in view of their expertise in their respective field. Judicial review of labor cases does not go far as to evaluate the sufficiency of evidence on which the labor official's findings rest. It is not our function to assess and evaluate all over again the evidence, testimonial and documentary, adduced by the parties to an appeal, particularly where the findings of both the trial court (here, the DOLE Secretary) and the appellate court on the matter coincide, as in this case at bar. The Rule limits that function of the Court to review or revision of errors of law and not to a second analysis of the evidence. Here, petitioners would have us re-calibrate all over again the factual basis and the probative value of the pieces of evidence submitted by the Company to the DOLE,

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[32] *Id.* at 56.

contrary to the provisions of Rule 45. Thus, absent any showing of whimsical or capricious exercise of judgment, and unless lack of any basis for the conclusions made by the appellate court may be amply demonstrated, we may not disturb such factual findings.[33]

In any event, we affirm that *capatazes* or foremen are not rank-and-file employees because they are an extension of the management, and as such they may influence the rank-and-file workers under them to engage in slowdowns or similar activities detrimental to the policies, interests or business objectives of the employers.[34]

WHEREFORE, the Court **DENIES** the petition for review for lack of merit, and **AFFIRMS** the resolutions the Court of Appeals promulgated on December 18, 2002 and January 31, 2003.

Petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

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[33] *Telefunken Semiconductors Employees Union-FFW v. Court of Appeals,* G.R. Nos. 143013-14, December 18, 2000, 348 SCRA 565, 579-580.

[34] *Golden Farms, Inc. v. Ferrer-Calleja*, G.R. No. 78755, July 19, 1989, 175 SCRA 471, 477-478.

FIRST DIVISION

[G.R. No. 158649. February 18, 2013]

SPOUSES QUIRINO V. DELA CRUZ and GLORIA DELA CRUZ, *petitioners, vs.* **PLANTERS PRODUCTS, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; THE WRITTEN TERMS OF THE CONTRACT, IF CLEAR UPON THE INTENTION OF THE CONTRACTING PARTIES, SHOULD BE LITERALLY APPLIED.— [G]loria signed the application for credit facilities on March 23, 1978, indicating that a trust receipt would serve as collateral for the credit line. On August 4, 1978, Gloria, as "dealer," signed together with Quirino the list of their assets having a total value of ₱260,000.00 (consisting of a residential house and lot, 10-hectare agricultural lands in Aliaga and Talavera, and two residential lots) that they tendered to PPI "to support our credit application in connection with our participation to your Special Credit Scheme." Gloria further signed the Trust Receipt/SCS documents defining her obligations under the agreement, and also the invoices pursuant to the agreement with PPI, indicating her having received PPI products on various dates. These established circumstances comprised by the contemporaneous and subsequent acts of Gloria and Quirino that manifested their intention to enter into the creditor-debtor relationship with PPI show that the CA properly held the petitioners fully liable to PPI. The law of contracts provides that in determining the intention of the parties, their contemporaneous and subsequent acts shall be principally considered. Consequently, the written terms of their contract with PPI, being clear upon the intention of the contracting parties, should be literally applied.

2. ID.; ID.; ID.; ID.; CIRCUMSTANCES MANIFESTING THE INTENTION OF THE PARTIES TO ENTER INTO A CREDITOR-DEBTOR RELATIONSHIP.— The first circumstance was the credit line of ₱200,000.00 that

commenced the business relationship between the parties. A credit line is really a loan agreement between the parties. x x x. The second circumstance was the offer by Gloria of trust receipt as her collateral for securing the loans that PPI extended to her. A trust receipt is "a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandice, and who may not be able to acquire credit except through utilization, as collateral, of the merchandice imported or purchased." x x x. The third circumstance was the offer of Gloria and Quirino to have their conjugal real properties beef up the collaterals for the credit line. Gloria signed the list of the properties involved as "dealer," thereby ineluctably manifesting that Gloria considered herself a dealer of the products delivered by PPI under the credit line. x x x. The fourth circumstance had to do with the undertakings under the trust receipts. x x x A close look at the Trust Receipt/SCS indicates that the farmer-participants were mentioned therein only with respect to the duties and responsibilities that Gloria personally assumed to undertake in holding goods "in trust for PPI." Under the notion of relativity of contracts embodied in Article 1311 of the *Civil Code*, contracts take effect only between the parties, their assigns and heirs. Hence, the farmer-participants, not being themselves parties to the contractual documents signed by Gloria, were not to be thereby liable. x x x. The last circumstance was that the petitioners now focus on the amount of liabilities adjudged against them by the lower courts. They thereby bolster the finding that they fully knew and accepted the legal import of the documents Gloria had signed of rendering them personally liable towards PPI for the value of the inputs granted to the farmer-participants through them. The finding is further confirmed by her admission of paying, to PPI the amount of ₱50,000.00, which payment, albeit allegedly made grudgingly, solidified the existence of a creditor-deptor relationship between them. Indeed, Gloria would not have paid that amount except in acknowledgement of an indebtedness towards PPI.

3. COMMERCIAL LAW; *TRUST RECEIPTS LAW*, TRUST RECEIPTS TRANSACTION, ELUCIDATED.— [T]he Court

clarifies that the contract, its label notwithstanding, was not a trust receipt transaction in legal contemplation or within the purview of the *Trust Receipt Law* (Presidential Decree No. 115) such that its breach would render Gloria criminally liable for *estafa*. Under Section 4 of the *Trust Receipts Law*, the sale of goods by a person in the business of selling goods for profit who, at the outset of the transaction, has, as against the buyer, general property rights in such goods, or who sells the goods to the buyer on credit, retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of the law x x x. In *Land Bank v. Perez*, the Court has elucidated on the coverage of Section 4, *supra*, to wit: There are two obligations in a trust receipt transaction. The first is covered by the provision that refers to money under the obligation to deliver it (*entregarla*) to the owner of the merchandise sold. The second is covered by the provision referring to merchandise received under the obligation to return it (*devolverla*) to the owner. Thus, under the *Trust Receipts Law*, intent to defraud is presumed when (1) the entrustee fails to turn over the proceeds of the sale of goods covered by the trust receipt to the entruster; or (2) when the entrustee fails to return the goods under trust, if they are not disposed of in accordance with the terms of the trust receipts. In all trust receipt transactions, both obligations on the part of the trustee exist in the alternative – the return of the proceeds of the sale or the return or recovery of the goods, whether raw or processed. **When both parties enter into an agreement knowing that the return of the goods subject of the trust receipt is not possible even without any fault on the part of the trustee, it is not a trust receipt transaction penalized under Section 13 of P.D. 115; the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale transaction. This transaction becomes a mere loan, where the borrower is obligated to pay the bank the amount spent for the purchase of the goods**.

4. ID.; ID.; TRUST RECEIPTS IN CASE AT BAR WERE ONLY COLLATERALS OR SECURITIES FOR THE CREDIT LINE GRANTED BY THE RESPONDENT; TERM "WITH

***RECOURSE*," CONSTRUED.—** It is not amiss to point out that the RTC even erred in citing Section 4 of the *Trust Receipts Law* as its basis for ordering Gloria to pay the total amount of ₱240,355.10. Section 13 of the *Trust Receipts Law* considers the "failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt" as constituting the crime of *estafa* under Article 315 (b) of the *Revised Penal Code*. However, had PPI intended to charge Gloria with *estafa*, it could have then done so. Instead, it brought this collection suit, a clear indication that the trust receipts were only collaterals for the credit line as agreed upon by the parties. To be clear, the obligation assumed by Gloria under the Trust Receipt/SCS involved "the execution of a Trust Agreement by the farmer-participants" in her favor, which, in turn, she would assign "in favor of PPI with *recourse*" in case of delivery and sale to the farmer-participants. The term *recourse* as thus used means "resort to a person who is secondarily liable after the default of the person who is primarily liable." An indorsement "with *recourse*" of a note, for instance, makes the indorser a general indorser, because the indorsement is without qualification. Accordingly, the term with *recourse* confirms the obligation of a general indorser, who has the same liability as the original obligor. As the assignor "*with recourse*" of the Trust Agreement executed by the farmer participating in the SCS, therefore, Gloria made herself directly liable to PPI for the value of the inputs delivered to the farmer-participants. Obviously, the signature of the representative of PPI found in the demand letters Gloria sent to the farmer-participants only indicated that the Trust Agreement was part of the SCS of PPI. The petitioners could not validly justify the non-compliance by Gloria with her obligations under the Trust Receipt/SCS by citing the loss of the farm outputs due to typhoon *Kading*. There is no question that she had expressly agreed that her liability would not be extinguished by the destruction or damage of the crops. The use of the term *with recourse* was, in fact,

consonant with the provision of the Trust Receipt/SCS stating that if Gloria could not deliver or serve "all the inputs" to the farmer-participants within 60 days, she agreed that "the undelivered inputs will be charged" to her "regular credit line." Under her arrangement with PPI, the trust receipts were mere securities for the credit line granted by PPI, having in fact indicated in her application for the credit line that the trust receipts were "collaterals" or separate obligations "attached to any other contract to guaranty its performance."

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; A CONTRACT OF ADHESION PREPARED BY ONE PARTY IS GENERALLY NOT A ONE-SIDED DOCUMENT AS LONG AS THE SIGNATORY IS NOT PREVENTED FROM STUDYING IT BEFORE SIGNING; UNLESS A CONTRACTING PARTY CANNOT READ OR DOES NOT UNDERSTAND THE LANGUAGE IN WHICH THE AGREEMENT IS WRITTEN, HE IS PRESUMED TO KNOW THE IMPORT OF HIS CONTRACT AND IS BOUND THEREBY.— It is worthwhile to note that the application for credit facilities was a form contract that Gloria filled out only with respect to her name, address, credit limit, term, and collateral. Her act of signing the application signified her agreement to be bound by the terms of the application, specifically her acquiescence to use trust receipts as collaterals, as well as by the terms and conditions of the Trust Receipt/SCS. In this regard, whether or not the Trust Receipt/SCS was a contract of adhesion apparently prepared by PPI would neither dilute nor erase her liabilities. A contract of adhesion prepared by one party, usually a corporation, is generally not a one-sided document as long as the signatory is not prevented from studying it before signing. Gloria did not show that she was deprived of that opportunity to study the contract. At any rate, the social stature of the parties, the nature of the transaction, and the amount involved were also factors to be considered in determining whether the aggrieved party "exercised adequate care and diligence in studying the contract prior to its execution." Thus, "[u]nless a contracting party cannot read or does not understand the language in which the agreement is written, he is presumed to know the import of his contract and

is bound thereby." Here, Gloria was married to a lawyer who was also then the Municipal Mayor of Aliaga. Both of them signed the list of conjugal assets that they used to support the application for the credit line.

6. REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; DUE EXECUTION AND AUTHENTICITY OF PRIVATE DOCUMENT, HOW PROVED; THE PERSON WHO PREPARED THE DOCUMENT IS COMPETENT TO TESTIFY ON THE DUE EXECUTION AND AUTHENTICITY THEREOF.— With Exhibit V being a private document, authentication pursuant to the rules on evidence was a condition for its admissibility. Llanera, admittedly the person who had prepared the document, was competent to testify on the due execution and authenticity of Exhibit V. Such authentication was done in accordance with Rule 132 of the *Rules of Court*, whose Section 20 states: Section 20. *Proof of private document*. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) By anyone who saw the document executed or written; or (b) By evidence of the genuineness of the signature or handwriting of the maker. Any other private document need only be identified as that which it is claimed to be.

7. ID.; ID.; PRESUMPTIONS; ENTRIES MADE IN THE COURSE OF BUSINESS ENJOY THE PRESUMPTION OF REGULARITY; IF PROPERLY AUTHENTICATED, THE ENTRIES SERVE AS EVIDENCE OF THE STATUS OF THE ACCOUNT OF THE PETITIONERS.— [T]he petitioners dispute the contents of Exhibit V by invoking Section 43, Rule 130 of the *Rules of Court* x x x. The invocation of the rule is misplaced, however, because the rule speaks of a situation where the person who made the entries is dead or unable to testify, which was not the situation here. Regardless, we have to point out that entries made in the course of business enjoy the presumption of regularity. If properly authenticated, the entries serve as evidence of the status of the account of the petitioners. In *Land Bank v. Monet's Export and Manufacturing Corporation*, the Court has explained that such entries are accorded unusual reliability because their regularity

and continuity are calculated to discipline record keepers in the habit of precision; and that if the entries are financial, the records are routinely balanced and audited; hence, in actual experience, the whole of the business world function in reliance of such kind of records.

8. ID.; APPEALS; THE COURT IS IN NO POSITION TO REVIEW AND OVERTURN THE LOWER COURTS' UNANIMOUS FINDING AND ACCEPTANCE WITHOUT STRONG AND VALID REASONS WHERE THE INVOLVED AN ISSUE OF FACT.— Nor have the petitioners proved that the entries contained in Exhibit V were incorrect and untruthful. They cannot be permitted to do so now at this stage of final appeal, especially after the lower courts found and accepted the statement of account contained therein to be properly authenticated and trustworthy. Indeed, the Court is in no position to review and overturn the lower courts' unanimous finding and acceptance without strong and valid reasons because they involved an issue of fact.

9. CIVIL LAW; DAMAGES; INTEREST; THE PARTIES ARE ALLOWED TO AGREE ON THE INTEREST THAT MAY BE CHARGED ON THE LOAN PROVIDED THE IMPOSED RATE ARE NOT "ESCESSIVE INIQUITOUS, UNCONSCIONABLE AND EXORBITANT;" OTHERWISE, THE COURT MAY DECLARE THE RATE ILLEGAL.— In 1978, when Gloria and PPI entered into the credit line agreement, the (Act No. 2655) was still in effect. Section 2 of the *Usury Law* prescribed an interest rate of 12% *per annum* on secured loans, while Section 1 provided that "[t]he rate of interest for the loan or forbearance of any money, goods, or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall be six *per centum per annum* or such rate as may be prescribed by the Monetary Board of the Central Bank." It is noted, of course, that the *Usury Law* allowed the parties in a loan agreement to exercise discretion on the interest rate to be charged. Once a judicial demand for payment has been made, however, Article 2212 of the *Civil Code* should apply, that is: "Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this

point." The Central Bank circulars on interest rates granted to the parties leeway on the rate of interest agreed upon. In this regard, the Court has said: The *Usury Law* had been rendered legally ineffective by Resolution No. 224 dated 3 December 1982 of the Monetary Board of the Central Bank, and later by Central Bank Circular No. 905 which took effect on 1 January 1983. These circulars removed the ceiling on interest rates for secured and unsecured loans regardless of maturity. The effect of these circulars is to allow the parties to agree on any interest that may be charged on a loan. The virtual repeal of the *Usury Law* is within the range of judicial notice which courts are bound to take into account. Although interest rates are no longer subject to a ceiling, the lender does not have an unbridled license to impose increased interest rates. The lender and the borrower should agree on the imposed rate, and such imposed rate should be in writing. Accordingly, the interest rate agreed upon should not be "excessive, iniquitous, unconscionable and exorbitant;" otherwise, the Court may declare the rate illegal.

10. ID.; ID.; ID.; ID.; LEGAL INTEREST OF 12% PER ANNUM APPLIED TO CASE AT BAR, TO BE RECKONED FROM THE FILING OF THE ACTION; COMPUTATION OF LEGAL INTEREST, FORMULA.— Considering that the credit line agreement was entered into in 1978, the rate of interest was still governed by the Usury Law. The 16% *per annum* interest imposed by the RTC was erroneous, therefore, because the loan was secured by the Trust Receipt/SCS. In view of this, 12% *per annum* is the legal rate of interest that should apply, to be reckoned from the filing of the action. This rate accords with *Eastern Shipping Lines, Inc. v. Court of Appeals*, whereby the Court has defined the following formula for the computation of legal interest for the guidance of the Bench and the Bar, *viz*: TOTAL A MOUNT DUE = [principal - partial payments made] + [interest+ interest on interest], where Interest = remaining balance x 12% *per annum* x no. of years from due date until date of sale to a third party (payment). Interest on interest = interest computed as of the filing of the complaint x no. of years until date of sale to a third party (payment).

11. ID.; ID.; ID.; THE INTEREST, HOWEVER, ENORMOUS IT MAY BE, CANNOT BE CONSIDERED INEQUITABLE AND

UNCONSCIONABLE, WHERE THE SAME RESULTED DIRECTLY FROM THE APPLICATION OF LAW AND JURISPRUDENCE.— Relevantly, the likelihood of the aggregate interest charged exceeding the principal indebtedness is not remote. In *Apo Fruits Corporation v. Land Bank of the Philippines*, a case involving just compensation for landholdings with legal interest, however, the Court has appropriately observed that the realization of such likelihood was not necessarily inequitable or unconscionable due to its resulting directly from the application of law and jurisprudence, to wit: That the legal interest due is now almost equivalent to the principal to be paid is not *per se* an inequitable or unconscionable situation, considering the length of time the interest has remained unpaid — almost twelve long years. From the perspective of interest income, twelve years would have been sufficient for the petitioners to double the principal, even if invested conservatively, had they been promptly paid the principal of the just compensation due them. Moreover, the interest, however enormous it may be, cannot be inequitable and unconscionable because it resulted directly from the application of law and jurisprudence — standards that have taken into account fairness and equity in setting the interest rates due for the use or forbearance of money. That is true herein. Although this case was commenced in 1981, the decision of the trial court was rendered only in 1997, or more than 15 years ago. By appealing to the CA and then to this Court, the petitioners chose to prolong the final resolution of the case; hence, they cannot complain, but must bear the consequences to them of the application of the pertinent law and jurisprudence, no matter how unfavorable to them.

12. ID.; ID.; ATTORNEY'S FEES; ABSENT THE STATEMENT OF FACTUAL BASIS AND LEGAL JUSTIFICATION, AWARD OF ATTORNEY'S FEES SHALL BE DISALLOWED; EXPOUNDED.— The award of attorney's fees is deleted because of the absence of any factual and legal justification being expressly stated by the CA as well as by the RTC. To start with, the Court has nothing to review if the CA did not tender in its decision any justification of why it was awarding attorney's fees. The award of attorney's fees must rest on a factual basis and legal justification stated in the body

of the decision under review. Absent the statement of factual basis and legal justification, attorney's fees are to be disallowed. In *Abobon v. Abobon*, the Court has expounded on the requirement for factual basis and legal justification in order to warrant the grant of attorney's fees to the winning party, *viz*: As to attorney's fees, the general rule is that such fees cannot be recovered by a successful litigant as part of the damages to be assessed against the losing party because of the policy that no premium should be placed on the right to litigate. Indeed, prior to the effectivity of the present *Civil Code*, such fees could be recovered only when there was a stipulation to that effect. It was only under the present *Civil Code* that the right to collect attorney's fees in the cases mentioned in Article 2208 of the *Civil Code* came to be recognized. Such fees are now included in the concept of actual damages. Even so, whenever attorney's fees are proper in a case, the decision rendered therein should still expressly state the *factual* basis and *legal* justification for granting them. Granting them in the dispositive portion of the judgment is not enough; a discussion of the *factual* basis and *legal* justification for them must be laid out in the body of the decision. Considering that the award of attorney's fees in favor of the respondents fell short of this requirement, the Court disallows the award for want of the factual and legal premises in the body of the decision. The requirement for express findings of fact and law has been set in order to bring the case within the exception and justify the award of the attorney's fees. Otherwise, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. The lack of any assignment of error upon the matter of attorney's fees is of no moment, for the award, being devoid of any legal and factual basis, can be corrected and removed as a matter of law.

APPEARANCES OF COUNSEL

Jaime S. Linsangan for petitioners.
Rayala and Partners Law Office for respondent.

D E C I S I O N

BERSAMIN, *J.*:

If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[1] In determining their intention, their contemporaneous and subsequent acts shall be principally considered.[2]

Under review on *certiorari* are the Decision promulgated on April 11, 2003 in C.A.-G.R. No. CV No. 57446,[3] whereby the Court of Appeals (CA) affirmed the judgment rendered on October 29, 1997 by the Regional Trial Court, Branch 66, (RTC) in Makati City (ordering the petitioners liable to pay the respondent the amount of ₱240,335.10 plus 16% interest *per annum* commencing from July 9, 1985 until full payment, and the sum of ₱20,000.00 as attorney's fees and cost of litigation);[4] and the resolution promulgated on June 9, 2003, whereby the CA denied the motion for reconsideration of the petitioners.[5]

Antecedents

Spouses Quirino V. Dela Cruz and Gloria Dela Cruz, petitioners herein, operated the Barangay Agricultural Supply, an agricultural supply store in Aliaga, Nueva Ecija engaged in the distribution and sale of fertilizers and agricultural chemical products, among others. At the time material to the case, Quirino, a lawyer, was the Municipal Mayor of Aliaga, Nueva Ecija.[6]

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[1] Article 1370, *Civil Code*.

[2] Article 1371, *Civil Code*.

[3] *Rollo*, pp. 45-52; penned by Associate Justice Andres B. Reyes, Jr. (later Presiding Justice), and concurred in by Associate Justice Eugenio S. Labitoria (retired) and Associate Justice Regalado E. Maambong (retired/deceased).

[4] Records, Volume I, pp. 413-416.

[5] *Rollo*, p. 92.

[6] Records, Volume I, p. 389.

On March 23, 1978, Gloria applied for and was granted by respondent Planters Products, Inc. (PPI) a regular credit line of ₱200,000.00 for a 60-day term, with trust receipts as collaterals.[7] Quirino and Gloria submitted a list of their assets in support of her credit application for participation in the Special Credit Scheme (SCS) of PPI.[8] On August 28, 1978, Gloria signed in the presence of the PPI distribution officer/assistant sales representative two documents[9] labelled "Trust Receipt/ Special Credit Scheme," indicating the invoice number, quantity, value, and names of the agricultural inputs (*i.e.*, fertilizer or agricultural chemicals) she received "upon the trust" of PPI. Gloria thereby subscribed to specific undertakings, as follows:

> For and in consideration thereof, I/We hereby agree to hold said goods in trust for PPI, as its property, with liberty to deliver and sell the same for PPI's account, in favor of farmers accepted to participate in PPI's Special Credit Scheme within 60 days from receipt of inputs from PPI. In case of such delivery and sale, I/We agree to require the execution of a Trust Agreement by the farmer-participants in my/our favor, which Agreement will in turn be Assigned by me/ us in favor of PPI with *Recourse*. In the event, I/We cannot deliver/ serve to the farmer-participants all the inputs as enumerated above within 60 days, then I/We agree that the undelivered inputs will be charged to my/our credit line, in which case, the corresponding adjustment of price and interests shall be made by PPI.[10]

Gloria expressly agreed to: (*a*) "supervise the collection of the equivalent number of cavanes of *palay* and/or corn from the farmer-participant" and to "turn over the proceeds of the sale of the deposited *palay* and corn as soon as received, to PPI to be applied against the listed invoices"; (*b*) "keep said fertilizer and pesticides insured at their full value against fire and other casualties prior to delivery to farmer-participants,

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[7] Exhibit A, records, Volume II, pp. 4-6.

[8] Exhibit B, *id.* at 7.

[9] Exhibit J and Exhibit K, *id.* at 18-19.

[10] *Id.*

the sum insured to be payable in case of loss to PPI, with the understanding that PPI is not to be chargeable with the storage, insurance premium, or any other expenses incurred on said goods"; (*c*) "keep the said fertilizer and pesticides, prior to delivery to the farmer-participants, separate and capable of identification as the property of PPI inside my/our warehouse"; and (*d*) "require the farmer-participants to deposit the *palay* or corn sufficient to cover their respective accounts within 72 hours after the harvest of the farmer-participants" and should the farmer-participants refuse to make the required deposit, Gloria would notify PPI thereof within 24 hours. For that purpose, negligence on her part would make her obligation under the Trust Receipt "direct and primary."[11]

Gloria further expressly agreed that her obligation as stipulated in the contract would "continue in force and be applicable to all transactions, notwithstanding any change in the individuals composing any firm, parties to or concerned x x x whether such change shall arise from accession of one or more new partners or from the death or cession of any partner or partners;" that her "liability for payment at maturity of the invoice(s) x x x shall not be extinguished or modified" by the following, namely: (*a*) "any priority, act of war, or restriction on the use, transportation, hypothecation, or disposal thereof imposed by any administrative, political or legislative enactments, regulations or orders whatsoever"; (*b*) "government appropriation of the same, or of any seizure or destruction thereof or damage thereto, whether insured against or not"; and (*c*) "any acts or regulation affecting this Trust Receipt or the inputs subject thereto."[12]

In addition, Gloria's obligation included the following terms and conditions, to wit:

All obligations of the undersigned under this Trust Receipt shall bear interest at the rate of twelve per cent (12%) *per annum* plus two percent (2%) service charges, reckoned from the date Dealer

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[11] *Id.*

[12] *Id.*

delivers to farmer-participants the fertilizer and agchem products. Where I/We have not delivered within 60 days, interest and service charges shall become effective on the 61st day.

If there are two or more signatories, our obligations hereunder shall in all cases be joint and several.

All expenses and charges incurred by PPI in re-possession of said fertilizer and agchem products, and in securing delivery of the same to a *bodega* or storage place in Manila or at some other place selected by it shall be for my/our account and shall be repaid to PPI by me/us.

Should it become necessary for PPI to avail of the services of an attorney-at-law to initiate legal steps to enforce any or all of its rights under this contract, we jointly and severally, shall pay to PPI for and as attorney's fees a sum equivalent to twenty per cent (20%) *per annum* of the total amount involved, principal and interest, then unpaid, but in no case less than FIVE HUNDRED PESOS (₱500.00), exclusive of all costs or fees allowed by law.

In consideration of PPI complying with the foregoing we jointly and severally agree and undertake to pay on demand to PPI all sums of money which PPI may call upon us to pay arising out of or pertaining to and/or in any event connected with the default of and/or non-fulfillment in any respect of the undertaking of the aforesaid.[13]

Gloria executed three more documents on September 14, 1978,[14] and one document each on September 28, 1978,[15] September 18, 1978,[16] and September 20, 1978.[17] On the corresponding dates, Gloria filled up customer order forms for fertilizer and agricultural chemical products.[18] Written at the upper portion of each order form was the following:

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[13] *Id.* (back pages but not numbered)

[14] Exhibit L, Exhibit M and Exhibit S, *id.* at 20-21, 23.

[15] Exhibit N, *id.* at 22.

[16] Exhibit T, *id.* at 24.

[17] Exhibit U, *id.* at 25.

[18] Exhibit C, Exhibit D, Exhibit E, Exhibit F, Exhibit G, Exhibit P, Exhibit Q and Exhibit R, *id.* at 8-15.

This invoice is subject to the terms and conditions stipulated in our contract. Under no circumstance is this invoice to be used as a receipt for payment. Interest at 14% *per annum* plus service and handling charges at the rate of 10% *per annum* shall be charged on all overdue accounts, and in the event of judicial proceedings to enforce collection, customer shall pay the Company an amount equivalent to 25% of the amount due for and as attorney's fees which in no case shall be less than ₱200 in addition to cost of suit.

The products were released to Gloria under the supervision of Cristina G. Llanera of PPI.

The 60-day credit term lapsed without Gloria paying her obligation under the Trust Receipt/SCS. Hence, PPI wrote collection letters to her on April 24, 1979 and May 22, 1979. Receiving no response from her, Inocencio E. Ortega, PPI District Distribution Manager, sent her on June 8, 1979 a demand letter on her "long overdue account" of ₱191,205,25.[19]

On February 24, 1979, PPI sent Gloria a credit note for ₱127,930.60 with these particulars: "To transfer to dealer's regular line inputs withdrawn VS. SCS line still undelivered to farmers after 60 days."[20] Another credit note, also dated February 24, 1979 and with the same particulars, indicated the amount of ₱46,622.80.[21]

The follow-up letter of October 11, 1979 culminated in the final demand letter of May 30, 1980 from Atty. R. M. Rivera, PPI Collection Officer,[22] stating that the total accountability of Gloria as of April 25, 1980 was ₱156,755.00 "plus interest, service charges, and penalty charges," all of which she should pay by June 18, 1980. PPI warned that should she fail to do so, PPI would file the "necessary civil and criminal cases" against her "based on the Trust Receipts."

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[19] Exhibit H, *id.* at 16.

[20] Exhibit W, *id.* at 27.

[21] Exhibit X, *id.* at 28.

[22] Exhibit I, *id.* at 17.

On November 17, 1981, PPI brought against Quirino and Gloria in the erstwhile Court of First Instance in Pasig, Metro Manila a complaint for the recovery of a sum of money with prayer for a writ of preliminary attachment.[23] PPI alleged that Gloria had violated the "fiduciary undertaking in the Trust Receipt agreement covering product withdrawals under the Special Credit Scheme which were subsequently charged to defendant dealer's regular credit line; therefore, she is guilty of fraudulently misapplying or converting to her own use the items delivered to her as contained in the invoices." It charged that Gloria did not return the goods indicated in the invoices and did not remit the proceeds of sales.

PPI prayed for judgment holding the petitioners liable for the principal amount of ₱161,203.60 as of October 25, 1981, "inclusive of interest and service charges"; additional "daily interest of ₱80.60 from October 26, 1981 until fully paid"; and 20% of the total amount due as attorney's fees. As of July 9, 1985, the statement of account showed a grand total liability of ₱240,355.10.[24]

In her answer, the petitioners alleged that Gloria was only a marketing outlet of PPI under its SCS Program, not a dealer primarily obligated to PPI for the products delivered to her; that she had not collected from the farmers participating in the SCS Program because of the October 27-28, 1979 typhoon *Kading* that had destroyed the participating farmers' crops; and that she had paid ₱50,000.00 to PPI despite the failure of the farmers to pay.[25]

Decision of the RTC

On October 29, 1997, the trial court, then already the RTC, rendered its judgment ordering the petitioners "to pay the plaintiff the amount of ₱240,335.10 plus 16% interest *per annum*

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[23] Records, Volume I, pp. 1-5.

[24] Exhibit V.

[25] Records, Volume I, p. 415.

commencing from July 9, 1985 until fully paid and the sum of ₱20,000.00 as attorney's fees and cost of litigation."[26]

The RTC found that based on the terms and conditions of the SCS Program, a creditor-debtor relationship was created between Gloria and PPI; that her liability was predicated on Section 4 of the *Trust Receipts Law* (Presidential Decree No. 115) and on the ruling in *Robles v. Court of Appeals*[27] to the effect that the failure of the entrustee (Gloria) to turn over to the entruster (plaintiff) the proceeds of the sale of goods covered by the delivery trust receipts or to return the goods constituted *estafa* punishable under Article 315(1)(*b*) of the *Revised Penal Code*; and that the petitioners could not use as a defense the occurrence of typhoon *Kading* because there was no privity of contract between the participating farmers and PPI.

Ruling of the CA

The petitioners appealed to the CA[28] upon the following assignment of errors, to wit:

THE LOWER COURT ERRED IN HOLDING THAT DEFENDANT GLORIA DELA CRUZ WAS AN ACCREDITED DEALER UNDER THE SPECIAL CREDIT SCHEME AND PURCHASED ON CREDIT FERTILIZERS AND CHEMICALS FROM PLAINTIFF.

THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANTS ARE PRIMARILY LIABLE FOR THE FERTILIZERS AND CHEMICALS COVERED BY THE ORDER FORMS, DELIVERY RECEIPTS AND TRUST RECEIPTS.

THE TRIAL COURT ERRED IN HOLDING THAT THE SPECIAL CREDIT SCHEME/LINE GRANTED TO DEFENDANT GLORIA DELA CRUZ WAS CONVERTED TO A REGULAR LINE.

THE TRIAL COURT ERRED IN FINDING FOR THE PLAINTIFF AND NOT FOR THE DEFENDANTS-APPELLANTS.

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[26] *Id.* at 416.

[27] G.R. No. 59640, July 15, 1991, 199 SCRA 195.

[28] Records, Volume I, p. 417.

On April 11, 2003, the CA affirmed the judgment of the RTC,[29] *viz*:

WHEREFORE, premises considered, the instant appeal is hereby DENIED, and the impugned Decision dated 29 October 1997 of Regional Trial Court of Makati City, Branch 66 is hereby **AFFIRMED** *in toto*. Costs against Defendants-appellants.

SO ORDERED.

The CA held the petitioners liable to PPI "for the value of the fertilizers and agricultural chemical products covered by the trust receipts" because a creditor-debtor relationship existed between the parties when, pursuant to the credit line of ₱200,000.00 and the SCS Program, the petitioners "withdrew several fertilizers and agricultural chemical products on credit;" that the petitioners then came under obligation to pay the equivalent value of the withdrawn goods, "or to return the undelivered and/or unused products within the specified period." It elucidated thus:

> The trust receipts covering the said fertilizers and agricultural chemical products under the special credit scheme, and signed by defendant-appellant Gloria de la Cruz specifically provides for their direct and primary liability over the same, to wit:
>
> > "x x x. In the event, I/We cannot deliver/serve to the farmer-participants all the inputs as enumerated above within 60 days, then I/We agree that the undelivered inputs will be charged to my/our regular credit line, in which case, the corresponding adjustment of price and interest shall be made by PPI."
>
> and in case of failure on the part of Defendants-appellants to liquidate within the specified period the undelivered or unused fertilizers and agricultural chemical products, its corresponding value will be charged to the regular credit line of Defendants-appellants, which was eventually done by Plaintiff-appellee, when it converted and/or credited Defendants-appellants' accounts payable under the special credit scheme to their regular credit line as per "credit notes."

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[29] *Rollo*, pp. 51-52.

Pursuant to said credit line account and trust receipts, plaintiff-appellee Planters Products, Inc. and defendants-appellants Spouses de la Cruz are bound to fulfill what has been expressly stipulated therein. It is well-settled in *Barons Marketing Corporation v. Court of Appeals,*[30] to wit:

> **"It may not be amiss to state that petitioner's contract with private respondent has the force of law between them. Petitioner is thus bound to fulfill what has been expressly stipulated therein.** In the absence of any abuse of right, private respondent cannot be allowed to perform its obligation under such contract in parts. Otherwise, private respondent's right under Article 1248 will be negated, the sanctity of its contract with petitioner defiled. The principle of autonomy of contracts must be respected." (Emphasis supplied)

Moreover, Defendants-appellants cannot pass their obligation to pay the equivalent value of the undelivered and/or unused fertilizers and agricultural chemical products under the trust receipts to the farmers-participants considering that the "contract" was between plaintiff-appellee Planters Products Inc. and defendants-appellants Quirino and Gloria Dela Cruz, and the farmers-participants were never privy to the said transaction."[31]

In their motion for reconsideration,[32] the petitioners mainly contended that the farmers as participants in the SCS, not Gloria, were liable because the inputs had been delivered to them; that such was the tenor of the demand letters they had sent to the farmers; that PPI would not have made a second delivery if it had not been satisfied that they (petitioners) had delivered the products to the farmers, who, however, had not paid their "loan" because of typhoon *Kading* destroying their crops; that in the aftermath of the typhoon, PPI representatives led by one Noel David had inspected the Municipality of Aliaga, and had forged an agreement with the petitioners whereby they bound themselves to help PPI "in collecting from the farmers in the succeeding

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[30] G.R. No. 126486, February 9, 1998, 286 SCRA 96, 106.

[31] *Rollo*, pp. 50-51.

[32] CA *rollo*, pp. 81-106.

palay crop their indebtedness;" and that PPI had subsequently made them the "principal debtor" notwithstanding that they had not incurred any account with PPI because all the transactions had been "on a cash on delivery basis or cash withdrawal basis."

On June 9, 2003, the CA denied the petitioners' motion for reconsideration.

Issues

Hence, the petitioners are now before the Court *via* their petition for review on *certiorari*.

The petitioners ascribe to the CA grave reversible error in affirming the decision of the RTC notwithstanding that the award to PPI of the amount of ₱240,335.10 plus 16% interest *per annum* was based on hearsay evidence, leaving absolutely no other evidence to support the award. They assail the award of attorney's fees for its lack of factual and legal bases; and insist that the CA did not consider "certain facts and circumstances on record which would otherwise justify a different decision."

Ruling

The appeal has no merit.

I.

Parties entered into a creditor-debtor relationship

The petitioners did not deny that Gloria applied with PPI for a credit line of ₱200,000.00; and that Gloria signed up for the SCS Program of PPI. The principal issue they now raise is whether the two transaction documents signed by Gloria expressed the intent of the parties to establish a creditor-debtor relationship between them. The resolution of the issue is necessary to resolve the corollary issue of whether the petitioners were liable to PPI for the value of the fertilizers and agricultural chemical products delivered to Gloria, and, if so, by how much.

It is apparent, however, that the petitioners are focusing on the evidentiary value of Exhibit V, the statement of account

showing that Gloria was liable in the total amount of ₱240,355.10 as of July 9, 1985, and are in the process avoiding the pivotal issue concerning the nature of the contract between them and PPI. Nonetheless, the issue of liability sprang from the terms of the contractual documents Gloria had signed. For them to question the amount of their liabilities without explaining why they should not be held liable veritably constituted their tacit admission of the existence of the loan but assailing only how much they should repay to PPI.

The petitioners aver that "in a surprising turn of events, when it appeared that no further collection could be had, [PPI] unilaterally and arbitrarily converted and charged its receivables from the farmers-participants against petitioner's regular credit line," and PPI thereafter sent the demand letters to Gloria.[33] Considering that the documents signed by Gloria governed the relationship between her and PPI, the controversy can be resolved only by an examination of the contractual documents.

As earlier mentioned, Gloria signed the application for credit facilities on March 23, 1978, indicating that a trust receipt would serve as collateral for the credit line. On August 4, 1978, Gloria, as "dealer," signed together with Quirino the list of their assets having a total value of ₱260,000.00 (consisting of a residential house and lot, 10-hectare agricultural lands in Aliaga and Talavera, and two residential lots) that they tendered to PPI "to support our credit application in connection with our participation to your Special Credit Scheme."[34] Gloria further signed the Trust Receipt/SCS documents defining her obligations under the agreement, and also the invoices pursuant to the agreement with PPI, indicating her having received PPI products on various dates.

These established circumstances comprised by the contemporaneous and subsequent acts of Gloria and Quirino that manifested their intention to enter into the creditor-debtor relationship with PPI show that the CA properly held the

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[33] *Rollo*, p. 12.

[34] Exhibit B, records, Volume II, p. 7.

petitioners fully liable to PPI. The law of contracts provides that in determining the intention of the parties, their contemporaneous and subsequent acts shall be principally considered.[35] Consequently, the written terms of their contract with PPI, being clear upon the intention of the contracting parties, should be literally applied.[36]

The first circumstance was the credit line of ₱200,000.00 that commenced the business relationship between the parties. A credit line is really a loan agreement between the parties. According to *Rosario Textile Mills Corporation v. Home Bankers Savings and Trust Co.*:[37]

> x x x [A] credit line is "that amount of money or merchandise which a banker, a merchant, or supplier agrees to supply to a person on credit and generally agreed to in advance." It is a fixed limit of credit granted by a bank, retailer, or credit card issuer to a customer, to the full extent of which the latter may avail himself of his dealings with the former but which he must not exceed and is usually intended to cover a series of transactions in which case, when the customer's line of credit is nearly exhausted, he is expected to reduce his indebtedness by payments before making any further drawings.[38]

The second circumstance was the offer by Gloria of trust receipts as her collateral for securing the loans that PPI extended to her.[39] A trust receipt is "a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased."[40] It is a security agreement that "secures

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[35] Article 1371, *Civil Code*.

[36] Article 1370, *Civil Code*.

[37] G.R. No. 137232, June 29, 2005, 462 SCRA 88.

[38] *Id.* at 94.

[39] Exhibit A, records, Volume II, pp. 4-6.

[40] *Rosario Textile Mills Corp. v. Home Bankers Savings and Trust Co.*, *supra* note 36, citing *Samo v. People,* Nos. L-17603-04, May 31, 1962, 5 SCRA 354, 356-357.

an indebtedness and there can be no such thing as security interest that secures no obligation."[41]

The third circumstance was the offer of Gloria and Quirino to have their conjugal real properties beef up the collaterals for the credit line. Gloria signed the list of the properties involved as "dealer," thereby ineluctably manifesting that Gloria considered herself a dealer of the products delivered by PPI under the credit line. In this connection, a dealer is "a person who makes a business of buying and selling goods, especially as distinguished from a manufacturer, without altering their condition." In other words, a dealer is "one who buys to sell again."[42]

The fourth circumstance had to do with the undertakings under the trust receipts. The position of the petitioners was that the farmers-participants alone were obligated to pay for the goods delivered to them by Gloria. However, such position had no factual and legal legs to prop it up. A close look at the Trust Receipt/SCS indicates that the farmer-participants were mentioned therein only with respect to the duties and responsibilities that Gloria personally assumed to undertake in holding goods "in trust for PPI." Under the notion of relativity of contracts embodied in Article 1311 of the *Civil Code*, contracts take effect only between the parties, their assigns and heirs. Hence, the farmer-participants, not being themselves parties to the contractual documents signed by Gloria, were not to be thereby liable.

At this juncture, the Court clarifies that the contract, its label notwithstanding, was not a trust receipt transaction in legal contemplation or within the purview of the *Trust Receipts Law* (Presidential Decree No. 115) such that its breach would render Gloria criminally liable for *estafa*. Under Section 4 of the *Trust Receipts Law*, the sale of goods by a person in the business of

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[41] *Id.*, citing *Vintola v. Insular Bank of Asia and America,* No. 73271, May 29, 1987, 150 SCRA 578, 583.

[42] *Manila Trading & Supply Co. v. City of Manila,* 105 Phil. 581, 586 (1959).

selling goods for profit who, at the outset of the transaction, has, as against the buyer, general property rights in such goods, or who sells the goods to the buyer on credit, retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of the law, to wit:

Section. 4. *What constitutes a trust receipt transaction.* — A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as the entrustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the entrustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the entrustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any of the following:

1. In the case of goods or documents, (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale: *Provided,* That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the entrustee has complied fully with his obligation under the trust receipt; or (c) to load, unload, ship or tranship or otherwise deal with them in a manner preliminary or necessary to their sale; or

2. In case of instruments x x x.

The sale of goods, documents or instruments by a person in the business of selling goods, documents or instruments for profit who, at the outset of the transaction, has, as against the buyer, general property rights in such goods, documents or instruments, or who sells the same to the buyer on credit,

retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of this Decree. (Bold emphasis supplied.)

In *Land Bank v. Perez*,[43] the Court has elucidated on the coverage of Section 4, *supra*, to wit:

There are two obligations in a trust receipt transaction. The first is covered by the provision that refers to money under the obligation to deliver it (*entregarla)* to the owner of the merchandise sold. The second is covered by the provision referring to merchandise received under the obligation to return it (*devolverla)* to the owner. Thus, under the *Trust Receipts Law*, intent to defraud is presumed when (1) the entrustee fails to turn over the proceeds of the sale of goods covered by the trust receipt to the entruster; or (2) when the entrustee fails to return the goods under trust, if they are not disposed of in accordance with the terms of the trust receipts.

In all trust receipt transactions, both obligations on the part of the trustee exist in the alternative — the return of the proceeds of the sale or the return or recovery of the goods, whether raw or processed. **When both parties enter into an agreement knowing that the return of the goods subject of the trust receipt is not possible even without any fault on the part of the trustee, it is not a trust receipt transaction penalized under Section 13 of P.D. 115; the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale transaction. This transaction becomes a mere loan, where the borrower is obligated to pay the bank the amount spent for the purchase of the goods**. (Bold emphasis supplied)

It is not amiss to point out that the RTC even erred in citing Section 4 of the *Trust Receipts Law* as its basis for ordering Gloria to pay the total amount of ₱240,355.10. Section 13 of

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[43] G.R. No. 166884, June 13, 2012, citing *Colinares v. Court of Appeals,* G.R. No. 90828, September 5, 2000, 339 SCRA 609, 619-620; *Gonzalez v. Hongkong and Shanghai Banking Corporation,* G.R. No. 164904, October 19, 2007, 537 SCRA 255, 272; *Allied Banking Corporation v. Ordoñez,* G.R. No. 82495, December 10, 1990, 192 SCRA 246, 254; *Ching v. Secretary of Justice,* G.R. No. 164317, February 6, 2006, 481 SCRA 609, 633.

the *Trust Receipts Law* considers the "failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt" as constituting the crime of *estafa* under Article 315 (b) of the *Revised Penal Code*. However, had PPI intended to charge Gloria with *estafa*, it could have then done so. Instead, it brought this collection suit, a clear indication that the trust receipts were only collaterals for the credit line as agreed upon by the parties.

To be clear, the obligation assumed by Gloria under the Trust Receipt/SCS involved "the execution of a Trust Agreement by the farmer-participants" in her favor, which, in turn, she would assign "in favor of PPI with *recourse*" in case of delivery and sale to the farmer-participants. The term *recourse* as thus used means "resort to a person who is secondarily liable after the default of the person who is primarily liable."[44] An indorsement "with *recourse*" of a note, for instance, makes the indorser a general indorser, because the indorsement is without qualification. Accordingly, the term *with recourse* confirms the obligation of a general indorser, who has the same liability as the original obligor.[45] As the assignor "with *recourse*" of the Trust Agreement executed by the farmer participating in the SCS, therefore, Gloria made herself directly liable to PPI for the value of the inputs delivered to the farmer-participants. Obviously, the signature of the representative of PPI found in the demand letters Gloria sent to the farmer-participants only indicated that the Trust Agreement was part of the SCS of PPI.

The petitioners could not validly justify the non-compliance by Gloria with her obligations under the Trust Receipt/SCS by

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[44] *Metropol (Bacolod) Financing & Investment Corporation v. Sambok Motors Company,* No. L-39641, February 28, 1983, 120 SCRA 864, 867, citing Ogden, *The Law of Negotiable Instruments*, p. 200, citing *Industrial Bank and Trust Company v. Hesselberg,* 195 S.W.(2d) 470.

[45] *Id.* at 868.

citing the loss of the farm outputs due to typhoon *Kading*. There is no question that she had expressly agreed that her liability would not be extinguished by the destruction or damage of the crops. The use of the term *with recourse* was, in fact, consonant with the provision of the Trust Receipt/SCS stating that if Gloria could not deliver or serve "all the inputs" to the farmer-participants within 60 days, she agreed that "the undelivered inputs will be charged" to her "regular credit line." Under her arrangement with PPI, the trust receipts were mere securities for the credit line granted by PPI,[46] having in fact indicated in her application for the credit line that the trust receipts were "collaterals" or separate obligations "attached to any other contract to guaranty its performance."[47]

It is worthwhile to note that the application for credit facilities was a form contract that Gloria filled out only with respect to her name, address, credit limit, term, and collateral. Her act of signing the application signified her agreement to be bound by the terms of the application, specifically her acquiescence to use trust receipts as collaterals, as well as by the terms and conditions of the Trust Receipt/SCS.

In this regard, whether or not the Trust Receipt/SCS was a contract of adhesion apparently prepared by PPI would neither dilute nor erase her liabilities. A contract of adhesion prepared by one party, usually a corporation, is generally not a one-sided document as long as the signatory is not prevented from studying it before signing. Gloria did not show that she was deprived of that opportunity to study the contract. At any rate, the social stature of the parties, the nature of the transaction, and the amount involved were also factors to be considered in determining whether the aggrieved party "exercised adequate care and diligence in studying the contract prior to its execution."[48]

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[46] See *Rosario Textile Mills Corp. v. Home Bankers Savings and Trust Co., supra* note 36, at 94-95.

[47] 7A Words and Phrases 142, citing *Thomson-Houston Electric Co. v. Capitol Electric Co.,* 56 F. 849, 854.

[48] *Panlilio v. Citibank, N.A.,* G.R. No. 156335, November 28, 2007, 539 SCRA 69, 92.

Thus, "[u]nless a contracting party cannot read or does not understand the language in which the agreement is written, he is presumed to know the import of his contract and is bound thereby."[49] Here, Gloria was married to a lawyer who was also then the Municipal Mayor of Aliaga. Both of them signed the list of conjugal assets that they used to support the application for the credit line.

The last circumstance was that the petitioners now focus on the amount of liabilities adjudged against them by the lower courts. They thereby bolster the finding that they fully knew and accepted the legal import of the documents Gloria had signed of rendering them personally liable towards PPI for the value of the inputs granted to the farmer-participants through them. The finding is further confirmed by her admission of paying to PPI the amount of ₱50,000.00, which payment, albeit allegedly made grudgingly, solidified the existence of a creditor-debtor relationship between them. Indeed, Gloria would not have paid that amount except in acknowledgement of an indebtedness towards PPI.

II.

Statement of account was not hearsay

The petitioners insist that they could not be held liable for the balance stated in Exhibit V due to such document being hearsay as a "mere statement of account."[50] They argue that Cristina Llanera, the witness of PPI on the matter, was only a warehouse assistant who was not shown to be either an accountant, or bookkeeper, or auditor or a person knowledgeable in accounting. They posit that Llanera's testimony on Exhibit V was limited to stating that she had prepared the statement of account contained therein; that she did not affirm the correctness or veracity of the contents of the document;[51] and that,

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[49] *Swift Foods, Inc. v. Mateo, Jr.,* G.R. No. 170486, September 12, 2011, 657 SCRA 394, 409.

[50] *Rollo*, p. 18.

[51] *Id.* at 19.

consequently, Exhibit V had no evidentiary value as proof of their total liability for ₱240,355.10, the amount stated therein.

We do not agree with the petitioners.

With Exhibit V being a private document, authentication pursuant to the rules on evidence was a condition for its admissibility.[52] Llanera, admittedly the person who had prepared the document, was competent to testify on the due execution and authenticity of Exhibit V. Such authentication was done in accordance with Rule 132 of the *Rules of Court*, whose Section 20 states:

> Section 20. *Proof of private document.* – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
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> (a) By anyone who saw the document executed or written; or
>
> (b) By evidence of the genuineness of the signature or handwriting of the maker.
>
> Any other private document need only be identified as that which it is claimed to be.

Further, the petitioners dispute the contents of Exhibit V by invoking Section 43, Rule 130 of the *Rules of Court*, to wit:

> Section 43. *Entries in the course of business.* – Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business.

The invocation of the rule is misplaced, however, because the rule speaks of a situation where the person who made the entries is dead or unable to testify, which was not the situation here. Regardless, we have to point out that entries made in the

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[52] *Barayuga v. Adventist University of the Philippines,* G.R. No. 168008, August 17, 2011, 655 SCRA 640, 657.

course of business enjoy the presumption of regularity.[53] If properly authenticated, the entries serve as evidence of the status of the account of the petitioners. In *Land Bank v. Monet's Export and Manufacturing Corporation*,[54] the Court has explained that such entries are accorded unusual reliability because their regularity and continuity are calculated to discipline record keepers in the habit of precision; and that if the entries are financial, the records are routinely balanced and audited; hence, in actual experience, the whole of the business world function in reliance of such kind of records.

Nor have the petitioners proved that the entries contained in Exhibit V were incorrect and untruthful. They cannot be permitted to do so now at this stage of final appeal, especially after the lower courts found and accepted the statement of account contained therein to be properly authenticated and trustworthy. Indeed, the Court is in no position to review and overturn the lower courts' unanimous finding and acceptance without strong and valid reasons because they involved an issue of fact.[55]

III.

Interest of 16% *per annum*, being usurious, must be reversed

The statement of account discloses that the interest rate was 14% *per annum* for the "SCS Account – from the invoice date to 7/09/85"; and that the interest rate was 16% *per annum* for the "Reg. Account – from 8/16/80 to 7/09/85." The petitioners assail the interest charged on the principal obligation as usurious.

The matter of interest, being a question of law, must have to dealt with and resolved.

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[53] *Basay v. Hacienda Consolacion,* G.R. No. 175532, April 19, 2010, 618 SCRA 422, 431.

[54] G.R. No. 184971, April 19, 2010, 618 SCRA 451, 458-459.

[55] *Bangayan v. Rizal Commercial Banking Corporation,* G.R. No. 149193, April 4, 2011, 647 SCRA 8, 27; *Deheza-Inamarga v. Alano,* G.R. No. 171321, December 18, 2008, 574 SCRA 651, 657.

In 1978, when Gloria and PPI entered into the credit line agreement, the *Usury Law* (Act No. 2655) was still in effect. Section 2 of the *Usury Law* prescribed an interest rate of 12% *per annum* on secured loans, while Section 1 provided that "[t]he rate of interest for the loan or forbearance of any money, goods, or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall be six *per centum per annum* or such rate as may be prescribed by the Monetary Board of the Central Bank."

It is noted, of course, that the *Usury Law* allowed the parties in a loan agreement to exercise discretion on the interest rate to be charged. Once a judicial demand for payment has been made, however, Article 2212 of the *Civil Code* should apply, that is: "Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point."

The Central Bank circulars on interest rates granted to the parties leeway on the rate of interest agreed upon. In this regard, the Court has said:

> The *Usury Law* had been rendered legally ineffective by Resolution No. 224 dated 3 December 1982 of the Monetary Board of the Central Bank, and later by Central Bank Circular No. 905 which took effect on 1 January 1983. These circulars removed the ceiling on interest rates for secured and unsecured loans regardless of maturity. The effect of these circulars is to allow the parties to agree on any interest that may be charged on a loan. The virtual repeal of the *Usury Law* is within the range of judicial notice which courts are bound to take into account. Although interest rates are no longer subject to a ceiling, the lender does not have an unbridled license to impose increased interest rates. The lender and the borrower should agree on the imposed rate, and such imposed rate should be in writing.[56]

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[56] *Solidbank Corporation v. Permanent Homes, Incorporated,* G.R. No. 171925, July 23, 2010, 625 SCRA 275, 284 citing *Philippine National Bank v. Spouses Encina,* G.R. No. 174055, February 12, 2008, 544 SCRA 608, 618.

Accordingly, the interest rate agreed upon should not be "excessive, iniquitous, unconscionable and exorbitant;" otherwise, the Court may declare the rate illegal.[57]

Considering that the credit line agreement was entered into in 1978, the rate of interest was still governed by the *Usury Law*. The 16% *per annum* interest imposed by the RTC was erroneous, therefore, because the loan was secured by the Trust Receipt/SCS. In view of this, 12% *per annum* is the legal rate of interest that should apply, to be reckoned from the filing of the action. This rate accords with *Eastern Shipping Lines, Inc. v. Court of Appeals*,[58] whereby the Court has defined the following formula for the computation of legal interest for the guidance of the Bench and the Bar, *viz*:

TOTAL AMOUNT DUE = [principal – partial payments made] + [interest + interest on interest], where

Interest = remaining balance x 12% *per annum* x no. of years from due date until date of sale to a third party (payment).

Interest on interest = interest computed as of the filing of the complaint x no. of years until date of sale to a third party (payment).[59]

Relevantly, the likelihood of the aggregate interest charged exceeding the principal indebtedness is not remote. In *Apo Fruits Corporation v. Land Bank of the Philippines*,[60] a case involving just compensation for landholdings with legal interest, however, the Court has appropriately observed that the realization of such likelihood was not necessarily inequitable or unconscionable due to its resulting directly from the application of law and jurisprudence, to wit:

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[57] *Toledo v. Hyden,* G.R. No. 172139, December 8, 2010, 637 SCRA 540, 547, citing *Medel v. Court of Appeals,* G.R. No. 131622, November 27, 1998, 299 SCRA 481, 489-490.

[58] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

[59] *PCI Leasing and Finance, Inc. v. Trojan Metal Industries Incorporated,* G.R. No. 176381, December 15, 2010, 638 SCRA 615, 629.

[60] G.R. No. 164195, October 12, 2010, 632 SCRA 727, 757-758.

That the legal interest due is now almost equivalent to the principal to be paid is not *per se* an inequitable or unconscionable situation, considering the length of time the interest has remained unpaid — almost twelve long years. From the perspective of interest income, twelve years would have been sufficient for the petitioners to double the principal, even if invested conservatively, had they been promptly paid the principal of the just compensation due them. Moreover, the interest, however enormous it may be, cannot be inequitable and unconscionable because it resulted directly from the application of law and jurisprudence — standards that have taken into account fairness and equity in setting the interest rates due for the use or forbearance of money.

That is true herein. Although this case was commenced in 1981, the decision of the trial court was rendered only in 1997, or more than 15 years ago. By appealing to the CA and then to this Court, the petitioners chose to prolong the final resolution of the case; hence, they cannot complain, but must bear the consequences to them of the application of the pertinent law and jurisprudence, no matter how unfavorable to them.

IV.

Attorney's fees to be deleted

In granting attorney's fees, the RTC merely relied on and adverted to PPI's allegation that the failure of the petitioners to comply with their obligations under the contracts had "compelled [them] to hire the services of a counsel for which it had agreed to an attorney's fee equivalent to 25% of the total amount recovered exclusive of appearance fee of ₱1,500.00" as its sole basis for holding the petitioners liable to pay ₱20,000.00 "as attorneys' fee and cost of litigation." In affirming the RTC thereon, the CA did not even mention or deal with the matter of attorney's fees in its own decision.

The award of attorney's fees is deleted because of the absence of any factual and legal justification being expressly stated by the CA as well as by the RTC. To start with, the Court has nothing to review if the CA did not tender in its decision any

justification of why it was awarding attorney's fees. The award of attorney's fees must rest on a factual basis and legal justification stated in the body of the decision under review. Absent the statement of factual basis and legal justification, attorney's fees are to be disallowed.[61] In *Abobon v. Abobon*,[62] the Court has expounded on the requirement for factual basis and legal justification in order to warrant the grant of attorney's fees to the winning party, *viz*:

> As to attorney's fees, the general rule is that such fees cannot be recovered by a successful litigant as part of the damages to be assessed against the losing party because of the policy that no premium should be placed on the right to litigate. Indeed, prior to the effectivity of the present *Civil Code*, such fees could be recovered only when there was a stipulation to that effect. It was only under the present *Civil Code* that the right to collect attorney's fees in the cases mentioned in Article 2208 of the *Civil Code* came to be recognized. Such fees are now included in the concept of actual damages.
>
> Even so, whenever attorney's fees are proper in a case, the decision rendered therein should still expressly state the *factual* basis and *legal* justification for granting them. Granting them in the dispositive portion of the judgment is not enough; a discussion of the *factual* basis and *legal* justification for them must be laid out in the body of the decision. Considering that the award of attorney's fees in favor of the respondents fell short of this requirement, the Court disallows the award for want of the factual and legal premises in the body of the decision. The requirement for express findings of fact and law has been set in order to bring the case within the exception and justify the award of the attorney's fees. Otherwise, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.

The lack of any assignment of error upon the matter of attorney's fees is of no moment, for the award, being devoid of any legal and factual basis, can be corrected and removed as a matter of law.

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[61] *Lozano v. Ballesteros,* G.R. No. 49470, April 8, 1991, 195 SCRA 681, 691; *OMC Carriers, Inc. v. Nabua,* G.R. No. 148974, July 2, 2010, 622 SCRA 624, 639.

[62] G.R. No. 155830, August 15, 2012.

Finally, the petitioners charge that the CA "failed to consider certain facts and circumstances on record which would otherwise justify a different decision." The "facts and circumstances" pertained to details relevant to the nature of the agreement of the petitioners, and to the amount of their liabilities. However, an examination reveals that the "facts and circumstances" do not warrant a conclusion that they were not debtors of PPI under the credit line agreement.

WHEREFORE, the Court **AFFIRMS** the Decision promulgated on April 11, 2003 by the Court of Appeals, subject to the **MODIFICATIONS** that: (*a*) the rate of interest is 12% *per annum* reckoned from the filing of the complaint until full payment; and (*b*) the award of attorney's fees is deleted.

The petitioners shall pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 159823. February 18, 2013]

TEODORO A. REYES, *petitioner, vs.* **ETTORE ROSSI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION; WHEN IT EXISTS; ELEMENTS OF A PREJUDICIAL QUESTION.— A prejudicial question generally comes into play in a situation where a civil action and a criminal action are both pending, and there exists in the former an issue

that must first be determined before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The rationale for the suspension on the ground of a prejudicial question is to avoid conflicting decisions. Two elements that must concur in order for a civil case to be considered a prejudicial question are expressly stated in Section 7, Rule 111 of the 2000 *Rules of Criminal Procedure*, to wit: Section 7. *Elements of prejudicial question.* — The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

2. ID.; ID.; ID.; CONCEPT OF PREJUDICIAL QUESTION, EXPLAINED.— In *Sabandal v. Tongco* the concept of prejudicial question is explained in this wise: For a civil action to be considered prejudicial to a criminal case as to cause the suspension of the criminal proceedings until the final resolution of the civil, the following requisites must be present: (1) the civil case involves facts intimately related to those upon which the criminal prosecution would be based; (2) in the resolution of the issue or issues raised in the civil action, the guilt or innocence of the accused would necessarily be determined; and (3) jurisdiction to try said question must be lodged in another tribunal. If both civil and criminal cases have similar issues or the issue in one is intimately related to the issues raised in the other, then a prejudicial question would likely exist, provided the other element or characteristic is satisfied. It must appear not only that the civil case involves the same facts upon which the criminal prosecution would be based, but also that the resolution of the issues raised in the civil action would be necessarily determinative of the guilt or innocence of the accused. If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action based on the same facts, or there is no necessity "that the civil case be determined first before taking up the criminal case," therefore, the civil case does not involve a prejudicial question. Neither is there a prejudicial question

if the civil and the criminal action can, according to law, proceed independently of each other.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; RECIPROCAL OBLIGATIONS; RESCISSION OF CONTRACT, DISCUSSED.— The action for the rescission of the deed of sale on the ground that Advanced Foundation did not comply with its obligation actually seeks one of the alternative remedies available to a contracting party unde Article 1191 of the *Civil Code*, to wit: Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. The injured party may choose between the fulfilment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfilment, if the latter should become impossible. x x x. Article 1191 of the *Civil Code* recognizes an implied or tacit resolutory condition in reciprocal obligations. The condition is imposed by law, and applies even if there is no corresponding agreement thereon between the parties. The explanation for this is that in reciprocal obligations a party incurs in delay once the other party has performed his part of the contract; hence, the party who has performed or is ready and willing to perform may rescind the obligation if the other does not perform, or is not ready and willing to perform. It is true that the rescission of a contract results in the extinguishment of the obligatory relation as if it was never created, the extinguishment having a retroactive effect. The rescission is equivalent to invalidating and unmaking the juridical tie, leaving things in their status before the celebration of the contract. However, until the contract is rescinded, the juridical tie and the concomitant obligations subsist.

4. CRIMINAL LAW; BOUNCING CHECKS LAW (BP. BLG. 22); VIOLATION THEREOF, ELEMENTS.— To properly appreciate if there is a prejudicial question to warrant the suspension of the criminal actions, reference is made to the elements of the crimes charged. The violation of *Batas Pambansa Blg. 22* requires the concurrence of the following elements, namely: (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee

bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION; THE CRIMINAL PROCEEDINGS FOR THE VIOLATIONS OF BATAS PAMBANSA BLG. 22, ARISING FROM THE DISHONOR OF THE CHECKS THE BUYER ISSUED IN CONNECTION WITH THE SALE, COULD PROCEED DESPITE THE PENDENCY OF THE CIVIL ACTION FOR RESCISSION OF THE CONDITIONAL SALE, FOR RESCISSION OF A CONTRACT IS NOT DETERMINATIVE OF THE GUILT OR INNOCENCE OF THE ACCUSED.— The issue in the criminal actions upon the violations of *Batas Pambansa Blg.* 22 is, x x x whether or not Reyes issued the dishonoured checks knowing them to be without funds upon presentment. On the other hand, the issue in the civil action for rescission is whether or not the breach in the fulfilment of Advanced Foundation's obligation warranted the rescission of the conditional sale. If, after trial on the merits in the civil action, Advanced Foundation would be found to have committed material breach as to warrant the rescission of the contract, such result would not necessarily mean that Reyes would be absolved of the criminal responsibility for issuing the dishonored checks because, as the aforementioned elements show, he already committed the violations upon the dishonor of the checks that he had issued at a time when the conditional sale was still fully binding upon the parties. His obligation to fund the checks or to make arrangements for them with the drawee bank should not be tied up to the future event of extinguishment of the obligation under the contract of sale through rescission. Indeed, under *Batas Pambansa Blg.* 22, the mere issuance of a worthless check was already the offense in itself. Under such circumstances, the criminal proceedings for the violation of *Batas Pambansa Blg.* 22 could proceed despite the pendency of the civil action for rescission of the conditional sale. Accordingly, we agree with the holding of the CA that the civil action for the rescission of contract was not determinative of the guilt or innocence of Reyes.

APPEARANCES OF COUNSEL

Ricardo J.M. Reyes Rivera Law Office for petitioner.
Batocabe & Associates Law Offices for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The rescission of a contract of sale is not a prejudicial question that will warrant the suspension of the criminal proceedings commenced to prosecute the buyer for violations of the Bouncing Checks Law (*Batas Pambansa Blg*. 22) arising from the dishonor of the checks the buyer issued in connection with the sale.

Antecedents

On October 31, 1997, petitioner Teodoro A. Reyes (Reyes) and Advanced Foundation Construction Systems Corporation (Advanced Foundation), represented by its Executive Project Director, respondent Ettore Rossi (Rossi), executed a deed of conditional sale involving the purchase by Reyes of equipment consisting of a Warman Dredging Pump HY 300A worth ₱10,000,000.00. The parties agreed therein that Reyes would pay the sum of ₱3,000,000.00 as downpayment, and the balance of ₱7,000,000.00 through four post-dated checks. Reyes complied, but in January 1998, he requested the restructuring of his obligation under the deed of conditional sale by replacing the four post-dated checks with nine post-dated checks that would include interest at the rate of ₱25,000.00/month accruing on the unpaid portion of the obligation on April 30, 1998, June 30, 1998, July 31, 1998, September 30, 1998 and October 31, 1998.[1]

Advanced Foundation assented to Reyes' request, and returned the four checks. In turn, Reyes issued and delivered the following

[1] *Rollo*, p. 27.

nine post-dated checks in the aggregate sum of ₱7,125,000.00 drawn against the United Coconut Planters Bank,[2] to wit:

Check No.	Date	Amount
72807	April 30, 1998	₱ 25,000.00
79125	May 1, 1998	1,000,000.00
72802	May 30, 1998	2,000,000.00
72808	June 30, 1998	25,000.00
72809	July 31, 1998	25,000.00
72801	August 31, 1998	2,000,000.00
72810	September 30, 1998	25,000.00
72811	October 31, 1998	25,000.00
72903	November 30, 1998	2,000,000.00

Rossi deposited three of the post-dated checks (*i.e.*, No. 72807, No. 79125 and No. 72808) on their maturity dates in Advanced Foundation's bank account at the PCI Bank in Makati. Two of the checks were denied payment ostensibly upon Reyes' instructions to stop their payment, while the third (*i.e.*, No. 72802) was dishonored for insufficiency of funds.[3]

Rossi likewise deposited two more checks (*i.e.*, No. 72809 and No. 72801) in Advanced Foundation's account at the PCI Bank in Makati, but the checks were returned with the notation *Account Closed* stamped on them. He did not anymore deposit the three remaining checks on the assumption that they would be similarly dishonored.[4]

In the meanwhile, on July 29, 1998, Reyes commenced an action for rescission of contract and damages in the Regional Trial Court in Quezon City (RTC). His complaint, docketed as Civil Case No. Q98-35109 and entitled *Teodoro A. Reyes v.*

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[2] *Id.* at 28.

[3] *Id.*

[4] *Id.*

Advanced Foundation Construction Systems Corporation, sought judgment declaring the deed of conditional sale "rescinded and of no further force and effect," and ordering Advanced Foundation to return the ₱3,000,000.00 downpayment with legal interest from June 4, 1998 until fully paid; and to pay to him attorney's fees, and various kinds and amounts of damages.[5]

On September 8, 1998, Rossi charged Reyes with five counts of *estafa* and five counts of violation of *Batas Pambansa Blg*. 22 in the Office of the City Prosecutor of Makati for the dishonor of Checks No. 72807, No. 72808, No. 72801, No. 72809 and No. 79125. Another criminal charge for violation of *Batas Pambansa Blg*. 22 was lodged against Reyes in the Office of the City Prosecutor of Quezon City for the dishonor of Check No. 72802.[6]

On September 29, 1998, Reyes submitted his counter-affidavit in the Office of the City Prosecutor of Makati,[7] claiming that the checks had not been issued for any valuable consideration; that he had discovered from the start of using the dredging pump involved in the conditional sale that the Caterpillar diesel engine powering the pump had been rated at only 560 horsepower instead of the 1200 horsepower Advanced Foundation had represented to him; that welding works on the pump had neatly concealed several cracks; that on May 6, 1998 he had written to Advanced Foundation complaining about the misrepresentations on the specifications of the pump and demanding documentary proof of Advanced Foundation's ownership of the pump; that he had caused the order to stop the payment of three checks (*i.e*., No. 72806, No. 72807 and No. 79125); that Advanced Foundation had replied to his letter on May 8, 1998 by saying that the pump had been sold to him on an *as is, where is* basis; that he had then sent another letter to Advanced Foundation on May 18, 1998 to reiterate his complaints and the request for

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[5] *Id.* at 39-43.

[6] *Id.* at 28.

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

proper documentation of ownership; that he had subsequently discovered other hidden defects, prompting him to write another letter; and that instead of attending to his complaints and request, Advanced Foundation's lawyers had threatened him with legal action.

At the same time, Reyes assailed the jurisdiction of the Office of the City Prosecutor of Makati over the criminal charges against him on the ground that he had issued the checks in Quezon City; as well as argued that the Office of the City Prosecutor of Makati should suspend the proceedings because of the pendency in the RTC of the civil action for rescission of contract that posed a prejudicial question as to the criminal proceedings.[8]

On November 20, 1998, the Assistant City Prosecutor handling the preliminary investigation recommended the dismissal of the charges of *estafa* and the suspension of the proceedings relating to the violation of *Batas Pambansa Blg.* 22 based on a prejudicial question.[9]

On January 5, 1999, the City Prosecutor of Makati approved the recommendation of the handling Assistant City Prosecutor,[10] stating:

> WHEREFORE, premises considered, the complaint for Estafa is respectfully recommended to be dismissed, as upon approval, it is hereby dismissed.
>
> Further, it is respectfully recommended that the proceedings in the charge for Violation of Batas Pambansa Bilang 22 against the respondent be suspended until the prejudicial question raised in Civil Case Q-98-35109 for Rescission of Contract and Damages which is now pending with the RTC of Quezon City, Branch 224, has been duly resolved.

Rossi appealed the resolution of the City Prosecutor to the Department of Justice, but the Secretary of Justice, by resolution of July 24, 2001, denied Rossi's petition for review.

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[8] *Id.* at 29.

[9] *Id.* at 52-55.

[10] *Id.* at 30.

After the denial of his motion for reconsideration on April 29, 2002, Rossi challenged the resolutions of the Secretary of Justice by petition for *certiorari* in the CA.

Ruling of the CA

In the petition for *certiorari*, Rossi insisted that the Secretary of Justice had committed grave abuse of discretion amounting to lack or excess of jurisdiction in upholding the suspension of the criminal proceedings by the City Prosecutor of Makati on account of the existence of a prejudicial question, and in sustaining the dismissal of the complaints for *estafa*.

On May 30, 2003, the CA promulgated its assailed decision,[11] to wit:

> **WHEREFORE**, the foregoing considered, the assailed resolution is hereby **MODIFIED** and the instant petition is **GRANTED** in so far as the issue of the existence of prejudicial question is concerned. Accordingly, the order suspending the preliminary investigation in I.S. No. 98-40024-29 is **REVERSED** and **SET ASIDE**, and the dismissal of the complaint for estafa is **AFFIRMED**.
>
> **SO ORDERED**.

Issues

Hence, this appeal by Reyes.

Reyes asserts that the CA erred in ruling that there was no prejudicial question that warranted the suspension of the criminal proceedings against him; that the petition suffered fatal defects that merited its immediate dismissal; that the CA was wrong in relying on the pronouncements in *Balgos, Jr. v. Sandiganbayan*[12] and *Umali v. Intermediate Appellate Court*[13] because the factual backgrounds thereat were not similar to that obtaining here;

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[11] *Id.* at 26-35; penned by Associate Justice Josefina Guevara-Salonga (retired), and concurred in by Associate Justice Rodrigo V. Cosico (retired) and Associate Justice Edgardo F. Sundiam (retired/deceased).

[12] G.R. No. 85590, August 10, 1989, 176 SCRA 287 (Note, however, that this ruling was not mentioned in the decision of the CA).

[13] G.R. No. 63198, June 21, 1990, 186 SCRA 680.

and that the Secretary of Justice did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction.

In his comment,[14] Rossi counters that the petition for review should be outrightly dismissed because of its fatal defect; that the CA did not err in ruling that the action for rescission of contract did not pose a prejudicial question that would suspend the criminal proceedings.

Reyes submitted a reply,[15] declaring that the defect in the affidavit of service attached to his petition for review had been due to oversight; that he had substantially complied with the rules; that there existed a prejudicial question that could affect the extent of his liability in light of Supreme Court Administrative Circular No. 12-2000; and that the CA erred in finding that the Secretary of Justice committed grave abuse of discretion.

To be resolved is whether or not the civil action for rescission of the contract of sale raised a prejudicial question that required the suspension of the criminal prosecution for violation of *Batas Pambansa Blg*. 22.

Ruling

The petition for review is without merit.

A prejudicial question generally comes into play in a situation where a civil action and a criminal action are both pending, and there exists in the former an issue that must first be determined before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.[16] The rationale for the suspension on the ground of a prejudicial question is to avoid conflicting decisions.[17]

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[14] *Rollo*, pp. 81-88.

[15] *Id.* at 94-100.

[16] *Jose v. Suarez*, G.R. No. 176795, June 30, 2008, 556 SCRA 773, 781; *Carlos v. Court of Appeals*, G.R. No. 109887; February 10, 1997, 268 SCRA 25, 33; *Tuanda v. Sandiganbayan (Third Division)*, G.R. No. 110544, October 17, 1995, 249 SCRA 342, 351.

[17] *Beltran v. People*, G.R. No. 137567, June 20, 2000, 334 SCRA 106, 110.

Two elements that must concur in order for a civil case to be considered a prejudicial question are expressly stated in Section 7, Rule 111 of the 2000 *Rules of Criminal Procedure*, to wit:

> Section 7. *Elements of prejudicial question.* — The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

In *Sabandal v. Tongco*,[18] the concept of prejudicial question is explained in this wise:

> For a civil action to be considered prejudicial to a criminal case as to cause the suspension of the criminal proceedings until the final resolution of the civil, the following requisites must be present: (1) the civil case involves facts intimately related to those upon which the criminal prosecution would be based; (2) in the resolution of the issue or issues raised in the civil action, the guilt or innocence of the accused would necessarily be determined; and (3) jurisdiction to try said question must be lodged in another tribunal.
>
> If both civil and criminal cases have similar issues or the issue in one is intimately related to the issues raised in the other, then a prejudicial question would likely exist, provided the other element or characteristic is satisfied. It must appear not only that the civil case involves the same facts upon which the criminal prosecution would be based, but also that the resolution of the issues raised in the civil action would be necessarily determinative of the guilt or innocence of the accused. If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action based on the same facts, or there is no necessity "that the civil case be determined first before taking up the criminal case," therefore, the civil case does not involve a prejudicial question. Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other.

Contending that the rescission of the contract of sale constitutes a prejudicial question, Reyes posits that the resolution of the civil action will be determinative of whether or not he was

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[18] G.R. No. 124498, October 5, 2001, 366 SCRA 567, 571-572.

criminally liable for the violations of *Batas Pambansa Blg*. 22. He states that if the contract would be rescinded, his obligation to pay under the conditional deed of sale would be extinguished, and such outcome would necessarily result in the dismissal of the criminal proceedings for the violations of *Batas Pambansa Blg*. 22.

The action for the rescission of the deed of sale on the ground that Advanced Foundation did not comply with its obligation actually seeks one of the alternative remedies available to a contracting party under Article 1191 of the *Civil Code*, to wit:

> Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfilment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfilment, if the latter should become impossible.
>
> The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
>
> This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

Article 1191 of the *Civil Code* recognizes an implied or tacit resolutory condition in reciprocal obligations. The condition is imposed by law, and applies even if there is no corresponding agreement thereon between the parties. The explanation for this is that in reciprocal obligations a party incurs in delay once the other party has performed his part of the contract; hence, the party who has performed or is ready and willing to perform may rescind the obligation if the other does not perform, or is not ready and willing to perform.[19]

It is true that the rescission of a contract results in the extinguishment of the obligatory relation as if it was never created,

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[19] 4 Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 1987 Edition, p. 175.

the extinguishment having a retroactive effect. The rescission is equivalent to invalidating and unmaking the juridical tie, leaving things in their status before the celebration of the contract.[20] However, until the contract is rescinded, the juridical tie and the concomitant obligations subsist.

To properly appreciate if there is a prejudicial question to warrant the suspension of the criminal actions, reference is made to the elements of the crimes charged. The violation of *Batas Pambansa Blg*. 22 requires the concurrence of the following elements, namely: (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[21] The issue in the criminal actions upon the violations of *Batas Pambansa Blg*. 22 is, therefore, whether or not Reyes issued the dishonoured checks knowing them to be without funds upon presentment. On the other hand, the issue in the civil action for rescission is whether or not the breach in the fulfilment of Advanced Foundation's obligation warranted the rescission of the conditional sale. If, after trial on the merits in the civil action, Advanced Foundation would be found to have committed material breach as to warrant the rescission of the contract, such result would not necessarily mean that Reyes would be absolved of the criminal responsibility for issuing the dishonored checks because, as the aforementioned elements show, he already committed the violations upon the dishonor of the checks that he had issued at a time when the conditional sale was still fully binding upon the parties. His obligation to fund the checks or to make arrangements for them with the

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[20] *Id.* at 180.

[21] *Tan v. Mendez, Jr.*, G.R. No. 138669, June 6, 2002, 383 SCRA 202, 210.

drawee bank should not be tied up to the future event of extinguishment of the obligation under the contract of sale through rescission. Indeed, under *Batas Pambansa Blg.* 22, the mere issuance of a worthless check was already the offense in itself. Under such circumstances, the criminal proceedings for the violation of *Batas Pambansa Blg*. 22 could proceed despite the pendency of the civil action for rescission of the conditional sale.

Accordingly, we agree with the holding of the CA that the civil action for the rescission of contract was not determinative of the guilt or innocence of Reyes. We consider the exposition by the CA of its reasons to be appropriate enough, to wit:

x x x x x x x x x

We find merit in the petition.

A careful perusal of the complaint for rescission of contract and damages reveals that the causes of action advanced by respondent Reyes are the alleged misrepresentation committed by the petitioner and AFCSC and their alleged failure to comply with his demand for proofs of ownership. On one hand, he posits that his consent to the contract was vitiated by the fraudulent act of the company in misrepresenting the condition and quality of the dredging pump. Alternatively, he claims that the company committed a breach of contract which is a ground for the rescission thereof. Either way, he in effect admits the validity and the binding effect of the deed pending any adjudication which nullifies the same.

Indeed, under the law on contracts, vitiated consent does not make a contract unenforceable but merely voidable, the remedy of which would be to annul the contract since voidable contracts produce legal effects until they are annulled. On the other hand, rescission of contracts in case of breach pursuant to Article 1191 of the Civil Code of the Philippines also presupposes a valid contract unless rescinded or annulled.

As defined, a prejudicial question is one that arises in a case, the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before

the court but the jurisdiction to try and resolve the question must be lodged in another court or tribunal.

It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined. It comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.

In this light, it is clear that the pendency of the civil case does not bar the continuation of the proceedings in the preliminary investigation on the ground that it poses a prejudicial question. **Considering that the contracts are deemed to be valid until rescinded, the consideration and obligatory effect thereof are also deemed to have been validly made, thus demandable. Consequently, there was no failure of consideration at the time when the subject checks were dishonored**. (Emphasis supplied)

x x x x x x x x x

WHEREFORE, the Court **DENIES** the petition for review; **AFFIRMS** the decision the Court of Appeals promulgated on May 30, 2003; and **DIRECTS** the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 164662. February 18, 2013]

MARIA LOURDES C. DE JESUS, *petitioner, vs.* **HON. RAUL T. AQUINO, PRESIDING COMMISSIONER, NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION, QUEZON CITY, and SUPERSONIC SERVICES, INC.,** *respondents.*

[G.R. No. 165787. February 18, 2013.]

SUPERSONIC SERVICES, INC., *petitioner, vs.* **MARIA LOURDES C. DE JESUS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION ON THE PRESENCE OF THE JUST CAUSE FOR TERMINATING EMPLOYMENT, AS AFFIRMED BY THE COURT OF APPEALS, ARE BINDING IF NOT CONCLUSIVE UPON THE COURT.— [S]upersonic substantially proved that De Jesus had failed to remit and had misappropriated the amounts she had collected in behalf of Supersonic. In that regard, the factual findings of the Labor Arbiter and NLRC on the presence of the just cause for terminating her employment, being already affirmed by the CA, are binding if not conclusive upon this Court. There being no cogent reason to disturb such findings, the dismissal of De Jesus was valid.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; PROCEDURAL DUE PROCESS; TWO-WRITTEN NOTICE RULE, DISCUSSED; REQUIREMENT IS MANDATORY.— A careful consideration of the records persuades us to affirm the decision of the CA holding that Supersonic had not complied with the two-written notice rule. It ought to be without dispute that the betrayal of the trust the employer reposed in De Jesus was the essence of the offense for which she was to be validly penalized with the supreme

penalty of dismissal. Nevertheless, she was still entitled to due process in order to effectively safeguard her security of tenure. The law affording to her due process as an employee imposed on Supersonic as the employer the obligation to send to her two written notices before finally dismissing her. This requirement of two written notices is enunciated in Article 277of the *Labor Code*, as amended x x x. And in Section 2 and Section 7, Rule I, Book VI of the *Implementing Rules of the Labor Code*. The first written notice would inform her of the particular acts or omissions for which her dismissal was being sought. The second written notice would notify her of the employer's decision to dismiss her. But the second written notice must not be made until after she was given a reasonable period after receiving the first written notice within which to answer the charge, and after she was given the ample opportunity to be heard and to defend herself with the assistance of her representative, if she so desired. The requirement was mandatory.

3. ID.; ID.; ID.; TWO-WRITTEN NOTICES REQUIREMENT NOT SATISFIED IN CASE AT BAR.— Supersonic contends that it gave the two written notices to De Jesus in the form of the memoranda dated March 26, 2001 and May 12, 2001 x x x. Contrary to Supersonic's contention, however, the aforequoted memoranda did not satisfy the requirement for the two written notices under the law. The March 26, 2001 memorandum did not specify the grounds for which her dismissal would be sought, and for that reason was at best a mere reminder to De Jesus to submit her report on the status of her accounts. The May 12, 2001 memorandum did not provide the notice of dismissal under the law because it only directed her to explain why she should not be dismissed for cause. The latter memorandum was apparently only the first written notice under the requirement. The insufficiency of the two memoranda as compliance with the two-written notices requirement of due process was, indeed, indubitable x x x.

4. STATUTORY CONSTRUCTION; STATUTES; A JUDICIAL INTERPRETATION BECOMES A PART OF THE LAW AS OF THE DATE THAT LAW WAS ORIGINALLY PASSED, SUBJECT ONLY TO THE QUALIFICATION THAT WHEN A DOCTRINE OF THE COURT IS OVERRULED AND THE COURT ADOPTS A DIFFERENT VIEW, AND MORE SO

WHEN THERE IS A REVERSAL OF THE DOCTRINE, THE NEW DOCTRINE SHOULD BE APPLIED PROSPECTIVELY AND SHOULD NOT APPLY TO PARTIES WHO RELIED ON THE OLD DOCTRINE AND ACTED IN GOOD FAITH.— [S]upersonic posits that the CA gravely erred in declaring the dismissal of De Jesus ineffectual pursuant to the ruling in *Serrano v. National Labor Relations Commission;* and insists that the CA should have instead applied the ruling in *Agabon v. National Labor Relations Commission,* which meanwhile abandoned *Serrano.* x x x. The CA did not err. Relying on *Serrano*, the CA precisely ruled that the violation by Supersonic of the two-written notice requirement rendered ineffectual the dismissal of De Jesus for just cause under Article 282 of the *Labor Code,* and entitled her to be paid full backwages from the time of her dismissal until the finality of its decision. The Court cannot ignore that the applicable case law when the CA promulgated its decision on July 23, 2004, and when it denied Supersonic's motion for reconsideration on October 21, 2004 was still *Serrano.* Considering that the Court determines in this appeal by petition for review on *certiorari* only whether or not the CA committed an error of law in promulgating its assailed decision of July 23, 2004, the CA cannot be declared to have erred on the basis of *Serrano* being meanwhile abandoned through *Agabon* if all that the CA did was to fully apply the law and jurisprudence applicable at the time of its rendition of the judgment. As a rule, a judicial interpretation becomes a part of the law as of the date that the law was originally passed, subject only to the qualification that when a doctrine of the Court is overruled and the Court adopts a different view, and more so when there is a reversal of the doctrine, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice, for, then, there is no recognition of what had transpired prior to such adjudication.

5. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; PROCEDURAL DUE PROCESS; DOCTRINE IN THE AGABON CASE (G.R. NO. 158693, NOV. 17, 2004) APPLIED TO CASE AT BAR; AN EMPLOYEE WHO IS DISMISSED FOR JUST OR

AUTHORIZED CAUSE IS ENTITLED TO PAYMENT OF INDEMNITY IN THE FORM OF NOMINAL DAMAGES WHERE HIS RIGHT TO STATUTORY DUE PROCESS HAS BEEN VIOLATED BY THE EMPLOYER; NOMINAL DAMAGES FIXED AT ₱50,000.00.— Although *Agabon*, being promulgated only on November 17, 2004, ought to be prospective, not retroactive, in its operation because its language did not expressly state that it would also operate retroactively, the Court has already deemed it to be the wise judicial course to let its abandonment of *Serrano* be retroactive as its means of giving effect to its recognition of the unfairness of declaring illegal or ineffectual dismissals for valid or authorized causes but not complying with statutory due process. Under *Agabon*, the new doctrine is that the failure of the employer to observe the requirements of due process in favor of the dismissed employee (*that is*, the two-written notices rule) should not invalidate or render ineffectual the dismissal for just or authorized cause. The *Agabon* Court plainly saw the likelihood of *Serrano* producing unfair but far-reaching consequences, such as, but not limited to, encouraging frivolous suits where even the most notorious violators of company policies would be rewarded by invoking due process; to having the constitutional policy of providing protection to labor be used as a sword to oppress the employers; and to compelling the employers to continue employing persons who were admittedly guilty of misfeasance or malfeasance and whose continued employment would be patently inimical to the interest of employers. Even so, the *Agabon* Court sti1l deplored the employer's violation of the employee's right to statutory due process by directing the payment of indemnity in the form of nominal damages, the amount of which would be addressed to the sound discretion of the labor tribunal upon taking into account the relevant circumstances. Thus, the *Agabon* Court designed such form of damages as a deterrent to employers from committing in the future violations of the statutory due process rights of employees, and, at the same time, as at the very least a vindication or recognition of the fundamental right granted to the employees under the *Labor Code* and its implementing rules. Accordingly, consistent with precedent, the amount of ₱50,000.00 as nominal damages is hereby fixed for the purpose of indemnifying De Jesus for the violation of her right to due process.

APPEARANCES OF COUNSEL

Napoleon Marapao for Ma. Lourdes De Jesus.
Abrenica Ardiente-Abrenica & Partners Law Office for Supersonic Services, Inc.

D E C I S I O N

BERSAMIN, *J.*:

The dismissal of an employee for a just or authorized cause is valid despite the employer's non-observance of the due process of law the *Labor Code* has guaranteed to the employee. The dismissal is effective against the employee subject to the payment by the employer of an indemnity.

Under review on *certiorari* is the July 23, 2004 Decision promulgated in C.A.-G.R. SP No. 81798 entitled *Maria Lourdes C. De Jesus v. Hon. Raul T. Aquino, Presiding Commissioner, NLRC, Second Division, Quezon City, and Supersonic Services, Inc.*,[1] whereby the Court of Appeals (CA) affirmed the validity of the dismissal from her employment of Maria Lourdes C. De Jesus (petitioner in G.R. No. 164622), but directed her employer, Supersonic Services, Inc. (Supersonic), to pay her full backwages from the time her employment was terminated until the finality of the decision because of the failure of Supersonic to comply with the two-written notice rule, citing the ruling in *Serrano v. National Labor Relations Commission*.[2]

Antecedents

The antecedent facts, as summarized by the CA, follow:

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[1] *Rollo* (G.R. No. 164662), pp. 20-26; penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justice Cancio C. Garcia (later Presiding Justice, and a Member of the Court, but now retired) and Associate Justice Hakim S. Abdulwahid, concurring.

[2] G.R. No. 117040, January 27, 2000, 323 SCRA 445.

On February 20, 2002, petitioner Ma. Lourdes De Jesus (De Jesus for brevity) filed with the Labor Arbiter a complaint for illegal dismissal against private respondents Supersonic Services Inc., (Supersonic for brevity), Pakistan Airlines, Gil Puyat, Jr. and Divina Abad Santos praying for the payment of separation pay, full backwages, moral and exemplary damages, *etc*.

De Jesus alleged that: she was employed by Supersonic since February 1976 until her illegal dismissal of March 15, 2001; from 1976 to 1992, she held the position of reservation staff, and from 1992 until her illegal dismissal on March 15, 2001, she held the position of Sales Promotion Officer where she solicited clients for Supersonic and sold plane tickets to various travel agencies on credit; on March 12, 2001, she had an emergency hysterectomy operation preceded by continuous bleeding; she stayed at the Makati Medical Center for three (3) days and applied for a sixty-(60) day leave in the meantime; on June 1, 2001, she went to Supersonic and found the drawers of her desk opened and her personal belongings packed, without her knowledge and consent; while there, Divina Abad Santos (Santos for brevity), the company's general manager, asked her to sign a promissory note and directed her secretary, Cora Malubay (Malubay for brevity) not to allow her to leave unless she execute a promissory note; she was later forced to execute a promissory note which she merely copied from the draft prepared by Santos and Malubay; she was also forced to indorse to Supersonic her SSS check in the amount of ₱25,000.00 which represents her benefits from the hysterectomy operation; there was no notice and hearing nor any opportunity given her to explain her side prior to the termination of her employment; Supersonic even filed a case for Estafa against her for her alleged failure to remit collections despite the fact that she had completely remitted all her collections; and the termination was done in bad faith and in violation of due process.

Supersonic countered that: as Sales Promotion Officer, De Jesus was fully authorized to solicit clients and receive payments for and in its behalf, and as such, she occupied a highly confidential and financially sensitive position in the company; De Jesus was able to solicit several ticket purchases for Pakistan International Airlines (PIA) routed from Manila to various destinations abroad and received all payments for the PIA tickets in its behalf; for the period starting May 30, 2000 until September 28, 2000, De Jesus issued PIA tickets to Monaliza Placement Agency, a client under her special solicitation

and account, in the amount of U.S.$15,085.00; on January 24, 2001, the company's general manager sent a memorandum to De Jesus informing her of the official endorsement of collectibles from clients under her account; in March 2001, another memorandum was issued to De Jesus reminding her to collect payments of accounts guaranteed by her and which had been past due since the year 2000; based on the company records, an outstanding balance of U.S.$36,168.39 accumulated under the account of De Jesus; after verifications with its clients, it discovered that the amount of U.S.$36,168.39 were already paid to De Jesus but this was not turned over and duly accounted for by her; hence, another memorandum was issued to De Jesus directing her to explain in writing why she should not be dismissed for cause for failure to account for the total amount of U.S.$36, 168.39; De Jesus was informed that her failure to explain in writing shall be construed that she misappropriated said amount for her own use and benefit to the damage of the company; De Jesus was likewise verbally notified of the company's intention to dismiss her for cause; after due investigation and confrontation, De Jesus admitted that she received the U.S.$36,168.39 from their clients and even executed a promissory note in her own handwriting acknowledging her obligation; she was fully aware of her dismissal and even obligated herself to offset her obligation with any amount she would receive from her retirement; when De Jesus failed to comply with her promise to settle her obligation, a demand letter was sent to her; because of her persistent failure to settle the unremitted collections, it was constrained to suspend her as a precautionary measure and to protect its interests; despite demands, De Jesus failed to fulfill her promise, hence, a criminal case for estafa was filed against her; and in retaliation to the criminal case filed against her, she filed this illegal dismissal case.[3]

After due proceedings, on October 30, 2002, the Labor Arbiter ruled against De Jesus,[4] declaring her dismissal to be for just cause and finding that she had been accorded due process of law.

Aggrieved, De Jesus appealed to the National Labor Relations Commission (NLRC), insisting that she had not been afforded the opportunity to explain her side.

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[3] *Rollo* (G.R. No. 164662), pp. 21-23.

[4] *Rollo* (G.R. No. 165787), pp. 149-154.

On July 31, 2003, however, the NLRC rendered its Resolution,[5] affirming the Labor Arbiter's Decision and dismissing De Jesus' appeal for its lack of merit, stating:

> Records show that pursuant to a Memorandum dated May 12, 2001, complainant was required to explain in writing why she should not be dismissed from employment for her failure to account for the cash collections in her custody (Records, p. 37). In a letter dated June 1, 2001, complainant acknowledged her failure to effect a turnover of the amount of US$36,168.39 to the respondent (Records, p. 40). More than this, she offered no explanation for her failure to immediately account for her collections. Further, her allegation of duress may not be accorded credence, there being no evidence as to the circumstances under which her consent was allegedly vitiated. Having been given the opportunity to explain her side, complainant may not successfully claim that she was denied due process. Further, her admission and other related evidence, particularly the finding of a *prima facie* case for estafa against her, and corroborative statements from respondent's client, sufficiently controvert complainant's assertion that no just cause existed for the dismissal.
>
> WHEREFORE, premises considered, the decision under review is AFFIRMED, and complainant's appeal, DISMISSED, for lack of merit.
>
> SO ORDERED.

The NLRC denied the Motion for Reconsideration filed by De Jesus on October 30, 2003.[6]

De Jesus brought a petition for *certiorari* to the CA, charging the NLRC with committing grave abuse of discretion amounting to lack or excess of jurisdiction in finding that she had not been denied due process; and in finding that her dismissal had been for just cause.

On July 23, 2004, the CA promulgated its assailed decision,[7] relevantly stating as follows:

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[5] *Id.* at 175-178.

[6] *Id.* at 194-195.

[7] *Supra* note 1, at 24-26.

The petition is partly meritorious.

In termination of employment based on just cause , it is not enough that the employee is guilty of misfeasance towards his employer, or that his continuance in service is patently inimical to the employer's interest. The law requires the employer to furnish the employee concerned with two written notices – one, specifying the ground or grounds for termination and giving said employee reasonable opportunity within which to explain his side, and another, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. In addition to this, a hearing or conference is also required, whereby the employee may present evidence to rebut the accusations against him.

There appears to be no dispute upon the fact that De Jesus failed to remit and account for some of her collections. This she admitted and explained in her letters dated April 5, 2001 and May 15, 2001 to Santos, the company's general manager. Without totally disregarding her allegations of duress in executing the promissory note, the facts disclose therein also coincide with the fact that De Jesus was somehow remiss in her duties. Considering that she occupied a confidential and sensitive position in the company, the circumstances presented fairly justified her termination from employment based on just cause. De Jesus' failure to fully account her collections is sufficient justification for the company to lose its trust and confidence in her. Loss of trust and confidence as a ground for dismissing an employee does not require proof beyond reasonable doubt. It is sufficient if there is "*some basis*" for such loss of confidence, or if the employer has reasonable grounds to believe that the employee concerned is responsible for the misconduct, as to be unworthy of the trust and confidence demanded by his position.

Nonetheless, while this Court is inclined to rule that De Jesus' dismissal was for just cause, the manner by which the same was effected does not comply with the procedure outlined under the Labor Code and as enunciated in the landmark case of *Serrano vs. NLRC.*

The evidence on record is bereft of any indicia that the two written notices were furnished to De Jesus prior to her dismissal. The various memoranda given her were not the same notices required by law, as they were mere internal correspondence intended to remind De Jesus of her outstanding accountabilities to the company. Assuming for

the sake of argument that the memoranda furnished to De Jesus may have satisfied the minimum requirements of due process, still, the same did not satisfy the notice requirement under the *Labor Code* because the intention to sever the employee's services must be made clear in the notice. Such was not apparent from the memoranda. As the Supreme Court held in *Serrano*, the violation of the notice requirement is not strictly a denial of due process. This is because such notice is precisely intended to enable the employee not only to prepare himself for the legal battle to protect his tenure of employment, but also to find other means of employment and ease the impact of the loss of his job and, necessarily, his income.

Conformably with the doctrine laid down in *Serrano vs. NLRC*, the dismissal of De Jesus should therefore be struck as ***ineffectual.***

WHEREFORE, premises considered, the Resolutions dated July 31, 2003 and October 30, 2003 of the NLRC, Second Division in NLRC NCR 30-02-01058-02 (CA NO. 033714-02) are hereby **MODIFIED,** in that while the dismissal is hereby held to be valid, the same must declared ineffectual. As a consequence thereof, Supersonic is hereby required to pay petitioner Maria Lourdes De Jesus full backwages from the time her employment was terminated up to the finality of this decision.

SO ORDERED.

De Jesus appealed by petition for review on *certiorari* to the Court (G.R. No. 164662), while Supersonic first sought the reconsideration of the Decision in the CA. Upon the denial of its motion for reconsideration on October 21, 2004, Supersonic likewise appealed to the Court by petition for review on *certiorari* (G.R. No. 165787). The appeals were consolidated on October 5, 2005.[8]

In G.R. No. 164662, De Jesus avers that:

I. The Honorable Court of Appeals erred in finding that respondent Supersonic is liable only on the backwages and not for the damages prayed for.

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[8] *Rollo* (G.R. No. 165787), p. 339.

II. The Honorable Court of Appeals erred in finding that the dismissal was valid and at the same time, declaring it ineffectual.[9]

In G.R. No. 165787, Supersonic ascribes the following errors to the CA, to wit:

I. Respondent Court of Appeals committed serious errors which are not in accordance with law and applicable decisions of the Honorable Supreme Court when it concluded that the two-notice requirement has not been complied with when respondent De Jesus was terminated from service.

II. Respondent Court of Appeals committed serious errors by concluding that the Serrano Doctrine applies squarely to the facts and legal issues of the present case which are contrary to the law and jurisprudence.

III. Serrano Doctrine has already been abandoned in the case of *Agabon v. NLRC*, which is prevailing and landmark doctrine applicable in the resolution of the present case.

IV. Respondent Court of Appeals committed serious errors by disregarding the law and jurisprudence when it awarded damages to private respondent which is excessive and unduly penalized petitioner SSI.[10]

Based on the foregoing, the decisive issues to be passed upon are: (1) Whether or not Supersonic was justified in terminating De Jesus' employment; (2) Whether or not Supersonic complied with the two-written notice rule; and (3) Whether or not De Jesus was entitled to full backwages and damages.

Ruling

We partially grant the petition for review of Supersonic in G.R. No. 165787.

Anent the first issue, Supersonic substantially proved that De Jesus had failed to remit and had misappropriated the amounts

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[9] *Rollo* (G.R. No. 164662), p. 12.

[10] *Rollo* (*G*.R. No. 165787), pp. 31-32.

she had collected in behalf of Supersonic. In that regard, the factual findings of the Labor Arbiter and NLRC on the presence of the just cause for terminating her employment, being already affirmed by the CA, are binding if not conclusive upon this Court. There being no cogent reason to disturb such findings, the dismissal of De Jesus was valid.

Article 282 of the *Labor Code* enumerates the causes by which the employer may validly terminate the employment of the employee, *viz*:

> Article 282. *Termination by employer.* - An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> **(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;**
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> (e) Other causes analogous to the foregoing.

The CA observed that De Jesus had not disputed her failure to remit and account for some of her collections, for, in fact, she herself had expressly admitted her failure to do so through her letters dated April 5, 2001 and May 15, 2001 sent to Supersonic's general manager. Thereby, the CA concluded, she defrauded her employer or willfully violated the trust reposed in her by Supersonic. In that regard, the CA rightly observed that proof beyond reasonable doubt of her violation of the trust was not required, for it was sufficient that the employer had "reasonable grounds to believe that the employee concerned is responsible for the misconduct as to be unworthy of the trust and confidence demanded by [her] position."[11]

[11] *Supra* note 1.

Concerning the second issue, the NLRC and the CA differed from each other, with the CA concluding, unlike the NLRC, that Supersonic did not comply with the two-written notice rule. In the exercise of its equity jurisdiction, then, this Court should now re-evaluate and re-examine the relevant findings.[12]

A careful consideration of the records persuades us to affirm the decision of the CA holding that Supersonic had not complied with the two-written notice rule.

It ought to be without dispute that the betrayal of the trust the employer reposed in De Jesus was the essence of the offense for which she was to be validly penalized with the supreme penalty of dismissal.[13] Nevertheless, she was still entitled to due process in order to effectively safeguard her security of tenure. The law affording to her due process as an employee imposed on Supersonic as the employer the obligation to send to her two written notices before finally dismissing her. This requirement of two written notices is enunciated in Article 277 of the *Labor Code*, as amended, which relevantly states:

Article 277. *Miscellaneous provisions.* — x x x

x x x x x x x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, **the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to**

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[12] *Lopez v. Bodega City*, G.R. No. 155731, September 3, 2007, 532 SCRA 56, 64; *Tiu v. Pasaol, Sr.*, G.R. No. 139876, April 30, 2003, 402 SCRA 312, 319; *Manila Water Company, Inc. v. Pena,* G.R. No. 158255, July 8, 2004, 434 SCRA 53, 58-59.

[13] *Caingat v. National Labor Relations Commission*, G.R. No. 154308, March 10, 2005, 453 SCRA 142, 151-152; *Central Pangasinan Electric Cooperative, Inc. v. Macaraeg*, G.R. No. 145800, January 22, 2003, 395 SCRA 720, 727; *Quezon Electric Cooperative v. NLRC*, G.R. Nos. 79718-22, April 12, 1989, 172 SCRA 88, 94.

be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a *prima facie* finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off.[14]

x x x x x x x x x

and in Section 2[15] and Section7,[16] Rule I, Book VI of the *Implementing Rules of the Labor Code*. The first written notice

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[14] As amended by Section 33, Republic Act No. 6715, March 21, 1989.

[15] Section 2. *Security of Tenure*. – x x x

x x x x x x x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) 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.

x x x x x x x x x

[16] Section 7. *Termination of employment by employer.* – The just causes for terminating the services of an employee shall be those provided in Article 282

would inform her of the particular acts or omissions for which her dismissal was being sought. The second written notice would notify her of the employer's decision to dismiss her. But the second written notice must not be made until after she was given a reasonable period after receiving the first written notice within which to answer the charge, and after she was given the ample opportunity to be heard and to defend herself with the assistance of her representative, if she so desired.[17] The requirement was mandatory.[18]

Did Supersonic observe due process before dismissing De Jesus?

Supersonic contends that it gave the two written notices to De Jesus in the form of the memoranda dated March 26, 2001 and May 12, 2001, to wit:

Memorandum dated March 26, 2001

26 March 2001

MEMORANDUM

TO	:	MA LOURDES DE JESUS SALES PROMOTION OFFICER
FROM	:	DIVINA S. ABAD SANTOS
SUBJECT	:	PAST DUE ACCOUNTS

We have repeatedly reminded you to collect payment of accounts guaranteed by you and which have been past due since last year. You

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of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective bargaining agreement with the employer or voluntary employer policy or practice.

[17] *Lim v. National Labor Relations Commission*, G.R. No. 118434, July 26, 1996, 259 SCRA 485, 498.

[18] *Colegio de San Juan de Letran–Calamba v. Villas*, G.R. No. 137795, March 26, 2003, 399 SCRA 550, 559; *Equitable Banking Corporation v. NLRC*, G.R. No. 102467, June 13, 1997, 273 SCRA 352, 378.

have assured us that these will be settled by the end of February 2001.

Our books show, that as of today, March 26, 2001, the following accounts have outstanding balances:

Wafa	$6,585
Monaliza/Ragab	4,326.39
Salah	1,950
Jerico	1,300
Rafat	4,730
Mahmood/Alhirsh	3,205
Amina	2,000
MMML	1,653
RDRI	361
HMD	2,100
Amru	1,388
Iyad Ali	97
Ali	740
Maher	675
Sharikat	350
Imad	905
Rubies	2,678
Adel	1,125
	$36,168.39

Please give us an updated report on your collection efforts and the status of each of the above accounts to enable us to take necessary actions. This would be submitted on or before April 2, 2001

(SGD) DIVINA ABAD SANTOS

General Manager[19]

Memorandum dated May 12, 2001

12 May 2001

MEMORANDUM

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[19] *Rollo* (G.R. No. 165787), p. 120.

TO	:	MA. LOURDES DE JESUS SALES PROMOTION OFFICER
FROM	:	DIVINA S. ABAD SANTOS GENERAL MANAGER
SUBJECT	:	PAST DUE ACCOUNTS

You are asked to refer to my memorandum dated 26 March 2001. We were informed that the following accounts have been paid to you but not accounted/turned over to the office:

NAME	AMOUNTS
Wafa	$6,585
Monaliza/Ragab	4,326.39
Salah	1,950
Jerico	1,300
Rafat	4,730
Mahmood/Alhirsh	3,205
Amina	2,000
MMML	1,653
RDRI	361
HMD	2,100
Amru	1,388
Iyad Ali	97
Ali	740
Maher	675
Sharikat	350
Imad	905
Rubies	2,678
Adel	1,125
	$36,168.39

You are hereby directed to explain in writing within 72 hours from receipt of this memorandum, why you should not be dismissed for cause for failure to account for above amounts.

By your failure to explain in writing the above accountabilities, within the set deadline, we shall assume that you have misappropriated the same for your own use and benefit to the damage of the office.

(SGD.) DIVINA S. ABAD SANTOS
General Manager[20]

Contrary to Supersonic's contention, however, the aforequoted memoranda did not satisfy the requirement for the two written notices under the law. The March 26, 2001 memorandum did not specify the grounds for which her dismissal would be sought, and for that reason was at best a mere reminder to De Jesus to submit her report on the status of her accounts. The May 12, 2001 memorandum did not provide the notice of dismissal under the law because it only directed her to explain why she should not be dismissed for cause. The latter memorandum was apparently only the first written notice under the requirement. The insufficiency of the two memoranda as compliance with the two-written notices requirement of due process was, indeed, indubitable enough to impel the CA to hold:

> The evidence on record is bereft of any indicia that the two written notices were furnished to De Jesus prior to her dismissal. The various memoranda given her were not the same notices required by law, as they were mere internal correspondences intended to remind De Jesus of her outstanding accountabilities to the company. Assuming for the sake of argument that the memoranda furnished to De Jesus may have satisfied the minimum requirements of due process, still, the same did not satisfy the notice requirement under the *Labor Code* because the intention to sever the employee's services must be made clear in the notice. Such was not apparent from the memoranda. As the Supreme Court held in *Serrano*, the violation of the notice requirement is not strictly a denial of due process. This is because such notice is precisely intended to enable the employee not only to prepare himself for the legal battle to protect his tenure of employment, but also to find other means of employment and ease the impact of the loss of his job and, necessarily, his income.
>
> Conformably with the doctrine laid down in *Serrano vs. NLRC*, the dismissal of De Jesus should therefore be struck (down) as ***ineffectual***.[21]

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[20] *Id.* at 121.

[21] *Supra* note 1, at 25.

On the third issue, Supersonic posits that the CA gravely erred in declaring the dismissal of De Jesus ineffectual pursuant to the ruling in *Serrano v. National Labor Relations Commission;* and insists that the CA should have instead applied the ruling in *Agabon v. National Labor Relations Commission*,[22] which meanwhile abandoned *Serrano*.

In *Serrano*, the Court pronounced as follows:

> x x x, with respect to dismissals for cause under Art. 282, if it is shown that the employee was dismissed for any of the just causes mentioned in said Art. 282, then, in accordance with that article, he should not be reinstated. However, he must be paid backwages from the time his employment was terminated until it is determined that the termination of employment is for a just cause because the failure to hear him before he is dismissed renders the termination of his employment without legal effect.
>
> WHEREFORE, the petition is GRANTED and the resolution of the National Labor Relations Commission is MODIFIED by ordering private respondent Isetann Department Store, Inc. to pay petitioner separation pay equivalent to one (1) month pay for every year of service, his unpaid salary, and his proportionate 13th month pay and, in addition, full backwages from the time his employment was terminated on October 11, 1991 up to the time the decision herein becomes final. For this purpose, this case is REMANDED to the Labor Arbiter for computation of the separation pay, backwages, and other monetary awards to petitioner.
>
> SO ORDERED.[23]

The CA did not err. Relying on *Serrano*, the CA precisely ruled that the violation by Supersonic of the two-written notice requirement rendered ineffectual the dismissal of De Jesus for just cause under Article 282 of the *Labor Code*, and entitled her to be paid full backwages from the time of her dismissal until the finality of its decision. The Court cannot ignore that the applicable case law when the CA promulgated its decision

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[22] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[23] *Supra* note 2, at 476.

on July 23, 2004, and when it denied Supersonic's motion for reconsideration on October 21, 2004 was still *Serrano*. Considering that the Court determines in this appeal by petition for review on *certiorari* only whether or not the CA committed an error of law in promulgating its assailed decision of July 23, 2004, the CA cannot be declared to have erred on the basis of *Serrano* being meanwhile abandoned through *Agabon* if all that the CA did was to fully apply the law and jurisprudence applicable at the time of its rendition of the judgment. As a rule, a judicial interpretation becomes a part of the law as of the date that the law was originally passed, subject only to the qualification that when a doctrine of the Court is overruled and the Court adopts a different view, and more so when there is a reversal of the doctrine, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.[24] To hold otherwise would be to deprive the law of its quality of fairness and justice, for, then, there is no recognition of what had transpired prior to such adjudication.[25]

Although *Agabon*, being promulgated only on November 17, 2004, ought to be prospective, not retroactive, in its operation because its language did not expressly state that it would also operate retroactively,[26] the Court has already deemed it to be the wise judicial course to let its abandonment of *Serrano* be retroactive as its means of giving effect to its recognition of the unfairness of declaring illegal or ineffectual dismissals for valid or authorized causes but not complying with statutory due

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[24] *Columbia Pictures Entertainment, Inc. v. Court of Appeals,* G.R. No. 111267, September 20, 1996, 262 SCRA 219, 225; *Columbia Pictures, Inc. v. Court of Appeals,* G.R. No. 110318, August 28, 1996, 261 SCRA 144, 167; *People v. Jabinal*, No. L-30061, February 27, 1974, 55 SCRA 607, 612; *Unciano Paramedical College, Inc. v. Court of Appeals*, G.R. No. 100335, April 7, 1993, 221 SCRA 285, 293; *Philippine Constitution Association v. Enriquez*, G.R. No. 113888, August 19, 1994, 235 SCRA 506, 552.

[25] *De Agbayani v. Philippine National Bank*, No. L-23127, April 29, 1971, 38 SCRA 429, 435.

[26] See *Co v. Court of Appeals*, G.R. No. 100776, October 28, 1993, 227 SCRA 444, 448.

process.[27] Under *Agabon*, the new doctrine is that the failure of the employer to observe the requirements of due process in favor of the dismissed employee (*that is*, the two-written notices rule) should not invalidate or render ineffectual the dismissal for just or authorized cause. The *Agabon* Court plainly saw the likelihood of *Serrano* producing unfair but far-reaching consequences, such as, but not limited to, encouraging frivolous suits where even the most notorious violators of company policies would be rewarded by invoking due process; to having the constitutional policy of providing protection to labor be used as a sword to oppress the employers; and to compelling the employers to continue employing persons who were admittedly guilty of misfeasance or malfeasance and whose continued employment would be patently inimical to the interest of employers.[28]

Even so, the *Agabon* Court still deplored the employer's violation of the employee's right to statutory due process by directing the payment of indemnity in the form of nominal damages, the amount of which would be addressed to the sound discretion of the labor tribunal upon taking into account the relevant circumstances. Thus, the *Agabon* Court designed such form of damages as a deterrent to employers from committing in the future violations of the statutory due process rights of employees, and, at the same time, as at the very least a vindication or recognition of the fundamental right granted to the employees under the *Labor Code* and its implementing rules.[29] Accordingly,

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[27] *Culili v. Eastern Telecommunications Philippines, Inc*., G.R. No. 165381, February 9, 2011, 642 SCRA 338, 363; *RTG Construction, Inc. v. Facto*, G.R. No. 163872, December 21, 2009, 608 SCRA 615, 623; *Coca-Cola Bottlers Philippines, Inc. v. Garcia*, G.R. No. 159625, January 31, 2008, 543 SCRA 364, 374; *Magro Placement and General Services v. Hernandez*, G.R. No. 156964, July 4, 2007, 526 SCRA 408, 417-418; *King of Kings Transport, Inc. v. Mamac*, G.R. No. 166208, June 29, 2007, 526 SCRA 116, 127; *Aladdin Transit Corporation v. Court of Appeals*, G.R. No. 152123, June 21, 2005, 460 SCRA 468, 472; *Jaka Food Processing Corporation v. Pacot*, G.R. No. 151378, March 28, 2005, 454 SCRA 119, 124.

[28] *Supra* note 22, at 614.

[29] *Id.* at 617.

consistent with precedent,[30] the amount of ₱50,000.00 as nominal damages is hereby fixed for the purpose of indemnifying De Jesus for the violation of her right to due process.

WHEREFORE, the Court *DENIES* the petition for review on *certiorari* in G.R. No. 164662 entitled *Maria Lourdes C. De Jesus v. Hon. Raul T. Aquino, Presiding Commissioner, NLRC, Second Division, Quezon City, and Supersonic Services, Inc.*; *PARTIALLY GRANTS* the petition for review on *certiorari* in G.R. No. 165787 entitled *Supersonic Services, Inc. v. Maria Lourdes C. De Jesus* and, accordingly, *DECLARES* the dismissal of Maria Lourdes C. De Jesus for just or authorized cause as valid and effectual; and *ORDERS* Supersonic Services, Inc. to pay to Maria Lourdes C. De Jesus ₱50,000.00 as nominal damages to indemnify her for the violation of her right to due process.

No pronouncements on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 169677. February 18, 2013]

METROPOLITAN BANK AND TRUST COMPANY, as successor-in-interest of ASIAN BANK CORPORATION, *petitioner, vs.* **HON. EDILBERTO G. SANDOVAL, HON. FRANCISCO H. VILLARUZ, JR. and HON.**

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[30] *E.g.*, *Culili v. Eastern Telecommunications Phils., Inc.*, *supra* note 27.

RODOLFO A. PONFERRADA (in their capacities as Chairman and Members, respectively, of the Second Division of SANDIGANBAYAN) and the REPUBLIC OF THE PHILIPPINES, *respondents.*

SYLLABUS

1. REMEDIAL LAW; TRIALS; CONSOLIDATION OR SEVERANCE; SEPARATE TRIALS; THE TRIAL COURT HAS DISCRETION TO DETERMINE IF A SEPARATE TRIAL OF ANY CLAIM, CROSS-CLAIM, COUNTERCLAIM, OR THIRD-PARTY COMPLAINT, OR OF ANY SEPARATE ISSUE OR OF ANY NUMBER OF CLAIMS, CROSS-CLAIMS, COUNTERCLAIMS, THIRD-PARTY COMPLAINTS OR ISSUES SHOULD BE HELD, PROVIDED THAT THE EXERCISE OF SUCH DISCRETION IS IN FURTHERANCE OF CONVENIENCE OR TO AVOID PREJUDICE TO ANY PARTY.— The rule on separate trials in civil actions is found in Section 2, Rule 31 of the *Rules of Court,* which reads: Section 2. *Separate trials*.— The court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, or third-party complaint, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party complaints or issues. The text of the rule grants to the trial court the discretion to determine if a separate trial of any claims, cross-claim, counterclaim, or third-party complaint, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party complaints or issues should be held, provided that the exercise of such discretion is in furtherance of convenience or to avoid prejudice to any party.

2. ID.; ID.; ID.; ID.; ALL THE ISSUES IN EVERY CASE MUST BE TRIED AT ONE TIME; RATIONALE; US CASE LAW CITED AND ADOPTED.— The rule is almost identical with *Rule 42(b)* of the United States *Federal Rules of Civil Procedure* (Federal Rules), a provision that governs separate trials in the United States Federal Courts (US Federal Courts) x x x. The US Federal Courts have applied *Rule 42(b)* by using several principles and parameters whose application in this jurisdiction may be warranted because our rule on separate trials has been patterned after the original version of

Rule 42(b). There is no obstacle to adopting such principles and parameters as guides in the application of our own rule on separate trials. This is because, generally speaking, the Court has randomly accepted the practices in the US Courts in the elucidation and application of our own rules of procedure that have themselves originated from or been inspired by the practice and procedure in the Federal Courts and the various US State Courts. x x x. In *Corrigan v. Methodist Hospital,* the US District Court for the Eastern District of Pennsylvania has cautioned against the unfettered granting of separate trials, thusly: Courts order separate trials only when "clearly necessary." x x x This is because a "single trial will generally lessen the delay, expense, and inconvenience to the parties and the courts." The movant has the burden to show prejudice. x x x A Colorado District Court found three factors to weigh in determining whether to order separate trials for separate defendants. These are 1) whether separate trials would further the convenience of the parties; 2) whether separate trials would promote judicial economy; and 3) whether separate trials would avoid substantial prejudice to the parties. x x x. Bearing in mind the foregoing principles and parameters defined by the relevant US case law, we conclude that the Sandiganbayan committed grave abuse of its discretion in ordering a separate trial as to Asian Bank (Metrobank) on the ground that the issue against Asian Bank was distinct and separate from that against the original defendants. Thereby, the Sandiganbayan veered away from the general rule of having all the issues in every case tried at one time, unreasonably shunting aside the dictum in *Corrigan, supra,* that a "single trial will generally lessen the delay, expense, and inconvenience to the parties and the courts."

3. ID.; ID.; ID.; ID.; SEPARATE TRIALS OF ISSUES, GROUNDS; NOT PRESENT.— Exceptions to the general rule are permitted only when there are extraordinary grounds for conducting separate trials on different issues raised in the same case, or when separate trials of the issues will avoid prejudice, or when separate trials of the issues will further convenience, or when separate trials of the issues will promote justice, or when separate trials of the issues will give a fair trial to all parties. Otherwise, the general rule must apply. As we see it, however, the justification of the Sandiganbayan for allowing the separate trial did not constitute a special or compelling reason like

any of the exceptions. To begin with, the issue relevant to Asian Bank was not complicated. In that context, the separate trial would not be in furtherance of convenience. And, secondly, the cause of action against Asian Bank was necessarily connected with the cause of action against the original defendants. Should the Sandiganbayan resolve the issue against Spouses Genito in a separate trial on the basis of the evidence adduced against the original defendants, the properties would be thereby adjudged as ill-gotten and liable to forfeiture in favor of the Republic without Metrobank being given the opportunity to rebut or explain its side. The outcome would surely be prejudicial towards Metrobank.

4. ID.; ID.; ID.; ID.; GRANT OF THE MOTION FOR SEPARATE TRIAL DECLARED ARBITRARY, FOR NOT BEING IN FURTHERANCE OF CONVENIENCE OR WOULD NOT AVOID PREJUDICE TO A PARTY AND FOR BEING CONTRARY TO THE CONSTITUTION, THE LAW AND JURISPRUDENCE.— The representation by the Republic in its comment to the petition of Metrobank, that the latter "merely seeks to be afforded the opportunity to confront the witnesses and documentary exhibits," and that it will "still be granted said right during the conduct of the separate trial, if proper grounds are presented therefor," unfairly dismisses the objective possibility of leaving the opportunity to confront the witnesses and documentary exhibits to be given to Metrobank in the separate trial as already too late. The properties, though already registered in the name of Asian Bank, would be meanwhile declared liable to forfeiture in favor of the Republic, causing Metrobank to suffer the deprivation of its properties without due process of law. Only a joint trial with the original defendants could afford to Metrobank the equal and efficient opportunity to confront and to contest all the evidence bearing on its ownership of the properties. Hence, the disadvantages that a separate trial would cause to Metrobank would far outweigh any good or benefit that the Republic would seemingly stand to gain from the separation of trials. We must safeguard Metrobank's right to be heard in the defense of its registered ownership of the properties, for that is what our Constitution requires us to do. Hence, the grant by the Sandiganbayan of the Republic's motion for separate trial, not being in furtherance of convenience or would not avoid

prejudice to a party, and being even contrary to the Constitution, the law and jurisprudence, was arbitrary, and, therefore, a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Sandiganbayan.

5. ID.; COURTS; SANDIGANBAYAN; HAS ORIGINAL AND EXCLUSIVE JURISDICTION NOT ONLY OVER PRINCIPAL CAUSES OF ACTION INVOLVING RECOVERY OF ILL-GOTTEN WEALTH, BUT ALSO OVER ALL INCIDENTS ARISING FROM, INCIDENTAL TO, OR RELATED TO SUCH CASES.— Presidential Decree No. 1606, as amended by Republic Act No. 7975 and Republic Act No. 8249, vests the Sandiganbayan with original exclusive jurisdiction over civil and criminal cases instituted pursuant to and in connection with Executive Orders No. 1, No. 2, No. 14 and No. 14-A , issued in 1986 by then President Corazon C. Aquino. Executive Order No. 1 refers to cases of recovery and sequestration of ill-gotten wealth amassed by the Marcoses their relatives, subordinates, and close associates, directly or through nominees, by taking undue advantage of their public office and/or by using their powers, authority, influence, connections or relationships. Executive Order No. 2 states that the ill-gotten wealth includes assets and properties in the form of estates and real properties in the Philippines and abroad. Executive Orders No. 14 and No. 14-A pertain to the Sandiganbayan's jurisdiction over criminal and civil cases relative to the ill-gotten wealth of the Marcoses and their cronies. The amended complaint filed by the Republic to implead Asian Bank prays for reversion, reconveyance, reconstitution, accounting and damages. In other words, the Republic would recover ill-gotten wealth, by virtue of which the properties in question came under sequestration and are now, for that reason, *in custodia legis*. Although the Republic has not imputed any responsibility to Asian Bank for the illegal accumulation of wealth by the original defendants, or has not averred that Asian Bank was a business associate, dummy, nominee, or agent of the Marcoses, the allegation in its amended complaint in Civil Case No. 0004 that Asian Bank acted with bad faith for ignoring the sequestration of the properties as ill-gotten wealth has made the cause of action against Asian Bank incidental or necessarily connected to the cause of action against the original defendants. Consequently,

the Sandiganbayan has original exclusive jurisdiction over the claim against Asian Bank, for the Court has ruled in *Presidential Commission on Good Government v. Sandiganbayan,* that "the Sandiganbayan has original and exclusive jurisdiction not only over principal causes of action involving recovery of ill-gotten wealth, but also over all incidents arising from, incidental to, or related to such cases." The Court made a similar pronouncement sustaining the jurisdiction of the Sandiganbayan in Republic of the Philippines (PCGG) v. Sandiganbayan (First Division).

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider and Santos for petitioner.
The Solicitor General for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, or third-party complaint, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party complaints or issues.[1] But a separate trial may be denied if a party is thereby deprived of his right to be heard upon an issue dealt with and determined in the main trial.

Through this special civil action for *certiorari*, Metropolitan Bank and Trust Company (Metrobank) hereby seeks to set aside and nullify the resolutions dated June 25, 2004[2] and July 13, 2005[3] issued in Civil Case No. 0004, whereby the Sandiganbayan granted the motion for separate trial filed by the Republic of the Philippines (Republic), and upheld its jurisdiction over the

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[1] Section 2, Rule 31, *Rules of Court*.

[2] *Rollo*, at 38-47.

[3] *Id.* at. 48-52.

Republic's claim against the petitioner as the successor-in-interest of Asian Bank Corporation (Asian Bank).

Antecedents

On July 17, 1987, the Republic brought a complaint for reversion, reconveyance, restitution, accounting and damages in the Sandiganbayan against Andres V. Genito, Jr., Ferdinand E. Marcos, Imelda R. Marcos and other defendants. The action was obviously to recover allegedly ill-gotten wealth of the Marcoses, their nominees, dummies and agents. Among the properties subject of the action were two parcels of commercial land located in Tandang Sora (Old Balara), Quezon City, covered by Transfer Certificate of Title (TCT) No. 266423[4] and TCT No. 266588[5] of the Registry of Deeds of Quezon City registered in the names of Spouses Andres V. Genito, Jr. and Ludivina L. Genito.

On February 5, 2001, the Republic moved for the amendment of the complaint in order to implead Asian Bank as an additional defendant. The Sandiganbayan granted the motion.[6] It appears that Asian Bank claimed ownership of the two parcels of land as the registered owner by virtue of TCT No. N-201383 and TCT No. N-201384 issued in its name by the Registry of Deeds of Quezon City. Asian Bank was also in possession of the properties by virtue of the writ of possession issued by the Regional Trial Court (RTC) in Quezon City.[7]

When the Republic was about to terminate its presentation of evidence against the original defendants in Civil Case No. 0004, it moved to hold a separate trial against Asian Bank.[8]

Commenting on the motion, Asian Bank sought the deferment of any action on the motion until it was first given the opportunity

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

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

[6] *Id.* at 88.

[7] *Id.* at 54-56.

[8] *Id.* at 39.

to test and assail the testimonial and documentary evidence the Republic had already presented against the original defendants, and contended that it would be deprived of its day in court if a separate trial were to be held against it without having been sufficiently apprised about the evidence the Republic had adduced before it was brought in as an additional defendant.[9]

In its reply to Asian Bank's comment, the Republic maintained that a separate trial for Asian Bank was proper because its cause of action against Asian Bank was entirely distinct and independent from its cause of action against the original defendants; and that the issue with respect to Asian Bank was whether Asian Bank had actual or constructive knowledge at the time of the issuance of the TCTs for the properties in its name that such properties were the subject of the complaint in Civil Case No. 0004, while the issue as to the original defendants was whether they had "committed the acts complained of as constituting illegal or unlawful accumulation of wealth which would, as a consequence, justify forfeiture of the said properties or the satisfaction from said properties of the judgement that may be rendered in favor of the Republic."[10]

Asian Bank's rejoinder to the Republic's reply asserted that the issue concerning its supposed actual or constructive knowledge of the properties being the subject of the complaint in Civil Case No. 0004 was intimately related to the issue delving on the character of the properties as the ill-gotten wealth of the original defendants; that it thus had a right to confront the evidence presented by the Republic as to the character of the properties; and that the Sandiganbayan had no jurisdiction to decide Asian Bank's ownership of the properties because the Sandiganbayan, being a special court with limited jurisdiction, could only determine the issue of whether or not the properties were illegally acquired by the original defendants.[11]

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[9] *Id.* at 164-168.

[10] *Id.* at 169-175.

[11] *Id.* at 179-182.

On June 25, 2004, the Sandiganbayan issued the first assailed resolution granting the Republic's motion for separate trial, giving its reasons as follows:

x x x x x x x x x

A cursory reading of the comment filed by defendant Asian Bank to plaintiff's request for a separate trial would readily reveal that defendant is not actually opposing the conduct of a separate trial insofar as the said bank is concerned. What it seeks is the opportunity to confront the witnesses and whatever documentary exhibits that may have been earlier presented by plaintiff in the case before the Court grants a separate trial. This being the situation, we find no reason to deny the motion in light of plaintiff's position that its claim as against Asian Bank is entirely separate and distinct from its claims as against the original defendants, albeit dealing with the same subject matter. In fact, as shown by the allegations of the Second Amended Complaint where Asian Bank was impleaded as a party defendant, the action against the latter is anchored on the claim that its acquisition of the subject properties was tainted with bad faith because of its actual or constructive knowledge that the said properties are subject of the present recovery suit at the time it acquired the certificates of title covering the said properties in its name. Consequently, whether or not it is ultimately established that the properties are ill-gotten wealth is of no actual significance to the incident pending consideration since the action against defendant bank is predicated not on the claim that it had knowledge of the ill-gotten wealth character of the properties in question but rather on whether or not it had knowledge, actual or constructive, of the fact that the properties it registered in its name are the subject of the instant recovery suit. Besides, plaintiff already admits that the evidence it had presented as against the original defendants would not apply to defendant bank for the reason that there is no allegation in the second amended complaint imputing responsibility or participation on the part of the said bank insofar as the issue of accumulation of wealth by the original defendants are concerned. Thus, there appears no basis for defendant bank's apprehension that it would be deprived of its right to due process if its not given the opportunity to cross-examine the witnesses presented prior to its inclusion as party defendant in the case. To reiterate, the only issue insofar as defendant bank is concerned is whether there is evidence

to show that it acquired the titles to the sequestered properties in bad faith.

Neither are we inclined to sustain defendant's bank argument that the Court cannot grant a separate trial in this case because it has no jurisdiction over the claim that defendant bank acquired the properties in bad faith. Indeed, the issue of defendant bank's acquisition of the properties in bad faith is merely incidental to the main action which is for reversion, reconveyance, restitution, accounting and damages. It is axiomatic that jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations in the complaint and the character of the relief sought, irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein *(Russell v. Vestil, 304 SCRA 738; Saura v. Saura, Jr., 313 SCRA 465).*[12]

Asian Bank moved for the reconsideration of the resolution, but the Sandiganbayan denied its motion through the second assailed resolution issued on July 13, 2005.[13]

Hence, Metrobank commenced this special civil action for *certiorari* as the successor-in-interest of Asian Bank and transferee of the properties.[14]

Issues

Metrobank contends that the Sandiganbayan committed grave abuse of discretion in ruling that: (1) the Republic was entitled to a separate trial against Asian Bank; (2) the only issue as regards Asian Bank was whether there was evidence that Asian Bank acquired the properties in bad faith; and (3) the Sandiganbayan had jurisdiction over the issue of Asian Bank's alleged bad faith in acquiring the properties.[15]

Anent the first issue, Metrobank states that the holding of a separate trial would deny it due process, because Asian Bank

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[12] *Id.* at 40-42.

[13] *Supra* note 3.

[14] *Rollo*, pp. 3-33.

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

was entitled to contest the evidence of the Republic against the original defendants prior to Asian Bank's inclusion as an additional defendant; that Asian Bank (Metrobank) would be deprived of its day in court if a separate trial was held against it, considering that the Republic had already presented such evidence prior to its being impleaded as an additional defendant; that such evidence would be hearsay unless Asian Bank (Metrobank) was afforded the opportunity to test and to object to the admissibility of the evidence; that because Asian Bank disputed the allegedly ill-gotten character of the properties and denied any involvement in their allegedly unlawful acquisition or any connivance with the original defendants in their acquisition, Asian Bank should be given the opportunity to refute the Republic's adverse evidence on the allegedly ill-gotten nature of the properties.[16]

With respect to the second issue, Metrobank submits thuswise:

> 8.02 x x x the Honorable Sandiganbayan failed to consider that Respondent Republic of the Philippines' claim for the recovery of the subject properties from Asian Bank Corporation is anchored mainly on its allegations that: a) the subject properties constitute ill-gotten wealth of the other defendants in the instant civil case; and, b) Asian Bank Corporation acquired the subject properties in bad faith and with due notice of the pendency of the ill-gotten wealth case. In other words, the determination of the character of the subject properties as "ill-gotten wealth" is equally important and relevant for Asian Bank Corporation as it is for the other defendants considering that the issue of its alleged acquisition in bad faith of the subject properties is premised on Respondent Republic of the Philippines' claim that the subject properties form part of the ill-gotten wealth of the late President Marcos and his cronies. Such being the case, Asian Bank Corporation is entitled as a matter of right to contest whatever evidence was presented by Respondent Republic of the Philippines on these two (2) issues, specifically the character and nature of the subject properties.
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> 8.03 It must be stressed that the discretion of the court to order a separate trial of such issues should only be exercised where the issue ordered to be separately tried is so independent of the other

[16] *Id.* at 19-22.

issues that its trial will in no way involve the trial of the issues to be thereafter tried and where the determination of that issues will satisfactorily and with practical certainty dispose of the case, if decided for defendant. Considering that the issue on Asian Bank Corporation's alleged acquisition in bad faith of the subject properties is intimately related to the issue on the character and nature of the subject properties as ill-gotten wealth of the other defendants in the instant civil case, there is absolutely no legal or factual basis for the holding of a separate trial against Asian Bank Corporation.[17]

As to the third issue, Metrobank posits that Asian Bank acquired the properties long after they had been acquired by the original defendants supposedly through unlawful means; that the Republic admitted that the evidence adduced against the original defendants would not apply to Asian Bank because the amended complaint in Civil Case No. 0004 did not impute any responsibility to Asian Bank for the accumulation of wealth by the original defendants, or did not allege that Asian Bank had participated in such accumulation of wealth; that there was also no allegation or proof that Asian Bank had been a business associate, dummy, nominee or agent of the Marcoses; that the inclusion of Asian Bank was not warranted under the law; that Asian Bank was a transferee in good faith and for valuable consideration; that the Sandiganbayan had no jurisdiction over civil cases against innocent purchasers for value like Asian Bank that had no notice of the allegedly ill-gotten nature of the properties; and that considering the admission of the Republic that the issue on the accumulation of wealth by the original defendants did not at all concern Asian Bank, it follows that the Sandiganbayan had no jurisdiction to pass judgment on the validity of Asian Bank's ownership of the properties.[18]

In contrast, the Republic insists that the *Rules of Court* allowed separate trials if the issues or claims against several defendants were entirely distinct and separate, notwithstanding that the main claim against the original defendants and the issue against Asian Bank involved the same properties; that the allegations

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[17] *Id.* at 23-24.

[18] *Id.* at 24-30.

in the case against Spouses Genito and the other original defendants pertained to the Republic's claim that the properties listed in Annex A of the original complaint constituted ill-gotten wealth, resulting in the probable forfeiture of the listed properties should the Republic establish in the end that such original defendants had illegally or unlawfully acquired such properties; that although the Republic conceded that neither Asian Bank nor Metrobank had any participation whatsoever in the commission of the illegal or unlawful acts, the only issue relevant to Metrobank being whether it had knowledge that the properties had been *in custodia legis* at the time of its acquisition of them to determine its allegation of being an innocent purchaser for valuable consideration; that because the properties were situated in the heart of Quezon City, whose land records had been destroyed by fire in 1998, resulting in the rampant proliferation of fake land titles, Asian Bank should have acted with extra caution in ascertaining the validity of the mortgagor's certificates of title; and that the series of transactions involving the properties was made under dubious circumstances.[19]

The Republic posits that the Sandiganbayan had exclusive original jurisdiction over all cases involving the recovery of ill-gotten wealth pursuant to Executive Orders No. 1, No. 2, No. 14 and No. 14-A issued in 1986, laws encompassing the recovery of sequestered properties disposed of by the original defendants while such properties remained *in custodia legis* and pending the final resolution of the suit; and that the properties pertaining to Spouses Genito were among the properties placed under the writs of sequestration issued by the Presidential Commission on Good Government (PCGG), thereby effectively putting such properties *in custodia legis* and rendering them beyond disposition except upon the prior approval of the Sandiganbayan.[20]

Ruling

The petition for *certiorari* is partly meritorious.

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[19] *Id.* at 261-265.

[20] *Id.* at 269-271.

The Sandiganbayan gravely abused its discretion in granting the Republic's motion for separate trial, but was correct in upholding its jurisdiction over the Republic's claim against Asian Bank (Metrobank).

First and Second Issues:
Separate Trials are Improper

The first and second issues, being interrelated, are jointly discussed and resolved.

The rule on separate trials in civil actions is found in Section 2, Rule 31 of the *Rules of Court*, which reads:

> Section 2. *Separate trials*. — The court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, or third-party complaint, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party complaints or issues.

The text of the rule grants to the trial court the discretion to determine if a separate trial of any claim, cross-claim, counterclaim, or third-party complaint, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party complaints or issues should be held, provided that the exercise of such discretion is in furtherance of convenience or to avoid prejudice to any party.

The rule is almost identical with *Rule 42(b)* of the United States *Federal Rules of Civil Procedure* (Federal Rules), a provision that governs separate trials in the United States Federal Courts (US Federal Courts), *viz*:

> *Rule 42*. Consolidation; Separate Trials.
>
> x x x x x x x x x
>
> (b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, crossclaim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, crossclaims, counterclaims, third-party claims, or issues, always preserving the inviolate right of trial

by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States.

The US Federal Courts have applied *Rule 42(b)* by using several principles and parameters whose application in this jurisdiction may be warranted because our rule on separate trials has been patterned after the original version of *Rule 42(b)*.[21] There is no obstacle to adopting such principles and parameters as guides in the application of our own rule on separate trials. This is because, generally speaking, the Court has randomly accepted the practices in the US Courts in the elucidation and application of our own rules of procedure that have themselves originated from or been inspired by the practice and procedure in the Federal Courts and the various US State Courts.

In *Bowers v. Navistar International Transport Corporation*,[22] we find the following explanation made by the US District Court for the Southern District of New York on the objectives of having separate trials, to wit:

> The aim and purpose of the Rule is aptly summarized in C. Wright and A Miller's Federal Practice and Procedure:
>
> > The provision for separate trials in *Rule 42 (b)* is intended to further convenience, avoid delay and prejudice, and serve the ends of justice. It is the interest of efficient judicial administration that is to be controlling rather than the wishes of the parties. The piecemeal trial of separate issues in a single

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[21] According to Wright & Miller, *Federal Practice and Procedure: Civil* 2d §2388, the phrase "or when separate trials will be conducive to expedition and economy" was added in 1966 to provide an additional ground, although the addition was on its face "quite unnecessary" because this ground was considered as a factor by the Federal Courts under the original rule. Wright & Miller write: "The explanation for the change in the rule's text lies in the union of admiralty and civil procedure effected in 1966. In certain suits in admiralty, separation for trial of the issues of liability and damages, or of the extent of liability other than damages, as for salvage or general average, had been common and beneficial, particularly in view of the statutory right to interlocutory appeal in admiralty cases, which the unified rules preserve for those proceedings that are admiralty and maritime cases x x x."

[22] No. 88 CIV 8857 (SS), 1993 U.S. Dist. LEXIS 6129.

suit is not to be the usual course. It should be resorted to only in the exercise of informed discretion when the court believes that separation will achieve the purposes of the rule.

x x x x x x x x x

As explained recently by the Second Circuit in United v. Alcan Aluminum Corp., Nos. 92-6158, 6160 1993 WL 100100, 1 (2d Cir., April 6, 1993), the purpose of separate trials under *Rule 42 (b)* is to "isolate issues to be resolved, avoid lengthy and perhaps needless litigation . . . [and to] encourage settlement discussions and speed up remedial action." (citing, *Amoco Oil v. Borden, Inc.,* 889 F.2d 664, 668 (5th Cir. 1989); *Katsaros v. Cody,* 744 F.2d 270, 278 (2d Cir.), cert. denied sub nom., 469 U.S. 1072, 105 S. Ct. 565, 83 L. Ed. 2d 506 (1984) (separate trials are proper to further convenience or to avoid prejudice); *Ismail v. Cohen,* 706 F. Supp. 243, 251 (S.D.N.Y. 1989) (quoting, *United States v. International Business Machines Corp.,* 60 F.R.D. 654, 657 (S.D.N.Y. 1973) (separate trials under *Rule 42 (b)* are appropriate, although not mandatory, to "(1) avoid prejudice; (2) provide for convenience, or (3) expedite the proceedings and be economical.") Separate trials, however, remain the exception rather than the rule. See, e.g., *Response of Carolina, Inc. v. Leasco Response, Inc.,* 537 F.2d 137 (5th Cir. 1976) xxx (separation of issues is not the usual course under *Rule 42 (b)*). The moving party bears the burden of establishing that separate trials are necessary to prevent prejudice or confusion and serve the ends of justice. *Buscemi v. Pepsico, Inc.,* 736 F. Supp. 1267, 1271 (S.D.N.Y. 1990).

In *Divine Restoration Apostolic Church v. Nationwide Mutual Insurance Co.*,[23] the US District Court for the Southern District of Texas, Houston Division specified that separate trials remained the exception, and emphasized that the moving party had the burden to establish the necessity for the separation of issues, *viz*:

Rule 42 (b) provides that a court has discretion to order separate trials of claims "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy." *FED. R. CIV. P.42 (b)*. Thus, the two primary factors to be considered

[23] Civil Action No. 4:09-cv-0926, 2010 U.S. Dist.

in determining whether to order separate trials are efficient judicial administration and potential prejudice. Separation of issues for separate trials is "not the usual course that should be followed," *McDaniel v. Anheuser-Bush, Inc.,* 987 F. 2d 298, 304 (5th Cir. 1993), and the burden is on the party seeking separate trials to prove that separation is necessary. 9A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE 2388 (3d ed. 2001).

x x x x x x x x x

Still, in *Corrigan v. Methodist Hospital*,[24] the US District Court for the Eastern District of Pennsylvania has cautioned against the unfettered granting of separate trials, thusly:

Courts order separate trials only when "clearly necessary." *Wetherill v. University of Chicago,* 565 F. Supp. 1553, 1566-67 (N.D. Ill. 1983) (citing 5 James William Moore, *Moore's Federal Practice* at pp. 42-37 to 42-38 & n.4 (1982)). This is because a "single trial will generally lessen the delay, expense, and inconvenience to the parties and the courts." 5 James William Moore, *Moore's Federal Practice* P. 42-03[1], at p. 42-43 (1994); *Laitram Corp. v. Hewlett-Packard Co*., 791 F. Supp. 113, 115 (E.D. La. 1992); *Willemijn Houdstermaatschaapij BV. V. Apollo Computer*, 707 F. Supp. 1429, 1433 (D. Del. 1989). The movant has the burden to show prejudice. Moore at p. 42-48.

x x x A Colorado District Court found three factors to weigh in determining whether to order separate trials for separate defendants. These are 1) whether separate trials would further the convenience of the parties; 2) whether separate trials would promote judicial economy; and 3) whether separate trials would avoid substantial prejudice to the parties. *Tri-R Sys. V. Friedman & Son*, 94 F.R.D. 726, 727 (D. Colo. 1982).

In *Miller v. American Bonding Company*,[25] the US Supreme Court has delimited the holding of separate trials to only the exceptional instances where there were special and persuasive

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[24] No. 94-CV-1478, 874 F. Supp. 657 (1995).

[25] 257 U.S. 304; 42 S. Ct. 98; 66 L. Ed. 250 (1921).

reasons for departing from the general practice of trying all issues in a case at only one time, stating:

> In actions at law, the general practice is to try all the issues in a case at one time; and it is only in exceptional instances where there are special and persuasive reasons for departing from this practice that distinct causes of action asserted in the same case may be made the subjects of separate trials. Whether this reasonably may be done in any particular instance rests largely in the court's discretion.

Further, *Corpus Juris Secundum*[26] makes clear that neither party had an absolute right to have a separate trial of an issue; hence, the motion to that effect should be allowed only to avoid prejudice, further convenience, promote justice, and give a fair trial to all parties, to wit:

> Generally speaking, a lawsuit should not be tried piecemeal, or at least such a trial should be undertaken only with great caution and sparingly. There should be one full and comprehensive trial covering all disputed matters, and parties cannot, as of right, have a trial divided. It is the policy of the law to limit the number of trials as far as possible, and separate trials are granted only in exceptional cases. Even under a statute permitting trials of separate issues, neither party has an absolute right to have a separate trial of an issue involved. The trial of all issues together is especially appropriate in an action at law wherein the issues are not complicated, x x x, or where the issues are basically the same x x x
>
> x x x Separate trials of issues should be ordered where such separation will avoid prejudice, further convenience, promote justice, and give a fair trial to all parties.

Bearing in mind the foregoing principles and parameters defined by the relevant US case law, we conclude that the Sandiganbayan committed grave abuse of its discretion in ordering a separate trial as to Asian Bank (Metrobank) on the ground that the issue against Asian Bank was distinct and separate from that against the original defendants. Thereby, the Sandiganbayan veered away from the general rule of having all the issues in every

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[26] CJS 88 Trial § 8-9.

case tried at one time, unreasonably shunting aside the dictum in *Corrigan*, *supra*, that a "single trial will generally lessen the delay, expense, and inconvenience to the parties and the courts."[27]

Exceptions to the general rule are permitted only when there are extraordinary grounds for conducting separate trials on different issues raised in the same case, or when separate trials of the issues will avoid prejudice, or when separate trials of the issues will further convenience, or when separate trials of the issues will promote justice, or when separate trials of the issues will give a fair trial to all parties. Otherwise, the general rule must apply.

As we see it, however, the justification of the Sandiganbayan for allowing the separate trial did not constitute a special or compelling reason like any of the exceptions. To begin with, the issue relevant to Asian Bank was not complicated. In that context, the separate trial would not be in furtherance of convenience. And, secondly, the cause of action against Asian Bank was necessarily connected with the cause of action against the original defendants. Should the Sandiganbayan resolve the issue against Spouses Genito in a separate trial on the basis of the evidence adduced against the original defendants, the properties would be thereby adjudged as ill-gotten and liable to forfeiture in favor of the Republic without Metrobank being given the opportunity to rebut or explain its side. The outcome would surely be prejudicial towards Metrobank.

The representation by the Republic in its comment to the petition of Metrobank, that the latter "merely seeks to be afforded the opportunity to confront the witnesses and documentary exhibits," and that it will "still be granted said right during the conduct of the separate trial, if proper grounds are presented therefor,"[28] unfairly dismisses the objective possibility of leaving the opportunity to confront the witnesses and documentary exhibits to be given to Metrobank in the separate trial as already too

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[27] *Corrigan v. Methodist Hospital*, *supra* note 21.

[28] *Rollo*, p. 261.

late. The properties, though already registered in the name of Asian Bank, would be meanwhile declared liable to forfeiture in favor of the Republic, causing Metrobank to suffer the deprivation of its properties without due process of law. Only a joint trial with the original defendants could afford to Metrobank the equal and efficient opportunity to confront and to contest all the evidence bearing on its ownership of the properties. Hence, the disadvantages that a separate trial would cause to Metrobank would far outweigh any good or benefit that the Republic would seemingly stand to gain from the separation of trials.

We must safeguard Metrobank's right to be heard in the defense of its registered ownership of the properties, for that is what our Constitution requires us to do. Hence, the grant by the Sandiganbayan of the Republic's motion for separate trial, not being in furtherance of convenience or would not avoid prejudice to a party, and being even contrary to the Constitution, the law and jurisprudence, was arbitrary, and, therefore, a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Sandiganbayan.[29]

Third Issue:
Sandiganbayan has exclusive original jurisdiction over the matter involving Metrobank

Presidential Decree No. 1606,[30] as amended by Republic Act No. 7975[31] and Republic Act No. 8249,[32] vests the

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[29] *Banal III v. Panganiban*, G.R. No. 167474, November 15, 2005, 475 SCRA 164, 174; *Freedom from Debt Coalition v. Energy Regulatory Commission*, G.R. No. 161113, June 15, 2004, 432 SCRA 157, 199.

[30] P.D. No. 1606 is entitled *Revising Presidential Decree No. 1486 Creating A Special Court To Be Known As "Sandiganbayan" And For Other Purposes,* approved on December 10, 1978.

[31] Republic Act No. 7975 is entitled *An Act To Strengthen The Functional And Structural Organization Of The Sandiganbayan, Amending For That Purpose Presidential Decree No. 1606, As Amended*, approved on March 30, 1995.

[32] Republic Act No. 8249 is entitled *An Act Further Defining The Jurisdiction Of The Sandiganbayan, Amending For The Purpose Presidential*

Sandiganbayan with original exclusive jurisdiction over civil and criminal cases instituted pursuant to and in connection with Executive Orders No. 1, No. 2, No. 14 and No. 14-A, issued in 1986 by then President Corazon C. Aquino.

Executive Order No. 1 refers to cases of recovery and sequestration of ill-gotten wealth amassed by the Marcoses their relatives, subordinates, and close associates, directly or through nominees, by taking undue advantage of their public office and/or by using their powers, authority, influence, connections or relationships. Executive Order No. 2 states that the ill-gotten wealth includes assets and properties in the form of estates and real properties in the Philippines and abroad. Executive Orders No. 14 and No. 14-A pertain to the Sandiganbayan's jurisdiction over criminal and civil cases relative to the ill-gotten wealth of the Marcoses and their cronies.

The amended complaint filed by the Republic to implead Asian Bank prays for reversion, reconveyance, reconstitution, accounting and damages. In other words, the Republic would recover ill-gotten wealth, by virtue of which the properties in question came under sequestration and are now, for that reason, *in custodia legis*.[33]

Although the Republic has not imputed any responsibility to Asian Bank for the illegal accumulation of wealth by the original defendants, or has not averred that Asian Bank was a business associate, dummy, nominee, or agent of the Marcoses, the allegation in its amended complaint in Civil Case No. 0004 that Asian Bank acted with bad faith for ignoring the sequestration of the properties as ill-gotten wealth has made the cause of action against Asian Bank incidental or necessarily connected to the cause of action against the original defendants. Consequently, the Sandiganbayan has original exclusive jurisdiction over the claim against Asian Bank, for the Court has ruled in

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Decree No. 1606, As Amended, Providing Funds Therefor, And For Other Purposes, approved on February 5, 1997.

[33] *Rollo,* pp. 43, 54-58, and 100.

Presidential Commission on Good Government v. Sandiganbayan,[34] that "the Sandiganbayan has original and exclusive jurisdiction not only over principal causes of action involving recovery of ill-gotten wealth, but also over all incidents arising from, incidental to, or related to such cases." The Court made a similar pronouncement sustaining the jurisdiction of the Sandiganbayan in *Republic of the Philippines (PCGG) v. Sandiganbayan (First Division)*, [35] to wit:

> We cannot possibly sustain such a puerile stand. *Peña* itself already dealt with the matter when it stated that under Section 2 of Executive Order No. 14, all cases of the Commission regarding alleged ill-gotten properties of former President Marcos and his relatives, subordinates, cronies, nominees and so forth, whether civil or criminal, are lodged within the exclusive and original jurisdiction of the Sandiganbayan, "and all incidents arising from, incidental to, or related to such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction, subject to review on *certiorari* exclusively by the Supreme Court."

WHEREFORE, the Court *PARTIALLY GRANTS* the petition for *certiorari*.

Let the writ of *certiorari* issue: (*a*) *ANNULLING AND SETTING ASIDE* the Resolution dated June 25, 2004 and the Resolution dated July 13, 2005 issued by the Sandiganbayan in Civil Case No. 0004 granting the motion for separate trial of the Republic of the Philippines as to Metropolitan Bank and Trust Company; and (*b*), *DIRECTING* the Sandiganbayan to hear Civil Case No. 0004 against Metropolitan Bank and Trust Company in the same trial conducted against the original defendants in Civil Case No. 0004.

The Court *DECLARES* that the Sandiganbayan has original exclusive jurisdiction over the amended complaint in Civil Case No. 0004 as against Asian Bank Corporation/Metropolitan Bank and Trust Company.

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[34] G.R. No. 132738, February 23, 2000, 326 SCRA 346, 353,

[35] G.R. No. 88126, July 12, 1996, 258 SCRA 685, 699.

No pronouncements on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 175002. February 18, 2013]

PEPSI-COLA PRODUCTS PHILIPPINES, INC., *petitioner, vs.* **ANECITO MOLON, AUGUSTO TECSON, JONATHAN VILLONES, BIENVENIDO LAGARTOS, JAIME CADION,† EDUARDO TROYO, RODULFO MENDIGO, AURELIO MORALITA, ESTANISLAO MARTINEZ, REYNALDO VASQUEZ, ORLANDO GUANTERO, EUTROPIO MERCADO, FRANCISCO GABON, ROLANDO ARANDIA, REYNALDO TALBO, ANTONIO DEVARAS, HONORATO ABARCA, SALVADOR MAQUILAN, REYNALDO ANDUYAN, VICENTE CINCO, FELIX RAPIZ, ROBERTO CATAROS, ROMEO DOROTAN, RODOLFO ARROPE, DANILO CASILAN, and SAUNDER SANTIAGO REMANDABAN III,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE COURT OF APPEALS IS AUTHORIZED TO MAKE ITS OWN FACTUAL DETERMINATION WHEN IT FINDS THAT THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) GRAVELY ABUSED ITS DISCRETION IN OVERLOOKING OR DISREGARDING EVIDENCE WHICH ARE MATERIAL TO THE

CONTROVERSY.— [I]n a special civil action for *certiorari*, the CA is authorized to make its own factual determination when it finds that the NLRC gravely abused its discretion in overlooking or disregarding evidence which are material to the controversy. The Court, in turn, has the same authority to sift through the factual findings of both the CA and the NLRC in the event of their conflict. Thus, in *Plastimer Industrial Corporation v. Gopo*, the Court explained: In a special civil action for *certiorari*, the Court of Appeals has ample authority to make its own factual determination. Thus, the Court of A ppeals can grant a petition for *certiorari* when it finds that the NLRC committed grave abuse of discretion by disregarding evidence material to the controversy. To make this finding, the Court of Appeals necessarily has to look at the evidence and make its own factual determination. In the same manner, this Court is not precluded from reviewing the factual issues when there are conflicting findings by the Labor A rbiter, the NLRC and the Court of Appeals. x x x x. In this light, given the conflicting findings of the CA and NLRC in this case, the Court finds it necessary to examine the same in order to resolve the substantive issues.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; RETRENCHMENT;EXPLAINED; REQUIREMENTS TO BE VALID; COMPLIED WITH.— Retrenchment is defined as the termination of employment initiated by the employer through no fault of the employee and without prejudice to the latter, resorted by management during periods of business recession, industrial depression or seasonal fluctuations or during lulls over shortage of materials. It is a reduction in manpower, a measure utilized by an employer to minimize business losses incurred in the operation of its business. Under Article 297 of the Labor Code, retrenchment is one of the authorized causes to validly terminate an employment. x x x. Essentially, the prerogative of an employer to retrench its employees must be exercised only as a last resort, considering that it will lead to the loss of the employees' livelihood. It is justified only when all other less drastic means have been tried and found insufficient or inadequate. Corollary thereto, the employer must prove the requirements for a valid retrenchment by clear and convincing evidence; otherwise, said

ground for termination would be susceptible to abuse by scheming employers who might be merely feigning losses or reverses in their business ventures in order to ease out employees. These requirements are: (1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher; (4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and (5) That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers. In due regard of these requisites, the Court observes that Pepsi had validly implemented its retrenchment program. [A]s all the requisites for a valid retrenchment are extant, the Court finds Pepsi's rightsizing program and the consequent dismissal of respondents in accord with law.

3. REMEDIAL LAW; APPEALS; ABSENT ANY CLEAR SHOWING OF ABUSE, ARBITRARINESS OR CAPRICIOUSNESS, THE FINDINGS OF FACT BY THE NLRC, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE BINDING AND CONCLUSIVE UPON THE COURT.— [R]ecords disclose that both the CA and the NLRC had already determined that Pepsi complied with the requirements of substantial loss and due notice to both the DOLE and the workers to be retrenched. x x x. It is axiomatic that absent any clear showing of abuse, arbitrariness or capriciousness, the findings of fact by the NLRC, especially when affirmed by the CA — as in this case — are binding and conclusive upon the Court. Thus, given that there lies no

discretionary abuse with respect to the foregoing findings, the Court sees no reason to deviate from the same.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMS "UNFAIR LABOR PRACTICE" AND "UNION BUSTING" DEFINED AND EXPLAINED; ABSENT ANY PERCEIVED THREAT TO THE UNION'S EXISTENCE OR A VIOLATION OF THE EMPLOYEES RIGHT TO SELF-ORGANIZATION, THE EMPLOYER CANNOT BE SAID TO HAVE COMMITTED UNION BUSTING OR UNFAIR LABOR PRACTICE.— Under Article 276(c) of the Labor Code, there is union busting when the existence of the union is threatened by the employer's act of dismissing the former's officers who have been duly-elected in accordance with its constitution and by-laws. On the other hand, the term unfair labor practice refers to that gamut of offenses defined in the Labor Code which, at their core, violates the constitutional right of workers and employees to self-organization, with the sole exception of Article 257(f) (previously Article 248[f]). As explained in the case of *Philcom Employees Union v. Philippine Global Communications:* **Unfair labor practice refers to acts that violate the workers' right to organize.** The prohibited acts are related to the workers' right to self-organization and to the observance of a CBA . Without that element, the acts, no matter how unfair, are not unfair labor practices. The only ex- ception is Article 248(f) [now Article 257(f)]. Mindful of their nature, the Court finds it difficult to attribute any act of union busting or ULP on the part of Pepsi considering that it retrenched its employees in good faith. As earlier discussed, Pepsi tried to sit-down with its employees to arrive at mutually beneficial criteria which would have been adopted for their intended retrenchment. In the same vein, Pepsi's cooperation during the NCMB-supervised conciliation conferences can also be gleaned from the records. Furthermore, the fact that Pepsi's rightsizing program was implemented on a company-wide basis dilutes respondents' claim that Pepsi's retrenchment scheme was calculated to stymie its union activities, much less diminish its constituency. Therefore, absent any perceived threat to LEPCEU-ALU's existence or a violation of respondents' right to self-organization – as demonstrated by the foregoing actuations – Pepsi cannot be said to have committed union busting or ULP in this case.

5. ID.; TERMINATION OF EMPLOYMENT; QUITCLAIMS; VALID AND BINDING AGREEMENT BETWEEN THE PARTIES, PROVIDED THAT IT CONSTITUTES A CREDIBLE AND REASONABLE SETTLEMENT AND THE ONE ACCOMPLISHING IT HAS DONE SO VOLUNTARILY AND WITH A FULL UNDERSTANDING OF ITS IMPORT; EXECUTION OF QUITCLAIMS IN CASE AT BAR NOT A BAR FROM INSTITUTING SUBSEQUENT ACTION WITH THE NLRC.— A waiver or quitclaim is a valid and binding agreement between the parties, provided that it constitutes a credible and reasonable settlement and the one accomplishing it has done so voluntarily and with a full understanding of its import. The applicable provision is Article 232 of the Labor Code x x x. In the present case, Pepsi claims that respondents have long been precluded from filing cases before the NLRC to assail their retrenchment due to their execution of the September 1999 quitclaims. In this regard, Pepsi advances the position that all issues arising from the foregoing must now be considered as conclusively settled by the parties. The Court is unconvinced. As correctly observed by the CA , the September 1999 quitclaims must be read in conjunction with the September 17, 1999 Agreement, to wit: 2. Both parties agree that the release of these benefits is **without prejudice to the filing of the case by the Union with the National Labor Relations Commission**; 3. The **Union undertakes to sign the Quitclaim but subject to the 2nd paragraph** of this Agreement. x x x. The language of the September 17, 1999 Agreement is straightforward. The use of the term "subject" in the 3rd clause of the said agreement clearly means that the signing of the quitclaim documents was without prejudice to the filing of a case with the NLRC. Hence, when respondents signed the September 1999 quitclaims, they did so with the reasonable impression that that they were not precluded from instituting a subsequent action with the NLRC. Accordingly, it cannot be said that the signing of the September 1999 quitclaims was tantamount to a full and final settlement between Pepsi and respondents.

6. ID.; ID.; REINSTATEMENT OF THE EMPLOYEE WITHOUT BACKWAGES MAY BE ORDERED BY THE COURT WHERE THE DISMISSAL OF THE EMPLOYEE WOULD BE TOO HARSH A PENALTY AND THE EMPLOYER WAS

IN GOOD FAITH IN TERMINATING THE EMPLOYEE.— An illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages. In certain cases, however, the Court has ordered the reinstatement of the employee without backwages considering the fact that (1) the dismissal of the employee would be too harsh a penalty; and (2) the employer was in good faith in terminating the employee. For instance, in the case of *Cruz v. Minister of Labor and Employment* the Court ruled as follows: The Court is convinced that petitioner's guilt was substantially established. Nevertheless, we agree with respondent Minister's order of reinstating petitioner without backwages instead of **dismissal which may be too drastic**. **Denial of backwages would sufficiently penalize her for her infractions**. The bank officials acted in good faith. They should be exempt from the burden of paying backwages. **The good faith of the employer, when clear under the circumstances, may preclude or diminish recovery of backwages**. Only employees discriminately dismissed are entitled to backpay. x x x. The factual similarity of these cases to Remandaban's situation deems it appropriate to render the same disposition. As may be gathered from the September 11, 2002 NLRC Decision, while Remandaban was remiss in properly informing Pepsi of his intended absence, the NLRC ruled that the penalty of dismissal would have been too harsh for his infractions considering that his failure to report to work was clearly prompted by a medical emergency and not by any intention to defy the July 27, 1999 return-to-work order. On the other hand, Pepsi's good faith is supported by the NLRC's finding that "the return-to-work-order of the Secretary was taken lightly by · Remandaban." In this regard, considering Remandaban's ostensible dereliction of the said order, Pepsi could not be blamed for sending him a notice of termination and eventually proceeding to dismiss him. x x x. All told, the NLRC's directive to reinstate Remandaban without backwages is upheld.

APPEARANCES OF COUNSEL

Bonifacio L. Valencia for petitioner.
Joseph N. Escalona for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the March 31, 2006 Decision[2] and September 18, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. S.P. No. 82354 which reversed and set aside the September 11, 2002 Decision[4] of the National Labor Relations Commission (NLRC) in NLRC Certified Case No. V-000001-2000.[5] The assailed CA issuances declared the illegality of respondents' retrenchment as well as held petitioner guilty of unfair labor practice (ULP), among others.

The Facts

Petitioner Pepsi-Cola Products Philippines, Inc. (Pepsi) is a domestic corporation engaged in the manufacturing, bottling and distribution of soft drink products. In view of its business, Pepsi operates plants all over the Philippines, one of which is located in Sto. Niño, Tanauan, Leyte (Tanauan Plant).

Respondents, on the other hand, are members of the Leyte Pepsi-Cola Employees Union-Associated Labor Union (LEPCEU-

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[1] *Rollo*, pp. 3-53.

[2] *Id.* at 55-70. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Enrico A. Lazanas and Apolinario D. Bruselas, Jr., concurring.

[3] *Id.* at 72-73. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Agustin S. Dizon and Priscilla Baltazar-Padilla, concurring.

[4] CA *rollo*, pp. 103-136. Penned by Presiding Commissioner Irenea E. Ceniza, with Commissioner Oscar S. Uy, concurring and Commissioner Edgardo M. Enerlan, dissenting.

[5] *Id.* at 103-104. Certified Case In Re: Labor Dispute at Pepsi-Cola Products Philippines, Inc. NLRC Certified Case No. V-000001-2000 (NCR CC No. 000171-99), NCMB-RBVIII-NS-07-10-99 and NCMB-RBVIII-NS-07-14-99. **Subsumed Cases**: (1) RAB Case No. VIII-7-0301-99 (For: Illegal Strike Under Article 217 of the Labor Code); (2) NLRC Injunction Case No. V-000013-99; (3) RAB Case No. VIII-9-0432-99 to 9-0560-99; and (4) RAB Case No. VIII-9-0459-99; **Consolidated Cases**: (1) RAB Case No. VIII-03-0246-2000 to 03-0259-2000; and (2) NLRC Injunction Case No. V-000003-2001.

ALU), a legitimate labor organization composed of rank-and-file employees in Pepsi's Tanauan Plant, duly registered with the Department of Labor and Employment (DOLE) Regional Office No. 8.[6]

In 1999, Pepsi adopted a company-wide retrenchment program denominated as Corporate Rightsizing Program.[7] To commence with its program, it sent a notice of retrenchment to the DOLE[8] as well as individual notices to the affected employees informing them of their termination from work.[9] Subsequently, on July 13, 1999, Pepsi notified the DOLE of the initial batch of forty-seven (47) workers to be retrenched.[10] Among these employees were six (6) elected officers and twenty-nine (29) active members of the LEPCEU-ALU, including herein respondents.[11]

On July 19, 1999, LEPCEU-ALU filed a Notice of Strike before the National Conciliation and Mediation Board (NCMB) due to Pepsi's alleged acts of union busting/ULP.[12] It claimed that Pepsi's adoption of the retrenchment program was designed solely to bust their union so that come freedom period, Pepsi's company union, the Leyte Pepsi-Cola Employees Union-Union de Obreros de Filipinas #49 (LEPCEU-UOEF#49) – which was also the incumbent bargaining union at that time – would garner the majority vote to retain its exclusive bargaining status.[13] Hence, on July 23, 1999, LEPCEU-ALU went on strike.[14]

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[6] *Id.* at 44. Registered on February 25, 1997, with Registration Number R0800-97-02-UR-63.

[7] *Rollo*, p. 56.

[8] NLRC records, pp. 439-440. Through a letter dated June 28, 1999 sent by Eduardo T. Dabbay, General Manager of the Tanauan Plant.

[9] *Rollo*, p. 56.

[10] *Id.*

[11] NLRC records, p. 44.

[12] CA *rollo,* p. 107.

[13] *Rollo*, p. 56.

[14] CA *rollo*, p. 110. Docketed as NCMB RBVIII-NS-07-10-99.

On July 27, 1999, Pepsi filed before the NLRC a petition to declare the strike illegal with a prayer for the loss of employment status of union leaders and some union members.[15] On even date, then DOLE Secretary Bienvenido A. Laguesma certified the labor dispute to the NLRC for compulsory arbitration.[16] A return-to-work order was also issued.[17]

Incidentally, one of the respondents, respondent Saunder Santiago Remandaban III (Remandaban), failed to report for work within twenty-four (24) hours from receipt of the said order. Because of this, he was served with a notice of loss of employment status (dated July 30, 1999) which he challenged before the NLRC, asserting that his absence on that day was justified because he had to consult a physician regarding the persistent and excruciating pain of the inner side of his right foot.[18]

Eventually, Pepsi and LEPCEU-ALU agreed to settle their labor dispute arising from the company's retrenchment program and thus, executed the Agreement dated September 17, 1999 which contained the following stipulations:

1. The union will receive 100% of the separation pay based on the employees' basic salary and the remaining 50% shall be released by Management after the necessary deductions are made from the concerned employees;

2. Both parties agree that the release of these benefits is without prejudice to the filing of the case by the Union with the National Labor Relations Commission;

3. The Union undertakes to sign the Quitclaim but subject to the 2nd paragraph of this Agreement.[19]

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[15] *Id.* at 110, 112. Docketed as RAB Case No. VIII-7-0301-99.

[16] *Id.* at 104. See also *rollo*, p. 57.

[17] *Rollo*, p. 57.

[18] CA *rollo*, p. 113-114. Docketed as RAB Case No. VIII-9-0459-99.

[19] *Rollo*, pp. 501-502.

Pursuant thereto, respondents signed individual release and quitclaim forms in September 1999 (September 1999 quitclaims)[20] stating that Pepsi would be released and discharged from any action arising from their employment. Notwithstanding the foregoing, respondents[21] still filed separate complaints for illegal dismissal with the NLRC.[22]

The NLRC Ruling

On September 11, 2002, the NLRC rendered a Decision[23] in **NLRC Certified Case No. V-000001-2000**. Among the cases subsumed and consolidated therein are the following with the pertinent dispositions involving herein respondents:

(1) In **NCMB RBVIII-NS-0710-99** and **NCMB-RBVIII-NS-07-14-99**, the NLRC absolved Pepsi of the charge of union busting/ULP as it was not shown that it (Pepsi) had any design to bust the union;[24]

(2) In **NLRC Case No. 7-0301-99**, the NLRC declared LEPCEU-ALU's July 23, 1999 strike as illegal for having been conducted without legal authority since LEPCEU-ALU was not the certified bargaining agent of the company. It was also observed that LEPCEU-ALU failed to comply with the seven (7)-day strike vote notice requirement. However, the NLRC denied Pepsi's prayer to declare loss of employment status of the union officers and members who participated in the strike for its failure to sufficiently establish the identity of the culpable union officers as well as their illegal acts;[25]

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[20] *Id.* at 360-407. Annexes "A to WW" of petitioner's February 1, 2011 Memorandum.

[21] With the exception of Remandaban who did not execute any release and quitclaim document and filed a separate complaint based on different grounds.

[22] CA *rollo*, pp. 114. These were docketed as NLRC-RAB VIII Case Nos. 9-0432-99 to 9-0458-99 and subsequently subsumed under NLRC Certified Case No. V-000001-2000.

[23] *Id.* at 103-136.

[24] *Id.* at 106-110

[25] *Id.* at 110-113.

(3) In **NLRC RAB VIII Case No. 9-0459-00**, the NLRC ordered Pepsi to reinstate Remandaban to his former position without loss of seniority rights but without backwages considering the lack of evidence showing that he willfully intended to disregard the July 27, 1999 return-to-work order;[26] and

(4) In **NLRC RAB VIII Case Nos. 9-0432-99** to **9-0458-99**, the NLRC dismissed respondents' complaints for illegal dismissal for having been finally settled by the parties through the execution of quitclaim documents by the respondents in favor of Pepsi.[27]

Respondents moved for reconsideration, mainly alleging that the NLRC erred when it declared that Pepsi's retrenchment program was valid.[28] The motion was, however, denied by the NLRC in its Resolution dated September 15, 2003.[29]

Aggrieved, respondents filed a petition for *certiorari* before the CA,[30] imputing grave abuse of discretion on the part of the NLRC when it upheld the validity of their retrenchment. They argued that the fact that Pepsi hired new employees as replacements right after retrenching forty-seven (47) of its workers negated the latter's claim of financial losses.[31] In any event, the evidence was inadequate to prove that Pepsi did suffer from any economic or financial loss to legitimize its conduct of retrenchment.[32]

In opposition, Pepsi pointed out that the respondents failed to assail the NLRC's finding that the controversy was not about

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[26] *Id.* at 113-114.

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

[28] *Id.* at 14a-17.

[29] *Id.* at 14-19

[30] The petition (*Id.* at 5-8) was initially dismissed due to procedural flaws through the CA's March 19, 2004 Resolution (*Id.* at 53-54). Respondents thereafter filed a Motion for Reconsideration With Prayer To Submit Supplemental Brief In Support of Petition For *Certiorari* and With Formal Appearance of Counsel (*Id.* at 66-97) which was granted by the CA in its August 17, 2004 Resolution (*Id.* at 240-242).

[31] *Id.* at 74.

[32] *Id.* at 76-77.

the validity of the retrenchment program but only about the underlying conflict regarding the selection of the employees to be retrenched;[33] hence, the latter fact should only remain at issue. Further, it claimed that its financial/business losses were sufficiently substantiated by the audited financial statements and other related evidence it submitted.[34]

The CA Ruling

On March 31, 2006, the CA issued a Decision[35] which reversed and set aside the NLRC's ruling.

It observed that Pepsi could not have been in good faith when it retrenched the respondents given that they were chosen because of their union membership with LEPCEU-ALU. In this accord, it ruled that the subject retrenchment was invalid because there was no showing that Pepsi employed fair and reasonable criteria in ascertaining who among its employees would be retrenched.[36]

Moreover, the CA held that Pepsi was guilty of ULP in the form of union busting as its retrenchment scheme only served to defeat LEPCEU-ALU's right to self-organization. It also pointed out that the fact that Pepsi hired twenty-six (26) replacements and sixty-five (65) new employees right after they were retrenched contravenes Pepsi's claim that the retrenchment was necessary to prevent further losses.[37]

Further, the CA pronounced that the respondents' signing of the individual release and quitclaims did not have the effect of settling all issues between them and Pepsi considering that the same should have been read in conjunction with the September 17, 1999 Agreement.[38]

[33] *Id.* at 330-331

[34] *Id.* at 334-338.

[35] *Rollo*, pp. 55-70

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

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

[38] *Id.* at 65-67.

Finally, the CA upheld the validity of LEPCEU-ALU's July 23, 1999 strike, ruling that LEPCEU-ALU "was sure to be the certified collective bargaining agent in the event that a certification election will be conducted" and thus, was authorized to conduct the aforesaid strike.[39] It added that there was no need for LEPCEU-ALU to comply with the fifteen (15) day cooling-off period requirement given that the July 23, 1999 strike was conducted on account of union busting.[40] In support thereof, the CA noted[41] that in a related case involving the same retrenchment incident affecting, however, other members of LEPCEU-ALU — entitled "*George C. Beraya, Arsenio B. Mercado, Romulo A. Orongan, Pio V. Dado and Primo C. Palana v. Pepsi Cola Products Philippines, Inc. (PCPPI), Pres. Jorge G. Sevilla and Area GM Edgar D. Del Mar*" (*Beraya*)[42] – the NLRC issued a Decision dated November 24, 2003[43] finding Pepsi guilty of union busting/ULP. Notably, in *Beraya*, the NLRC ruled that Pepsi's retrenchment program and the consequent dismissal of the retrenched employees were valid.[44]

Dissatisfied with the CA's ruling, Pepsi moved for reconsideration which was, however, denied by the CA in its September 18, 2006 Resolution.[45] Hence, the instant petition.

Issues Before the Court

As culled from the records, the following issues have been raised for the Court's resolution: (1) whether the CA may reverse the factual findings of the NLRC; (2) whether respondents' retrenchment was valid; (3) whether Pepsi committed ULP in

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[39] *Id.* at 61.

[40] *Id.* at 61-62.

[41] *Id.* at 62.

[42] Docketed as NLRC Case No. V-000115-2002.

[43] NLRC records, pp. 743-748.

[44] *Id.* at 748.

[45] *Rollo*, pp. at 72-73.

the form of union busting; (4) whether respondents' execution of quitclaims amounted to a final settlement of the case; and (5) whether Remandaban was illegally dismissed.

The Court's Ruling

The petition is meritorious.

A. Appellate Court's Evaluation of the NLRC's Findings

Pepsi contends that the CA erred in evaluating and examining anew the evidence and in making its own finding of facts when the findings of the NLRC have been fully supported by substantial evidence. It therefore claims that the validity of the corporate rightsizing program, integrity and binding effect of the executed quitclaims as well as the issues relating to union busting and ULP constitute factual matters which have already been resolved by the NLRC and are now beyond the authority of the CA to pass upon on *certiorari*.

In contrast, respondents aver that the CA was clothed with ample authority to review the factual findings and conclusions of the NLRC, especially in this case where the latter misappreciated the factual circumstances and misapplied the law.

Pepsi's arguments are untenable.

Parenthetically, in a special civil action for *certiorari*, the CA is authorized to make its own factual determination when it finds that the NLRC gravely abused its discretion in overlooking or disregarding evidence which are material to the controversy. The Court, in turn, has the same authority to sift through the factual findings of both the CA and the NLRC in the event of their conflict. Thus, in *Plastimer Industrial Corporation v. Gopo*,[46] the Court explained:

In a special civil action for *certiorari*, the Court of Appeals has ample authority to make its own factual determination. Thus, the

[46] G.R. No. 183390, February 16, 2011, 643 SCRA 502, 509.

Court of Appeals can grant a petition for *certiorari* when it finds that the NLRC committed grave abuse of discretion by disregarding evidence material to the controversy. To make this finding, the Court of Appeals necessarily has to look at the evidence and make its own factual determination. In the same manner, this Court is not precluded from reviewing the factual issues when there are conflicting findings by the Labor Arbiter, the NLRC and the Court of Appeals. x x x (Citations omitted.)

In this light, given the conflicting findings of the CA and NLRC in this case, the Court finds it necessary to examine the same in order to resolve the substantive issues.

Separately, it must be pointed out that the CA erred in resolving the issues pertaining to LEPCEU-ALU's July 23, 1999 strike in its March 31, 2006 Decision[47] and September 18, 2006 Resolution[48] (in CA-G.R. SP No. 82354) considering that the parties therein — now, the respondents in this case — do not have any legal interest in the said issue. To be clear, **NLRC-RAB VIII Case Nos. 9-0432-99 to 9-0458-99** are the cases which involve herein respondents; their concern in those cases was the illegality of their retrenchment. On the other hand, the strike issue was threshed out in **RAB Case No. VIII-7-0301-99** which involved other members of LEPCEU-ALU. Although all these cases were subsumed under **NLRC Certified Case No. V-000001-2000**, the legality of the July 23, 1999 strike was not raised by the respondents in NLRC-RAB VIII Case Nos. 9-0432-99 to 9-0458-99. In view of these incidents, given that the CA has taken cognizance of a matter (*i.e.*, the legality of the strike) where the parties (*i.e.*, respondents) are devoid of any legal interest, the Court sees no reason to perpetuate the misstep and delve upon the same.

B. Validity of Retrenchment

Retrenchment is defined as the termination of employment initiated by the employer through no fault of the employee and

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[47] *Rollo*, pp. 55-70.

[48] *Id.* at 72-73.

without prejudice to the latter, resorted by management during periods of business recession, industrial depression or seasonal fluctuations or during lulls over shortage of materials. It is a reduction in manpower, a measure utilized by an employer to minimize business losses incurred in the operation of its business.[49]

Under Article 297 of the Labor Code,[50] retrenchment is one of the authorized causes to validly terminate an employment. It reads:

> ART. 297. Closure of Establishment and Reduction of Personnel. **— The employer may also terminate the employment of any employee due to** the installation of labor saving devices, redundancy, **retrenchment to prevent losses** or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Emphasis supplied.)

As may be gleaned from the afore-cited provision, to properly effect a retrenchment, the employer must: (a) serve a written notice both to the employees and to the DOLE at least one (1) month prior to the intended date of retrenchment; and (b) pay the retrenched employees separation pay equivalent to one (1)

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[49] *Philippine Carpet Employees Association v. Secretary of Labor and Employment,* G.R. No. 168719, February 22, 2006, 483 SCRA 128, 143, citing *Trendline Employees Association-Southern Philippines Federation of Labor v. NLRC,* 338 Phil. 681, 688 (1997).

[50] Renumbered pursuant to Republic Act No. 10151.

month pay or at least one-half (½) month pay for every year of service, whichever is higher.

Essentially, the prerogative of an employer to retrench its employees must be exercised only as a last resort, considering that it will lead to the loss of the employees' livelihood. It is justified only when all other less drastic means have been tried and found insufficient or inadequate.[51] Corollary thereto, the employer must prove the requirements for a valid retrenchment by clear and convincing evidence; otherwise, said ground for termination would be susceptible to abuse by scheming employers who might be merely feigning losses or reverses in their business ventures in order to ease out employees.[52] These requirements are:

(1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;

(2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;

(3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher;

(4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest

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[51] *Supra* note 46, at 144, citing *Guerrero v. NLRC*, 329 Phil. 1069, 1076 (1996); and *Somerville Stainless Steel Corporation v. NLRC,* 350 Phil. 859, 870 (1998).

[52] *Id.*

and not to defeat or circumvent the employees' right to security of tenure; and

(5) That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[53]

In due regard of these requisites, the Court observes that Pepsi had validly implemented its retrenchment program:

(1) Records disclose that both the CA and the NLRC had already determined that Pepsi complied with the requirements of substantial loss and due notice to both the DOLE and the workers to be retrenched. The pertinent portion of the CA's March 31, 2006 Decision reads:

> In the present action, the NLRC held that PEPSI-COLA's financial statements *are substantial evidence which carry great credibility and reliability viewed in light of the financial crisis that hit the country which saw multinational corporations closing shops and walking away, or adapting* [*sic*] *their own corporate rightsizing program*. Since these findings are supported by evidence submitted before the NLRC, we resolve to respect the same. x x x x
>
> The notice requirement was also complied with by PEPSI-COLA when it served notice of the corporate rightsizing program to the DOLE and to the fourteen (14) employees who will be affected thereby at least one (1) month prior to the date of retrenchment. (Citations omitted)[54]

It is axiomatic that absent any clear showing of abuse, arbitrariness or capriciousness, the findings of fact by the NLRC, especially when affirmed by the CA — as in this case — are binding and conclusive upon the Court.[55] Thus, given that there

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[53] *Id.* at 144-145, citing *Asian Alcohol Corporation v. NLRC*, 364 Phil. 912, 926-927 (1999).

[54] *Rollo,* p. 64.

[55] See *Acevedo v. Advanstar Company, Inc.*, G.R. No. 157656, November 11, 2005, 474 SCRA 656, 664.

lies no discretionary abuse with respect to the foregoing findings, the Court sees no reason to deviate from the same.

(2) Records also show that the respondents had already been paid the requisite separation pay as evidenced by the September 1999 quitclaims signed by them. Effectively, the said quitclaims serve *inter alia* the purpose of acknowledging receipt of their respective separation pays.[56] Appositely, respondents never questioned that separation pay arising from their retrenchment was indeed paid by Pepsi to them. As such, the foregoing fact is now deemed conclusive.

(3) Contrary to the CA's observation that Pepsi had singled out members of the LEPCEU-ALU in implementing its retrenchment program,[57] records reveal that the members of the company union (*i.e.*, LEPCEU-UOEF#49) were likewise among those retrenched.[58]

Also, as aptly pointed out by the NLRC, Pepsi's Corporate Rightsizing Program was a company-wide program which had already been implemented in its other plants in Bacolod, Iloilo, Davao, General Santos and Zamboanga.[59] Consequently, given the general applicability of its retrenchment program, Pepsi could not have intended to decimate LEPCEU-ALU's membership, much less impinge upon its right to self-organization, when it employed the same.

In fact, it is apropos to mention that Pepsi and its employees entered into a collective bargaining agreement on October 17,

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[56] *Rollo,* pp. 360-407.

[57] *Id.* at 64. The CA disposed as follows; "Gleaned from the records, the members of the LEPCEU-ALU were singled out to be retrenched. Note that members of the other rival union did not file any case before the Labor Arbiter and the NLRC. This scenario creates a suspicion in the mind of the Court and bolsters our finding that indeed, the members of the LEPCEU-ALU were among those chosen to be retrenched because of their union membership. x x x"

[58] NLRC records, pp. 43-44. Among the forty-seven (47) employees retrenched only thirty-five (35) belonged to LEPCEU-ALU.

[59] CA *rollo*, p.107.

1995 which contained a union shop clause requiring membership in LEPCEU-UOEF#49, the incumbent bargaining union, as a condition for continued employment. In this regard, Pepsi had all the reasons to assume that all employees in the bargaining unit were all members of LEPCEU-UOEF#49; otherwise, the latter would have already lost their employment. In other words, Pepsi need not implement a retrenchment program just to get rid of LEPCEU-ALU members considering that the union shop clause already gave it ample justification to terminate them. It is then hardly believable that union affiliations were even considered by Pepsi in the selection of the employees to be retrenched.[60]

Moreover, it must be underscored that Pepsi's management exerted conscious efforts to incorporate employee participation during the implementation of its retrenchment program. Records indicate that Pepsi had initiated sit-downs with its employees to review the criteria on which the selection of who to be retrenched would be based. This is evidenced by the report of NCMB Region VIII Director Juanito Geonzon which states that "[Pepsi's] [m]anagement conceded on the proposal to review the criteria and to sit down for more positive steps to resolve the issue."[61]

Lastly, the allegation that the retrenchment program was a mere subterfuge to dismiss the respondents considering Pepsi's subsequent hiring of replacement workers cannot be given credence for lack of sufficient evidence to support the same.

Verily, the foregoing incidents clearly negate the claim that the retrenchment was undertaken by Pepsi in bad faith.

(5) On the final requirement of fair and reasonable criteria for determining who would or would not be dismissed, records indicate that Pepsi did proceed to implement its rightsizing program based on fair and reasonable criteria recommended by the company supervisors.[62]

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[60] *Id.* at 107-108

[61] *Id.* at 109.

[62] *Id.* at 110.

Therefore, as all the requisites for a valid retrenchment are extant, the Court finds Pepsi's rightsizing program and the consequent dismissal of respondents in accord with law.

At this juncture, it is noteworthy to mention that in the related case of *Beraya* — which involved the same retrenchment incident affecting the respondents, although litigated by other LEPCEU-ALU employees — the NLRC in a Decision dated November 24, 2003 had already pronounced that Pepsi's retrenchment program was valid.[63] Subsequently, the petitioners in *Beraya* elevated the case via petition for *certiorari* to the CA[64] which was, however, denied in a Decision dated November 28, 2006.[65] They appealed the said ruling to the Court[66] which was equally denied through the Resolutions dated April 24, 2008[67] and August 4, 2008.[68] The fact that the validity of the same Pepsi retrenchment program had already been passed upon and thereafter sustained in a related case, albeit involving different parties, behooves the Court to accord a similar disposition and thus, finally uphold the legality of the said program altogether.

C. Union Busting and ULP

Under Article 276(c) of the Labor Code, there is union busting when the existence of the union is threatened by the employer's act of dismissing the former's officers who have been duly-elected in accordance with its constitution and by-laws.[69]

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[63] NLRC records, p. 748.

[64] Docketed as CA-G.R. SP No. 84383.

[65] *Rollo*, pp. 517-533. Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Isaias P. Dicdican and Romeo F. Barza, concurring.

[66] Docketed as G.R. No. 181694 (*George C. Beraya, et al. v. Pepsi-Cola Products Phils., Inc.*).

[67] *Rollo*, p. 539.

[68] *Id.* at 540.

[69] Article 276(c) of the Labor Code provides in part:

On the other hand, the term unfair labor practice refers to that gamut of offenses defined in the Labor Code[70] which, at their core, violates the constitutional right of workers and employees to self-organization,[71] with the sole exception of Article 257(f) (previously Article 248[f]).[72] As explained in the case of *Philcom Employees Union v. Philippine Global Communications*:[73]

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Department at least thirty (30) days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be fifteen (15) days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However **in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened,** the 15-day cooling-off period shall not apply and the union may take action immediately. (Emphasis supplied.)

[70] Art. 257 of the Labor Code enumerates the unfair labor practices by employers, while Art. 258 enumerates the unfair labor practices of labor organizations.

[71] Article 256 of the Labor Code provides in part:

ART. 256. Concept of Unfair Labor Practice and Procedure for Prosecution Thereof. – Unfair labor practices **violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management,** including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

Consequently, unfair labor practices are not only violations of the civil rights of both labor and management but are also criminal offenses against the State which shall be subject to prosecution and punishment as herein provided. x x x (Emphasis supplied.)

[72] (f) To dismiss, discharge, or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code; x x x.

[73] *Philcom Employees Union v. Philippine Global Communications*, G.R. No. 144315, July 17, 2006 citing *Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation*, G.R. No. 126717, 11 February 1999, 303 SCRA 113; and Cesario A. Azucena, Jr., II The Labor Code with Comments and Cases 210 (5th ed. 2004).

Unfair labor practice refers to acts that violate the workers' right to organize. The prohibited acts are related to the workers' right to self-organization and to the observance of a CBA. Without that element, the acts, no matter how unfair, are not unfair labor practices. The only exception is Article 248(f) [now Article 257(f)]. (Emphasis and underscoring supplied)

Mindful of their nature, the Court finds it difficult to attribute any act of union busting or ULP on the part of Pepsi considering that it retrenched its employees in good faith. As earlier discussed, Pepsi tried to sit-down with its employees to arrive at mutually beneficial criteria which would have been adopted for their intended retrenchment. In the same vein, Pepsi's cooperation during the NCMB-supervised conciliation conferences can also be gleaned from the records. Furthermore, the fact that Pepsi's rightsizing program was implemented on a company-wide basis dilutes respondents' claim that Pepsi's retrenchment scheme was calculated to stymie its union activities, much less diminish its constituency. Therefore, absent any perceived threat to LEPCEU-ALU's existence or a violation of respondents' right to self-organization – as demonstrated by the foregoing actuations — Pepsi cannot be said to have committed union busting or ULP in this case.

D. Execution of Quitclaims

A waiver or quitclaim is a valid and binding agreement between the parties, provided that it constitutes a credible and reasonable settlement and the one accomplishing it has done so voluntarily and with a full understanding of its import.[74] The applicable provision is Article 232 of the Labor Code which reads in part:

ART. 232. Compromise Agreements. — Any compromise settlement, including those involving labor standard laws, voluntarily agreed upon by the parties with the assistance of the Bureau or the regional office

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[74] *Alabang Country Club, Inc. v. NLRC,* G.R. No. 157611, August 9, 2005, 466 SCRA 329,346, citing *Wack Wack Golf and Country Club v. NLRC, G.R. No. 149793*, April 15, 2005, 456 SCRA 280.

of the Department of Labor, shall be **final and binding upon the parties** x x x. (Emphasis and underscoring supplied)

In *Olaybar v. National Labor Relations Commission,*[75] the Court, recognizing the conclusiveness of compromise settlements as a means to end labor disputes, held that Article 2037 of the Civil Code, which provides that "[a] compromise has upon the parties the effect and authority of *res judicata,*" applies suppletorily to labor cases even if the compromise is not judicially approved.[76]

In the present case, Pepsi claims that respondents have long been precluded from filing cases before the NLRC to assail their retrenchment due to their execution of the September 1999 quitclaims. In this regard, Pepsi advances the position that all issues arising from the foregoing must now be considered as conclusively settled by the parties.

The Court is unconvinced.

As correctly observed by the CA, the September 1999 quitclaims must be read in conjunction with the September 17, 1999 Agreement, to wit:

2. Both parties agree that the release of these benefits is **without prejudice to the filing of the case by the Union with the National Labor Relations Commission**;

3. The **Union undertakes to sign the Quitclaim but subject to the 2nd paragraph** of this Agreement. x x x (Emphasis and underscoring supplied)[77]

The language of the September 17, 1999 Agreement is straightforward. The use of the term "subject" in the 3rd clause of the said agreement clearly means that the signing of the quitclaim documents was without prejudice to the filing of a case with

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[75] *Olaybar v. NLRC*, G.R. No. 108713, October 28, 1994, 237 SCRA 819.

[76] *J-Phil Marine, Inc. v. NLRC,* G.R. No. 175366, August 11, 2008, 561 SCRA 675, 680, citing *Olaybar* at 823-824.

[77] *Rollo*, p. 501.

the NLRC. Hence, when respondents signed the September 1999 quitclaims, they did so with the reasonable impression that that they were not precluded from instituting a subsequent action with the NLRC. Accordingly, it cannot be said that the signing of the September 1999 quitclaims was tantamount to a full and final settlement between Pepsi and respondents.

E. Dismissal of Remandaban

An illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.[78] In certain cases, however, the Court has ordered the reinstatement of the employee without backwages considering the fact that (1) the dismissal of the employee would be too harsh a penalty; and (2) the employer was in good faith in terminating the employee. For instance, in the case of *Cruz v. Minister of Labor and Employment*[79] the Court ruled as follows:

The Court is convinced that petitioner's guilt was substantially established. Nevertheless, we agree with respondent Minister's order of reinstating petitioner without backwages instead of **dismissal which may be too drastic**. **Denial of backwages would sufficiently penalize her for her infractions.** The bank officials acted in good faith. They should be exempt from the burden of paying backwages. **The good faith of the employer, when clear under the circumstances, may preclude or diminish recovery of backwages.** Only employees discriminately dismissed are entitled to backpay. x x x (Emphasis and underscoring supplied)

Likewise, in the case of *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*,[80] the Court pronounced that "[t]he

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[78] *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507, citing *Mt. Carmel College v. Resuena*, G.R. No. 173076, October 10, 2007, 535 SCRA 518, 541.

[79] *Cruz v. Minister of Labor and Employment*, G.R. No. L-56591, January 17, 1983, 120 SCRA 15, 20.

[80] *Itogon-Suyoc Mines, Inc. v. NLRC*, G.R. No. L-54280, September 30, 1982, 117 SCRA 523, 529.

ends of social and compassionate justice would therefore be served if private respondent is reinstated but without backwages in view of petitioner's good faith."

The factual similarity of these cases to Remandaban's situation deems it appropriate to render the same disposition.

As may be gathered from the September 11, 2002 NLRC Decision, while Remandaban was remiss in properly informing Pepsi of his intended absence, the NLRC ruled that the penalty of dismissal would have been too harsh for his infractions considering that his failure to report to work was clearly prompted by a medical emergency and not by any intention to defy the July 27, 1999 return-to-work order.[81] On the other hand, Pepsi's good faith is supported by the NLRC's finding that "the return-to-work-order of the Secretary was taken lightly by Remandaban."[82] In this regard, considering Remandaban's ostensible dereliction of the said order, Pepsi could not be blamed for sending him a notice of termination and eventually proceeding to dismiss him. At any rate, it must be noted that while Pepsi impleaded Remandaban as party to the case, it failed to challenge the NLRC ruling ordering his reinstatement to his former position without backwages. As such, the foregoing issue is now settled with finality.

All told, the NLRC's directive to reinstate Remandaban without backwages is upheld.

WHEREFORE, the petition is *GRANTED*. The assailed March 31, 2006 Decision and September 18, 2006 Resolution of the Court of Appeals in CA-G.R. S.P. No. 82354 are hereby *REVERSED* and *SET ASIDE*. Accordingly, the September 11, 2002 Decision of the National Labor Relations Commission is hereby *REINSTATED* insofar as (1) it dismissed subsumed cases NLRC-RAB VIII Case Nos. 9-0432-99 to 9-0458-99 and; (2) ordered the reinstatement of respondent Saunder Santiago

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[81] CA *rollo*, p. 114.

[82] *Id.*

Remandaban III without loss of seniority rights but without backwages in NLRC-RAB VIII Case No. 9-0459-99.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 180677. February 18, 2013]

VICTORIO P. DIAZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES AND LEVI STRAUSS [PHILS.], INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DISMISSAL OF APPEALS; THE USAGE OF THE WORD "MAY" IN SECTION 1 (e) OF RULE 50 INDICATES THAT THE DISMISSAL OF AN APPEAL UPON FAILURE TO FILE THE APPELLANT'S BRIEF IS NOT MANDATORY, BUT DISCRETIONARY.— Under Section 7, Rule 44 of the *Rules of Court,* the appellant is required to file the appellant's brief in the CA "within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee." Section 1(e) of Rule 50 of the *Rules of Court* grants to the CA the discretion to dismiss an appeal either *motu proprio* or on motion of the appellee should the appellant fail to serve and file the required number of copies of the appellant's brief within the time provided by the *Rules of Court*. The usage of the word may in Section 1(e) of Rule 50 indicates that the

dismissal of the appeal upon failure to file the appellant's brief is not mandatory, but discretionary. V erily, the failure to serve and file the required number of copies of the appellant's brief within the time provided by the *Rules of Court* does not have the immediate effect of causing the outright dismissal of the appeal. This means that the discretion to dismiss the appeal on that basis is lodged in the CA , by virtue of which the CA may still allow the appeal to proceed despite the late filing of the appellant's brief, when the circumstances so warrant its liberality. In deciding to dismiss the appeal, then, the CA is bound to exercise its sound discretion upon taking all the pertinent circumstances into due consideration.

2. ID.; ID.; ID.; ID.; WHILE THE PETITIONER'S FAILURE TO FILE THE APPELLANT'S BRIEF ON TIME DESERVED THE OUTRIGHT REJECTION OF HIS APPEAL, THE COURT WAS IMPELLED TO LOOK BEYOND TECHNICALITY AND DELVE IN TO THE MERITS OF THE CASE IN THE INTEREST OF JUSTICE.— Under the circumstances, the failure to file the appellant's brief on time rightly deserved the outright rejection of the appeal. The acts of his counsel bound Diaz like any other client. It was, of course, only the counsel who was well aware that the *Rules of Court* fixed the periods to file pleadings and equally significant papers like the appellant's brief with the lofty objective of avoiding delays in the administration of justice. Yet, we have before us an appeal in two criminal cases in which the appellant lost his chance to be heard by the CA on appeal because of the failure of his counsel to serve and file the appellant's brief on time despite the grant of several extensions the counsel requested. Diaz was convicted and sentenced to suffer two indeterminate sentences that would require him to spend time in detention for each conviction lasting two years, as minimum, to five years, as maximum, and to pay fines totaling ₱100,000.00 (with subsidiary imprisonment in case of his insolvency). His personal liberty is now no less at stake. This reality impels us to look beyond the technicality and delve into the merits of the case to see for ourselves if the appeal, had it not been dismissed, would have been worth the time of the CA to pass upon. After all, his appellant's brief had been meanwhile submitted to the CA. While delving into the merits of the case, we have uncovered a weakness in the evidence of guilt that cannot be

simply ignored and glossed over if we were to be true to our oaths to do justice to everyone.

3. ID.; ID.; ID.; ID.; PETITIONER SHOULD NOT BE MADE TO SUFFER THE DIRE CONSEQUENCES OF HIS COUNSEL'S OVERSIGHT AND NEGLIGENCE; WITH SO MUCH ON THE LINE THE PEOPLE WHOSE FUTURES HANG IN A BALANCE SHOULD NOT BE LEFT TO THE TO SUFFER FROM THE INCOMPETENCE, MINDLESSNESS OR LACK OF PROFESSIONALISM OF ANY MEMBER OF THE LAW PROFESSION.— We feel that despite the CA being probably right in dismissing the excuses of oversight and excusable negligence tendered by Diaz's counsel to justify the belated filing of the appellant's brief as unworthy of serious consideration, Diaz should not be made to suffer the dire consequence. Any accused in his shoes, with his personal liberty as well as his personal fortune at stake, expectedly but innocently put his fullest trust in his counsel's abilities and professionalism in the handling of his appeal. He thereby delivered his fate to the hands of his counsel. W hether or not those hands were efficient or trained enough for the job of handling the appeal was a learning that he would get only in the end. Likelier than not, he was probably even unaware of the three times that his counsel had requested the CA for extensions. If he were now to be left to his unwanted fate, he would surely suffer despite his innocence. How costly a learning it would be for him! That is where the Court comes in. It is most important for us as dispensers of justice not to allow the inadvertence or incompetence of any counsel to result in the outright deprivation of an appellant's right to life, liberty or property. W e do not mind if this softening of judicial attitudes be mislabeled as excessive leniency. W ith so much on the line, the people whose futures hang in a balance should not be left to suffer from the incompetence, mindlessness or lack of professionalism of any member of the Law Profession. They reasonably expect a just result in every litigation. The courts must give them that just result. That assurance is the people's birthright. Thus, we have to undo Diaz's dire fate. Even as we now set aside the CA 's rejection of the appeal of Diaz, we will not remand the records to the CA for its review. In an appeal of criminal convictions, the records are laid open for review. To avoid further delays, therefore, we take it upon

ourselves to review the records and resolve the issue of guilt, considering that the records are already before us.

4. MERCANTILE LAW; INTELLECTUAL PROPERTY CODE (R.A. NO. 8293); INFRINGEMENT OF TRADEMARK; ELEMENTS OF THE OFFENSE.— The elements of the offense of trademark infringement under the *Intellectual Property Code* are, therefore, the following: ???The trademark being infringed is registered in the Intellectual Property Office; ???The trademark is reproduced, counterfeited, copied, or colorably imitated by the infringer; ???The infringing mark is used in connection with the sale, offering for sale, or advertising of any goods, business or services; or the infringing mark is applied to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services; ???The use or application of the infringing mark is likely to cause confusion or mistake or to deceive purchasers or others as to the goods or services themselves or as to the source or origin of such goods or services or the identity of such business; and ???The use or application of the infringing mark is without the consent of the trademark owner or the assignee thereof.

5. ID.; ID.; ID.; THE LIKELIHOOD OF CONFUSION IS THE GRAVAMEN OF THE OFFENSE OF TRADEMARK INFRINGEMENT; TWO TESTS TO DETERMINE LIKELIHOOD OF CONFUSION; DOMINANCY TEST AND HOLISTIC TEST; EXPLAINED.— As can be seen, the likelihood of confusion is the gravamen of the offense of trademark infringement.[15] There are two tests to determine likelihood of confusion, namely: the dominancy test, and the holistic test. The contrasting concept of these tests was explained in *Societes Des Produits Nestle, S.A. v. Dy, Jr.*, thus: x x x. The dominancy test focuses on the similarity of the main, prevalent or essential features of the competing trademarks that might cause confusion. Infringement takes place when the competing trademark contains the essential features of another. Imitation or an effort to imitate is unnecessary. The question is whether the use of the marks is likely to cause confusion or deceive purchasers. The holistic test considers the entirety of the marks, including labels and packaging, in determining confusing similarity. The focus is not only on the predominant words but also on the other features appearing

on the labels. As to what test should be applied in a trademark infringement case, we said in *McDonald's Corporation v. Macjoy Fastfood Corporation* that: In trademark cases, particularly in ascertaining whether one trademark is confusingly similar to another, no set rules can be deduced because each case must be decided on its merits. In such cases, even more than in any other litigation, precedent must be studied in the light of the facts of the particular case. That is the reason why in trademark cases, jurisprudential precedents should be applied only to a case if they are specifically in point.

6. ID.; ID.; ID.; THE HOLISTIC TEST IS APPLICABLE IN CASE AT BAR.— The case *of Emerald Garment Manufacturing Corporation v. Court of Appeals*, which involved an alleged trademark infringement of jeans products, is worth referring to. There, H.D. Lee Co., Inc. (H.D. Lee), a corporation based in the United States of A merica, claimed that Emerald Garment's trademark of "STY LISTIC MR. LEE" that it used on its jeans products was confusingly similar to the "LEE" trademark that H.D. Lee used on its own jeans products. Applying the holistic test, the Court ruled that there was no infringement. The holistic test is applicable here considering that the herein criminal cases also involved trademark infringement in relation to jeans products. Accordingly, the jeans trademarks of Levi's Philippines and Diaz must be considered as a whole in determining the likelihood of confusion between them. The *maong* pants or jeans made and sold by Levi's Philippines, which included LEV I'S 501, were very popular in the Philippines. The consuming public knew that the original LEVI'S 501 jeans were under a foreign brand and quite expensive. Such jeans could be purchased only in malls or boutiques as ready-to-wear items, and were not available in tailoring shops like those of Diaz's as well as not acquired on a "made-to-order" basis. Under the circumstances, the consuming public could easily discern if the jeans were original or fake LEV I'S 501, or were manufactured by other brands of jeans. Confusion and deception were remote, for, as the Court has observed in *Emerald Garments*:

7. ID.; ID.; ID.; NO LIKELIHOOD OF CONFUSION BETWEEN THE TWO TRADEMARKS INVOLVED IN CASE AT BAR AS THERE ARE REMARKABLE DIFFERENCES THAT THE CONSUMING PUBLIC WOULD EASILY PERCEIVE;

THE INTELLECTUAL PROPERTY OFFICE ALSO WOULD NOT HAVE ALLOWED THE REGISTRATION HAD PETITIONER'S TRADEMARK BEEN CONFUSINGLY SIMILAR WITH THE REGISTERED TRADEMARK OF RESPONDENTS.— Diaz used the trademark "LS JEANS TAILORING" for the jeans he produced and sold in his tailoring shops. His trademark was visually and aurally different from the trademark "LEVI STRAUSS & CO" appearing on the patch of original jeans under the trademark LEVI'S 501. The word "LS" could not be confused as a derivative from "LEVI STRAUSS" by virtue of the "LS" being connected to the word "TAILORING", thereby openly suggesting that the jeans bearing the trademark "LS JEA NS TAILORING" came or were bought from the tailoring shops of Diaz, not from the malls or boutiques selling original LEV I'S 501 jeans to the consuming public. There were other remarkable differences between the two trademarks that the consuming public would easily perceive. x x x Moreover, based on the certificate issued by the Intellectual Property Office, "LS JEA NS TA ILORING" was a registered trademark of Diaz. He had registered his trademark prior to the filing of the present cases.[21] The Intellectual Property Office would certainly not have allowed the registration had Diaz's trademark been confusingly similar with the registered trademark for LEV I'S 501 jeans. Given the foregoing, it should be plain that there was no likelihood of confusion between the trademarks involved. Thereby, the evidence of guilt did not satisfy the quantum of proof required for a criminal conviction, which is proof beyond reasonable doubt. A ccording to Section 2, Rule 133 of the *Rules of Court,* proof beyond a reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. Consequently, Diaz should be acquitted of the charges.

APPEARANCES OF COUNSEL

M.B. Tomacruz & Associates Law Offices for petitioner.
The Solicitor General for public respondent.
Poblador Bautista & Reyes for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

It is the tendency of the allegedly infringing mark to be confused with the registered trademark that is the gravamen of the offense of infringement of a registered trademark. The acquittal of the accused should follow if the allegedly infringing mark is not likely to cause confusion. Thereby, the evidence of the State does not satisfy the quantum of proof beyond reasonable doubt.

Accused Victorio P. Diaz (Diaz) appeals the resolutions promulgated on July 17, 2007[1] and November 22, 2007,[2] whereby the Court of Appeals (CA), respectively, dismissed his appeal in C.A.-G.R. CR No. 30133 for the belated filing of the appellant's brief, and denied his motion for reconsideration. Thereby, the decision rendered on February 13, 2006 in Criminal Case No. 00-0318 and Criminal Case No. 00-0319 by the Regional Trial Court, Branch 255, in Las Piñas City (RTC) convicting him for two counts of infringement of trademark were affirmed.[3]

Antecedents

On February 10, 2000, the Department of Justice filed two informations in the RTC of Las Piñas City, charging Diaz with violation of Section 155, in relation to Section 170, of Republic Act No. 8293, also known as the *Intellectual Property Code of the Philippines* (*Intellectual Property Code*), to wit:

Criminal Case No. 00-0318

That on or about August 28, 1998, and on dates prior thereto, in Las Pinas City, and within the jurisdiction of this Honorable Court,

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[1] *Rollo,* pp. 29-32; penned by Associate Justice Ramon M. Bato, Jr., with Associate Justice Andres B. Reyes, Jr. (now Presiding Justice) and Associate Justice Jose C. Mendoza (now a Member of the Court) concurring.

[2] *Id.* at 34-36.

[3] *Id.* at 37-56.

the above-named accused, with criminal intent to defraud Levi's Strauss (Phil.) Inc. (hereinafter referred to as LEVI'S), did then and there, willfully, unlawfully, feloniously, knowingly and intentionally engaged in commerce by reproducing, counterfeiting, copying and colorably imitating Levi's registered trademarks or dominant features thereof such as the ARCUATE DESIGN, TWO HORSE BRAND, TWO HORSE PATCH, TWO HORSE LABEL WITH PATTERNED ARCUATE DESIGN, TAB AND COMPOSITE ARCUATE/TAB/TWO HORSE PATCH, and in connection thereto, sold, offered for sale, manufactured, distributed counterfeit patches and jeans, including other preparatory steps necessary to carry out the sale of said patches and jeans, which likely caused confusion, mistake, and /or deceived the general consuming public, without the consent, permit or authority of the registered owner, LEVI'S, thus depriving and defrauding the latter of its right to the exclusive use of its trademarks and legitimate trade, to the damage and prejudice of LEVI'S.

CONTRARY TO LAW.[4]

Criminal Case No. 00-0319

That on or about August 28, 1998, and on dates prior thereto, in Las Pinas City, and within the jurisdiction of this Honorable Court, the above-named accused, with criminal intent to defraud Levi's Strauss (Phil.) Inc. (hereinafter referred to as LEVI'S), did then and there, willfully, unlawfully, feloniously, knowingly and intentionally engaged in commerce by reproducing, counterfeiting, copying and colorably imitating Levi's registered trademarks or dominant features thereof such as the ARCUATE DESIGN, TWO HORSE BRAND, TWO HORSE PATCH, TWO HORSE LABEL WITH PATTERNED ARCUATE DESIGN, TAB AND COMPOSITE ARCUATE/TAB/TWO HORSE PATCH, and in connection thereto, sold, offered for sale, manufactured, distributed counterfeit patches and jeans, including other preparatory steps necessary to carry out the sale of said patches and jeans, which likely caused confusion, mistake, and /or deceived the general consuming public, without the consent, permit or authority of the registered owner, LEVI'S, thus depriving and defrauding the latter of its right to the exclusive use of its trademarks and legitimate trade, to the damage and prejudice of LEVI'S.

CONTRARY TO LAW.[5]

[4] Records, p. 3.

[5] *Id.* at 9.

The cases were consolidated for a joint trial. Diaz entered his pleas of *not guilty* to each information on June 21, 2000.[6]

1.
Evidence of the Prosecution

Levi Strauss and Company (Levi's), a foreign corporation based in the State of Delaware, United States of America, had been engaged in the apparel business. It is the owner of trademarks and designs of Levi's jeans like LEVI'S 501, the arcuate design, the two-horse brand, the two-horse patch, the two-horse patch with pattern arcuate, and the composite tab arcuate. LEVI'S 501 has the following registered trademarks, to wit: (1) the leather patch showing two horses pulling a pair of pants; (2) the arcuate pattern with the inscription "LEVI STRAUSS & CO;" (3) the arcuate design that refers to "the two parallel stitching curving downward that are being sewn on both back pockets of a Levi's Jeans;" and (4) the tab or piece of cloth located on the structural seam of the right back pocket, upper left side. All these trademarks were registered in the Philippine Patent Office in the 1970's, 1980's and early part of 1990's.[7]

Levi Strauss Philippines, Inc. (Levi's Philippines) is a licensee of Levi's. After receiving information that Diaz was selling counterfeit LEVI'S 501 jeans in his tailoring shops in Almanza and Talon, Las Piñas City, Levi's Philippines hired a private investigation group to verify the information. Surveillance and the purchase of jeans from the tailoring shops of Diaz established that the jeans bought from the tailoring shops of Diaz were counterfeit or imitations of LEVI'S 501. Levi's Philippines then sought the assistance of the National Bureau of Investigation (NBI) for purposes of applying for a search warrant against Diaz to be served at his tailoring shops. The search warrants were issued in due course. Armed with the search warrants, NBI agents searched the tailoring shops of Diaz and seized

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[6] *Id.* at 192.

[7] *Id.* at 26-101.

several fake LEVI'S 501 jeans from them. Levi's Philippines claimed that it did not authorize the making and selling of the seized jeans; that each of the jeans were mere imitations of genuine LEVI'S 501 jeans by each of them bearing the registered trademarks, like the arcuate design, the tab, and the leather patch; and that the seized jeans could be mistaken for original LEVI'S 501 jeans due to the placement of the arcuate, tab, and two-horse leather patch.[8]

2.
Evidence of the Defense

On his part, Diaz admitted being the owner of the shops searched, but he denied any criminal liability.

Diaz stated that he did not manufacture Levi's jeans, and that he used the label "LS Jeans Tailoring" in the jeans that he made and sold; that the label "LS Jeans Tailoring" was registered with the Intellectual Property Office; that his shops received clothes for sewing or repair; that his shops offered made-to-order jeans, whose styles or designs were done in accordance with instructions of the customers; that since the time his shops began operating in 1992, he had received no notice or warning regarding his operations; that the jeans he produced were easily recognizable because the label "LS Jeans Tailoring," and the names of the customers were placed inside the pockets, and each of the jeans had an "LSJT" red tab; that "LS" stood for "Latest Style;" and that the leather patch on his jeans had two buffaloes, not two horses.[9]

Ruling of the RTC

On February 13, 2006, the RTC rendered its decision finding Diaz guilty as charged, disposing thus:

WHEREFORE, premises considered, the Court finds accused Victorio P. Diaz, a.k.a. Vic Diaz, GUILTY beyond reasonable doubt

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[8] *Id.* at 98-148.

[9] TSN, November 11, 2004, pp. 1-30.

of twice violating Sec. 155, in relation to Sec. 170, of RA No. 8293, as alleged in the Informations in Criminal Case Nos. 00-0318 & 00-0319, respectively, and hereby sentences him to suffer in each of the cases the penalty of imprisonment of TWO (2) YEARS of *prision correcional*, as minimum, up to FIVE (5) YEARS of *prision correcional*, as maximum, as well as pay a fine of ₱50,000.00 for each of the herein cases, with subsidiary imprisonment in case of insolvency, and to suffer the accessory penalties provided for by law.

Also, accused Diaz is hereby ordered to pay to the private complainant Levi's Strauss (Phils.), Inc. the following, thus:

1. ₱50,000.00 in exemplary damages; and
2. ₱222,000.00 as and by way of attorney's fees.

Costs *de officio*.

SO ORDERED.[10]

Ruling of the CA

Diaz appealed, but the CA dismissed the appeal on July 17, 2007 on the ground that Diaz had not filed his appellant's brief on time despite being granted his requested several extension periods.

Upon denial of his motion for reconsideration, Diaz is now before the Court to plead for his acquittal.

Issue

Diaz submits that:

THE COURT OF APPEALS VIOLATED EXISTING LAW AND JURISPRUDENCE WHEN IT APPLIED RIGIDLY THE RULE ON TECHNICALITIES AND OVERRIDE SUBSTANTIAL JUSTICE BY DISMISSING THE APPEAL OF THE PETITIONER FOR LATE FILING OF APPELLANT'S BRIEF.[11]

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[10] *Rollo,* p. 56.

[11] *Id.* at 10-11.

Ruling

The Court first resolves whether the CA properly dismissed the appeal of Diaz due to the late filing of his appellant's brief.

Under Section 7, Rule 44 of the *Rules of Court*, the appellant is required to file the appellant's brief in the CA "within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee." Section 1(e) of Rule 50 of the *Rules of Court* grants to the CA the discretion to dismiss an appeal either *motu proprio* or on motion of the appellee should the appellant fail to serve and file the required number of copies of the appellant's brief within the time provided by the *Rules of Court*.[12]

The usage of the word *may* in Section 1(e) of Rule 50 indicates that the dismissal of the appeal upon failure to file the appellant's brief is not mandatory, but discretionary. Verily, the failure to serve and file the required number of copies of the appellant's brief within the time provided by the *Rules of Court* does not have the immediate effect of causing the outright dismissal of the appeal. This means that the discretion to dismiss the appeal on that basis is lodged in the CA, by virtue of which the CA may still allow the appeal to proceed despite the late filing of the appellant's brief, when the circumstances so warrant its liberality. In deciding to dismiss the appeal, then, the CA is bound to exercise its sound discretion upon taking all the pertinent circumstances into due consideration.

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[12] Section 1(e), Rule 50, *Rules of Court,* states*:*

Section 1. *Grounds for dismissal of appeal*. – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x x x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules.

x x x x x x x x x

The records reveal that Diaz's counsel thrice sought an extension of the period to file the appellant's brief. The first time was on March 12, 2007, the request being for an extension of 30 days to commence on March 11, 2007. The CA granted his motion under its resolution of March 21, 2007. On April 10, 2007, the last day of the 30-day extension, the counsel filed another motion, seeking an additional 15 days. The CA allowed the counsel until April 25, 2007 to serve and file the appellant's brief. On April 25, 2007, the counsel went a third time to the CA with another request for 15 days. The CA still granted such third motion for extension, giving the counsel until May 10, 2007. Notwithstanding the liberality of the CA, the counsel did not literally comply, filing the appellant's brief only on May 28, 2007, which was the 18th day beyond the third extension period granted.

Under the circumstances, the failure to file the appellant's brief on time rightly deserved the outright rejection of the appeal. The acts of his counsel bound Diaz like any other client. It was, of course, only the counsel who was well aware that the *Rules of Court* fixed the periods to file pleadings and equally significant papers like the appellant's brief with the lofty objective of avoiding delays in the administration of justice.

Yet, we have before us an appeal in two criminal cases in which the appellant lost his chance to be heard by the CA on appeal because of the failure of his counsel to serve and file the appellant's brief on time despite the grant of several extensions the counsel requested. Diaz was convicted and sentenced to suffer two indeterminate sentences that would require him to spend time in detention for each conviction lasting two years, as minimum, to five years, as maximum, and to pay fines totaling ₱100,000.00 (with subsidiary imprisonment in case of his insolvency). His personal liberty is now no less at stake. This reality impels us to look beyond the technicality and delve into the merits of the case to see for ourselves if the appeal, had it not been dismissed, would have been worth the time of the CA to pass upon. After all, his appellant's brief had been meanwhile submitted to the CA. While delving into the merits of the case,

we have uncovered a weakness in the evidence of guilt that cannot be simply ignored and glossed over if we were to be true to our oaths to do justice to everyone.

We feel that despite the CA being probably right in dismissing the excuses of oversight and excusable negligence tendered by Diaz's counsel to justify the belated filing of the appellant's brief as unworthy of serious consideration, Diaz should not be made to suffer the dire consequence. Any accused in his shoes, with his personal liberty as well as his personal fortune at stake, expectedly but innocently put his fullest trust in his counsel's abilities and professionalism in the handling of his appeal. He thereby delivered his fate to the hands of his counsel. Whether or not those hands were efficient or trained enough for the job of handling the appeal was a learning that he would get only in the end. Likelier than not, he was probably even unaware of the three times that his counsel had requested the CA for extensions. If he were now to be left to his unwanted fate, he would surely suffer despite his innocence. How costly a learning it would be for him! That is where the Court comes in. It is most important for us as dispensers of justice not to allow the inadvertence or incompetence of any counsel to result in the outright deprivation of an appellant's right to life, liberty or property.[13]

We do not mind if this softening of judicial attitudes be mislabeled as excessive leniency. With so much on the line, the people whose futures hang in a balance should not be left to suffer from the incompetence, mindlessness or lack of professionalism of any member of the Law Profession. They reasonably expect a just result in every litigation. The courts must give them that just result. That assurance is the people's birthright. Thus, we have to undo Diaz's dire fate.

Even as we now set aside the CA's rejection of the appeal of Diaz, we will not remand the records to the CA for its review.

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[13] See, *e.g.*, *The Government of the Kingdom of Belgium v. Court of Appeals*, G.R. No. 164150, April 14, 2008, 551 SCRA 223, 242.

In an appeal of criminal convictions, the records are laid open for review. To avoid further delays, therefore, we take it upon ourselves to review the records and resolve the issue of guilt, considering that the records are already before us.

Section 155 of R.A. No. 8293 defines the acts that constitute infringement of trademark, *viz*:

> *Remedies; Infringement*. — Any person who shall, without the consent of the owner of the registered mark:
>
> 155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or
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> 155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

The elements of the offense of trademark infringement under the *Intellectual Property Code* are, therefore, the following:

1. The trademark being infringed is registered in the Intellectual Property Office;
2. The trademark is reproduced, counterfeited, copied, or colorably imitated by the infringer;
3. The infringing mark is used in connection with the sale, offering for sale, or advertising of any goods, business

or services; or the infringing mark is applied to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services;

4. The use or application of the infringing mark is likely to cause confusion or mistake or to deceive purchasers or others as to the goods or services themselves or as to the source or origin of such goods or services or the identity of such business; and

5. The use or application of the infringing mark is without the consent of the trademark owner or the assignee thereof.[14]

As can be seen, the likelihood of confusion is the gravamen of the offense of trademark infringement.[15] There are two tests to determine likelihood of confusion, namely: the dominancy test, and the holistic test. The contrasting concept of these tests was explained in *Societes Des Produits Nestle, S.A. v. Dy, Jr.*, thus:

x x x. The dominancy test focuses on the similarity of the main, prevalent or essential features of the competing trademarks that might cause confusion. Infringement takes place when the competing trademark contains the essential features of another. Imitation or an effort to imitate is unnecessary. The question is whether the use of the marks is likely to cause confusion or deceive purchasers.

The holistic test considers the entirety of the marks, including labels and packaging, in determining confusing similarity. The focus is not only on the predominant words but also on the other features appearing on the labels.[16]

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[14] *Societe Des Produits Nestle, S.A. v. Dy, Jr.,* G.R. No. 172276, August 9, 2010, 627 SCRA 223, 233-234; citing *Prosource International, Inc. v. Horphag Research Management SA*, G.R. No. 180073, November 25, 2009, 605 SCRA 523, 530.

[15] *Societe Des Produits Nestle, S.A. v. Dy, Jr., id.*

[16] *Id.* at 235.

As to what test should be applied in a trademark infringement case, we said in *McDonald's Corporation v. Macjoy Fastfood Corporation*[17] that:

> In trademark cases, particularly in ascertaining whether one trademark is confusingly similar to another, no set rules can be deduced because each case must be decided on its merits. In such cases, even more than in any other litigation, precedent must be studied in the light of the facts of the particular case. That is the reason why in trademark cases, jurisprudential precedents should be applied only to a case if they are specifically in point.

The case of *Emerald Garment Manufacturing Corporation v. Court of Appeals*,[18] which involved an alleged trademark infringement of jeans products, is worth referring to. There, H.D. Lee Co., Inc. (H.D. Lee), a corporation based in the United States of America, claimed that Emerald Garment's trademark of "STYLISTIC MR. LEE" that it used on its jeans products was confusingly similar to the "LEE" trademark that H.D. Lee used on its own jeans products. Applying the holistic test, the Court ruled that there was no infringement.

The holistic test is applicable here considering that the herein criminal cases also involved trademark infringement in relation to jeans products. Accordingly, the jeans trademarks of Levi's Philippines and Diaz must be considered as a whole in determining the likelihood of confusion between them. The *maong* pants or jeans made and sold by Levi's Philippines, which included LEVI'S 501, were very popular in the Philippines. The consuming public knew that the original LEVI'S 501 jeans were under a foreign brand and quite expensive. Such jeans could be purchased only in malls or boutiques as ready-to-wear items, and were not available in tailoring shops like those of Diaz's as well as not acquired on a "made-to-order" basis. Under the circumstances, the consuming public could easily discern if the jeans were original or fake LEVI'S 501, or were manufactured by other

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[17] G.R. No. 166115, February 2, 2007, 514 SCRA 95, 107.

[18] G.R. No. 100098, December 29, 1995, 251 SCRA 600.

brands of jeans. Confusion and deception were remote, for, as the Court has observed in *Emerald Garments*:

> First, the products involved in the case at bar are, in the main, various kinds of jeans. These are not your ordinary household items like catsup, soy sauce or soap which are of minimal cost. Maong pants or jeans are not inexpensive. Accordingly, the casual buyer is predisposed to be more cautious and discriminating in and would prefer to mull over his purchase. Confusion and deception, then, is less likely. In *Del Monte Corporation v. Court of Appeals,* we noted that:
>
> > .... Among these, what essentially determines the attitudes of the purchaser, specifically his inclination to be cautious, is the cost of the goods. To be sure, a person who buys a box of candies will not exercise as much care as one who buys an expensive watch. As a general rule, an ordinary buyer does not exercise as much prudence in buying an article for which he pays a few centavos as he does in purchasing a more valuable thing. Expensive and valuable items are normally bought only after deliberate, comparative and analytical investigation. But mass products, low priced articles in wide use, and matters of everyday purchase requiring frequent replacement are bought by the casual consumer without great care....
>
> Second, like his beer, the average Filipino consumer generally buys his jeans by brand. He does not ask the sales clerk for generic jeans but for, say, a Levis, Guess, Wrangler or even an Armani. He is, therefore, more or less knowledgeable and familiar with his preference and will not easily be distracted.
>
> Finally, in line with the foregoing discussions, more credit should be given to the "ordinary purchaser." Cast in this particular controversy, the ordinary purchaser is not the "completely unwary consumer" but is the "ordinarily intelligent buyer" considering the type of product involved.
>
> The definition laid down in *Dy Buncio v. Tan Tiao Bok* is better suited to the present case. There, the "ordinary purchaser" was defined as one "*accustomed to buy, and therefore to some extent familiar with, the goods* in question. The test of fraudulent simulation is to be found in the likelihood of the deception of *some persons in some measure acquainted with an established design and desirous of purchasing the commodity with which that design has been*

associated. The test is not found in the deception, or the possibility of deception, of the person who knows nothing about the design which has been counterfeited, and who must be indifferent between that and the other. The simulation, in order to be objectionable, must be such as appears likely to mislead the ordinary intelligent buyer who has a need to supply and is familiar with the article that he seeks to purchase.[19]

Diaz used the trademark "LS JEANS TAILORING" for the jeans he produced and sold in his tailoring shops. His trademark was visually and aurally different from the trademark "LEVI STRAUSS & CO" appearing on the patch of original jeans under the trademark LEVI'S 501. The word "LS" could not be confused as a derivative from "LEVI STRAUSS" by virtue of the "LS" being connected to the word "TAILORING", thereby openly suggesting that the jeans bearing the trademark "LS JEANS TAILORING" came or were bought from the tailoring shops of Diaz, not from the malls or boutiques selling original LEVI'S 501 jeans to the consuming public.

There were other remarkable differences between the two trademarks that the consuming public would easily perceive. Diaz aptly noted such differences, as follows:

> The prosecution also alleged that the accused copied the "**two horse design**" of the petitioner-private complainant but the evidence will show that there was no such design in the seized jeans. Instead, what is shown is "**buffalo design**." Again, a horse and a buffalo are two different animals which an ordinary customer can easily distinguish. x x x.
>
> The prosecution further alleged that the red tab was copied by the accused. However, evidence will show that the red tab used by the private complainant indicates the word "LEVI'S" while that of the accused indicates the letters "LSJT" which means LS JEANS TAILORING. Again, even an ordinary customer can distinguish the word LEVI'S from the letters LSJT.
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> x x x x x x x x x

[19] *Id.* at 616-617.

In terms of classes of customers and channels of trade, the jeans products of the private complainant and the accused cater to different classes of customers and flow through the different channels of trade. The customers of the private complainant are mall goers belonging to class A and B market group – while that of the accused are those who belong to class D and E market who can only afford Php 300 for a pair of made-to-order pants.[20] x x x.

Moreover, based on the certificate issued by the Intellectual Property Office, "LS JEANS TAILORING" was a registered trademark of Diaz. He had registered his trademark prior to the filing of the present cases.[21] The Intellectual Property Office would certainly not have allowed the registration had Diaz's trademark been confusingly similar with the registered trademark for LEVI'S 501 jeans.

Given the foregoing, it should be plain that there was no likelihood of confusion between the trademarks involved. Thereby, the evidence of guilt did not satisfy the quantum of proof required for a criminal conviction, which is proof beyond reasonable doubt. According to Section 2, Rule 133 of the *Rules of Court*, proof beyond a reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. Consequently, Diaz should be acquitted of the charges.

WHEREFORE, the Court *ACQUITS* petitioner ***VICTORIO P. DIAZ*** of the crimes of infringement of trademark charged in Criminal Case No. 00-0318 and Criminal Case No. 00-0319 for failure of the State to establish his guilt by proof beyond reasonable doubt.

No pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

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[20] *Rollo,* pp. 19-20.

[21] Records, p. 696.

SECOND DIVISION

[G.R. No. 199781. February 18, 2013]

LICOMCEN, INC., *petitioner, vs.* **ENGR. SALVADOR ABAINZA, doing business under the name and style "ADS INDUSTRIAL EQUIPMENT,"** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EFFECT OF FAILURE TO PLEAD; THE NON-INCLUSION OF PETITIONER'S BELATED DEFENSE IN THE PRE-TRIAL ORDER BARRED ITS CONSIDERATIONS DURING THE TRIAL.— Under Section 1, Rule 9 of the Rules of Court, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, with the following exceptions: (1) lack of jurisdiction over the subject matter; (2) *litis pendentia;* (3) *res judicata*; and (4) prescription of the action. Clearly, petitioner cannot change its defense after the termination of the period of testimony and after the exhibits of both parties have already been admitted by the court. The non-inclusion of this belated defense in the pre-trial order barred its consideration during the trial. To rule otherwise would put the adverse party at a disadvantage since he could no longer offer evidence to rebut the new theory.

2. ID.; ID.; PRE-TRIAL; PARTIES ARE BOUND BY THE DELIMITATION OF ISSUES DURING PRE-TRIAL.— Indeed, parties are bound by the delimitation of issues during the pre-trial. As held in *Villanueva v. Court of Appeals*: Pre-trial is primarily intended to insure that the parties properly raise all issues necessary to dispose of a case. The parties must disclose during pre-trial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. Although a pre-trial order is not meant to catalogue each issue that the parties may take up during the trial, issues not included in the pre-trial order may be considered only if they are impliedly included in the issues raised or inferable from the issues raised by necessary implication. The basis of the rule is simple. Petitioners are bound by the delimitation of the

issues during the pre-trial because they themselves agreed to the same.

3. CIVIL LAW; CIVIL CODE; CONTRACT FOR A PIECE OF WORK; ARTICLE 1724 OF THE CIVIL CODE IS NOT APPLICABLE IN CASE AT BAR.— Article 1724 of the Civil Code is not even applicable to this case. It is evident from the records that the original contract agreement, submitted by respondent as evidence, which stated a total contract price of ₱5,300,000, was never signed by the parties considering that there were substantial changes in the plan imposed by petitioner in the course of the work on the project. Petitioner admitted paying ₱6,700,000 to respondent which was allegedly the agreed cost of the project. However, petitioner did not submit any written contract signed by both parties which would substantiate its claim that the agreed cost of the project was only ₱6,700,000. Clearly, petitioner cannot invoke Article 1724 of the Civil Code to avoid paying its obligation considering that the alleged original contract was never even signed by both parties because of the various changes imposed by petitioner on the original plan. The fact that petitioner paid ₱1,400,000 more than the amount stated in the unsigned contract agreement clearly indicates that there were indeed additional costs during the course of the work on the project. It is just unfortunate that petitioner is now invoking Article 1724 of the Civil Cide to avoid further payment of the additional costs incurred on the project.

4. ID.; ID.; ID.; PETITIONER IS LIABLE FOR THE ADDITIONAL COSTS INCURRED FOR LABOR, MATERIALS, AND EQUIPMENT ON THE REVISED PROJECT.— What was established in the trial court was that petitioner ordered the changes in the original plan which entailed additional costs in labor and materials. The work done by respondent was closely monitored and supervised by petitioner's engineering consultant and all the paperworks relating to the project were approved by petitioner through its representatives. We find no justifiable reason to deviate from the findings and ruling of the trial court, which were also upheld by the Court of Appeals. Thus, petitioner should be held liable for the additional costs incurred for labor, materials, and equipment on the revised project.

APPEARANCES OF COUNSEL

Danilo S. Azaña for petitioner.
Edmiro V. Regino for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 21 September 2011 Decision[2] and the 6 December 2011 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 86296. The Court of Appeals affirmed the 7 November 2005 Decision[4] of the Regional Trial Court, Branch 8, Legazpi City, in Civil Case No. 9919, which ordered petitioner LICOMCEN, Inc. (petitioner) to pay respondent Engr. Salvador Abainza (respondent) the sum of ₱1,777,202.80 plus 12% interest per annum, ₱50,000 attorney's fees, and ₱20,000 litigation and incidental expenses.

The Facts

Respondent filed an action for sum of money and damages against Liberty Commercial Center, Inc. (Liberty). Respondent alleged that in 1997 and 1998, he was hired by Liberty to do various projects in their commercial centers, mainly at the LCC Central Mall, Naga City, for the supply, fabrication, and installation of air-conditioning ductworks. Respondent completed the project, which included some changes and revisions of the original plan

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

[2] *Rollo*, pp. 27-36. Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Fernanda Lampas Peralta and Priscilla J. Baltazar-Padilla, concurring.

[3] *Id.* at 38-39.

[4] CA *rollo*, pp. 41-59.

at the behest of Liberty. However, despite several demands by respondent, Liberty failed to pay the remaining balance due on the project in the sum of ₱1,777,202.80.

Liberty denied the material allegations of the complaint and countered that the collection suit was not filed against the real party-in-interest. Thus, respondent amended his complaint to include petitioner as defendant.[5] The HRD Administrative Manager of Liberty testified that petitioner LICOMCEN, Inc. is a sister company of Liberty and that the incorporators and directors of both companies are the same.

The Ruling of the Trial Court

The trial court found that petitioner's claim that it has fully paid respondent the total cost of the project in the sum of ₱6,700,000 pertains only to the cost of the original plan of the project. However, the additional costs of ₱1,777,202.80 incurred for labor, materials, and equipment on the revised plan were not paid by petitioner.

As found by the trial court, petitioner (then defendant) ordered and approved the revisions in the original plan, thus:

> During the awarding of the work, defendants wanted the aircon duct[s] changed from rectangular to round ducts because Ronald Tan, one of the LCC owners who came from abroad, suggested round aircon ducts he saw abroad were preferable. Plaintiff prepared a plan corresponding to the changes desired by the defendants *(Exhibits "D", "D-1", "D-2")*.
>
> The changing of the rectangular ducts to round ducts entailed additional cost in labor and materials. Plaintiff had to remove the rectangular ducts installed, resize it to round ducts and re-install again. More G.I. Sheets were needed and new fittings as well, because

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[5] It appears that the confusion in identifying the real defendants in the collection case arose because the previous payments to respondent totaling ₱6,700,000, although billed to petitioner LICOMCEN, Inc., were all paid by the accounting department of Liberty Commercial Center, Inc. Thus, the inclusion of Liberty as the defendant in the original complaint. CA *rollo*, p. 58.

the fittings for the rectangular ducts cannot be used in the round duct. There were movements of the equipment. In the original plan, the air handling unit (AHU) was [o]n the ground floor. It was relocated to the second floor. There were additional air ducting in the two big comfort rooms for customers, an exhaust blower to the dondon and discaminos, fresh air blower and lock machine at the food court were installed.

Because of the changes, defendants wanted the tonnage of the refrigeration (TR) to be increased to cool up the space. The 855 tons capacity was increased to 900 [sic] tons. These changes entailed additional expense for labor and materials in the sum of Php1,805,355.62 *(Exhibits "F" to "F-26")*.

Plaintiff's work was being monitored by Es De Castro and Associates (ESCA), defendant's engineering consultant. Paper works for the approval of ESCA are signed by Michal Cruz, an electrical engineer, and Jake Ozaeta, mechanical engineer, both employees of the defendants and a certain Mr. Tan, a representative of defendants who actually supervises the construction. Plaintiff presented the cost changes on the rework and change to 960 ton capacity. The total balance payable to plaintiff by defendant is Php 1,777.202.80 *(Exhibit "G-42")*. Accomplishment report had been submitted by plaintiff and approved by ESCA, project was turned over in 1988 but plaintiff was not paid the balance corresponding to the changed plan of work and additional work performed by plaintiff. Series of communications demanding payment *(Exhibits "G-3" to "G-11", "G-13", "G-17" to "G-18", "G-23", "G-24", "G-25", "G-26", "G-35 to 42")* were made but plaintiff [sic] refused to pay.[6]

On 7 November 2005, the trial court rendered its Decision, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, decision is hereby rendered in favor of the plaintiff and against defendant LICOMCEN, Inc. ordering the latter to pay the plaintiff the sum of Php1,777,202.80 as its principal obligation with interest at 12% per annum until the amount is fully paid, the sum of Php50,000.00 as attorney's fess [sic] and Php20,000.00 as litigation and incidental expenses. Costs against defendant LICOMCEN, Inc.

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[6] *Id.* at 54-55.

The case against Liberty Commercial Center, Inc. is hereby ordered DISMISSED.

SO ORDERED.[7]

The Ruling of the Court of Appeals

Petitioner appealed the trial court's Decision to the Court of Appeals, invoking Article 1724 of the Civil Code which provides:

Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

(1) Such change has been authorized by the proprietor in writing; and

(2) The additional price to be paid to the contractor has been determined in writing by both parties.

The Court of Appeals stated that petitioner never raised Article 1724 of the Civil Code as a defense in the trial court. Citing Section 1, Rule 9 of the Rules of Court[8] and the case of *Bank of the Philippine Islands v. Leobrera*,[9] the Court of Appeals ruled that petitioner cannot be allowed to change its theory on appeal since the adverse party would then be deprived of the opportunity to present further evidence on the new theory. Besides, the Court of Appeals held that Article 1724 of the

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

[8] Section 1. *Defenses and objections not pleaded.* – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings of the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

[9] 461 Phil. 461 (2003).

Civil Code is not even applicable to the case because the Contract of Agreement was never signed by the parties considering that there were substantial changes to the original plan as the work progressed. Thus, the Court of Appeals affirmed the trial court's Decision, finding petitioner liable to respondent for the additional costs in labor and materials due to the revisions in the original project.

Petitioner filed a Motion for Reconsideration, which the Court of Appeals denied in its Resolution dated 6 December 2011. Hence, this petition.

The Issue

The issue in this case is whether petitioner is liable for the additional costs incurred for labor, materials, and equipment on the revised project.

The Ruling of the Court

We find the petition without merit.

In this case, petitioner invoked Article 1724 of the Civil Code as a defense against respondent's claim. Petitioner alleged that respondent cannot recover additional costs since the agreement in the change of plans and specifications of the project, the pricing and cost of materials and labor was not in writing.

The Court of Appeals mistakenly stated that petitioner only raised Article 1724 of the Civil Code as a defense on appeal. A perusal of the records reveals that, although petitioner did not invoke Article 1724 of the Civil Code as a defense in its answer[10] or in its pre-trial brief,[11] petitioner belatedly asserted such defense in its Memorandum[12] filed before the trial court. Thus, from its previous defense that it has fully paid its obligations to respondent, petitioner changed its theory by adding that since the additional work done by respondent was not authorized in writing, then respondent cannot recover additional costs. In effect, petitioner does not deny that additional costs were incurred due to the change of plans in the original project, but justifies not paying for such expense by invoking Article 1724 of the Civil Code.

Under Section 1, Rule 9 of the Rules of Court, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, with the following exceptions: (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*; (3) *res judicata*; and (4) prescription of the action. Clearly, petitioner cannot change its defense after the termination of the period of testimony and after the exhibits of both parties have already been admitted by the court. The non-inclusion of this belate defense in the pre-trial order barred its consideration during the trial. To rule otherwise would put the adverse party at a disadvantage since he could no longer offer evidence to rebut the new theory. Indeed, parties are bound by the delimitation of issues during the pre-trial.[13] As held in *Villanueva v. Court of Appeals:*[14]

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[10] Records, pp. 82-83.

[11] *Id.* at 87-89.

[12] *Id.* at 225-232.

[13] Sections 6 and 7, Rule 18 of the Rules of Court provide:

Sec. 6. *Pre-trial brief.* – The parties shall file with the court and serve on the adverse party, in such manner as shall insure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

(a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;

(b) A summary of admitted facts and proposed stipulation of facts;

(c) **The issues to be tried or resolved**;

(d) The documents or exhibits to be presented, stating the purpose thereof;

(e) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and

(f) The number and names of the witnesses, and the substance of their respective testimonies.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

Sec. 7. *Record of pre-trial*. – The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings, and the agreements or

Pre-trial is primarily intended to insure that the parties properly raise all issues necessary to dispose of a case. The parties must disclose during pre-trial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. Although a pre-trial order is not meant to catalogue each issue that the parties may take up during the trial, issues not included in the pre-trial order may be considered only if they are impliedly included in the issues raised or inferable from the issues raised by necessary implication. The basis of the rule is simple. Petitioners are bound by the delimitation of the issues during the pre-trial because they themselves agreed to the same.[15]

Besides, Article 1724 of the Civil Code is not even applicable to this case. It is evident from the records that the original contract agreement,[16] submitted by respondent as evidence, which stated a total contract price of ₱5,300,000, was never signed by the parties considering that there were substantial changes in the plan imposed by petitioner in the course of the work on the project.[17] Petitioner admitted paying ₱6,700,000 to respondent which was allegedly the agreed cost of the project. However, petitioner did not submit any written contract signed by both parties which would substantiate its claim that the agreed cost of the project was only ₱6,700,000. Clearly, petitioner cannot invoke Article 1724 of the Civil Code to avoid paying its obligation considering that the alleged original contract was never even signed by both parties because of the various changes imposed by petitioner on the original plan. The fact that petitioner paid ₱1,400,000[18] more than the amount stated in the unsigned contract

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admissions made by the parties as to any of the matters considered. **Should the action proceed to trial, the order shall explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice**. (Emphasis supplied)

[14] 471 Phil. 394 (2004).

[15] *Id.* at 407.

[16] Exhibit "A."

[17] *Rollo*, p. 33.

[18] ₱6,700,000 – ₱5,300,000 = ₱1,400,000.

agreement clearly indicates that there were indeed additional costs during the course of the work on the project. It is just unfortunate that petitioner is now invoking Article 1724 of the Civil Code to avoid further payment of the additional costs incurred on the project.

What was established in the trial court was that petitioner ordered the changes in the original plan which entailed additional costs in labor and materials. The work done by respondent was closely monitored and supervised by petitioner's engineering consultant and all the paperworks relating to the project were approved by petitioner through its representatives. We find no justifiable reason to deviate from the findings and ruling of the trial court, which were also upheld by the Court of Appeals. Thus, petitioner should be held liable for the additional costs incurred for labor, materials, and equipment on the revised project.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 21 September 2011 Decision and the 6 December 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 86296.

SO ORDERED.

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

EN BANC

[A.M. OCA IPI No. 12-201-CA-J. February 19, 2013]

ETHELWOLDO E. FERNANDEZ, ANTONIO A. HENSON and ANGEL S. ONG, *complainants, vs.* **COURT OF APPEALS ASSOCIATE JUSTICES RAMON M. BATO, JR., ISAIAS P. DICDICAN and EDUARDO B. PERALTA, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; DISCIPLINE OF JUSTICES OF THE COURT OF APPEALS AND THE SANDIGANBAYAN AND JUDGES OF REGULAR AND SPECIAL COURTS; PROCEDURE.— Under Rule 140, there are three ways by which administrative proceedings may be instituted against justices of the CA and the Sandiganbayan and judges of regular and special courts: (1) motu proprio by the Supreme Court; (2) upon verified complaint (as in this complaint) with affidavits of persons having personal knowledge of the facts alleged therein or by documents which may substantiate said allegations; or (3) upon an anonymous complaint supported by public records of indubitable integrity. In this verified administrative complaint, the essential facts comprising the conduct of the respondent Justices of the CA complained of are not disputed, and are verifiable from the copies of orders and pleadings attached to the complaint and to the comments of the respondent Justices. There is, thus, no need to assign the matter to a retired member of the Supreme Court for evaluation, report, and recommendation.

2. ID.; INTERNAL RULES OF THE COURT OF APPEALS (IRCA); JUSTICE BATO SITTING AS ACTING SENIOR MEMBER OF THE SPECIAL 14TH DIVISION OF THE COURT OF APPEALS, HAD AUTHORITY TO ACT ON THE URGENT MOTIONS TO RESOLVE THE PETITIONER'S APPLICATION FOR WRIT OF PRELIMINARY INJUNCTION.— There is nothing in the IRCA which would have required the Division Clerk of Court to transmit the urgent motion for action only to the two present regular members of the 14th Division, as the complainants seem to believe. We agree with Justice Dicdican that the complainants would have been correct if the absent member of the Division was not the *ponente* herself but either of the other members. This implies that the *ponente* if present can act upon the urgent motion alone or with another member present, provided that the action or resolution "is submitted on the next working day to the absent member or members of the Division for ratification, modification or recall." The complainants need to realize that a preliminary injunction is not a ponencia but an order granted at any stage of an action

prior to final judgment, requiring a person to refrain from a particular act. It is settled that as an ancillary or preventive remedy, a writ of preliminary injunction may be resorted to by a party to protect or preserve his rights and for no other purpose during the pendency of the principal action. Its object is to preserve the *status quo* until the merits of the case are passed upon. It is not a cause of action in itself but merely a provisional remedy, an adjunct to a main suit. On the other hand, ponencia refers to the rendition of a decision in a case on the merits, which disposes of the main controversy. In this case, the main issue in the four CA petitions is the validity of the RTC's Order dated December 21, 2011 declaring as void and of no effect NADECOR's stockholders' meeting on August 15, 2011. Contrary to the complainants' insistence, the writ of preliminary injunction issued by the 14th Division in CA-G.R. SPNo. 122784 did not settle the controversy therein, but is a mere interlocutory order to restore the *status quo ante*, that is, the state of things prior to the RTC's Order of December 21, 2011. That Justice Bato was expected to act on the urgent motion to resolve in CA-G.R. SP No. 122784 is clearly implied from the instruction contained in Office Order No. 201-12-ABR. It authorized him to act "on all cases submitted to the FOURTEENTH DIVISION for final resolution and/or appropriate action, except ponencia, from June 1 to 15, 2012 or until Justice Lantion reports back for duty." The Office Order also states that the said authority "HOLDS TRUE WITH THE OTHER DIVISION/S WHEREIN JUSTICE JANE AURORA C. LANTION PARTICIPATED OR TOOK PART AS REGULAR MEMBER OR IN AN ACTING CAPACITY." As a provisional remedy, the timing of the grant of a writ of preliminary injunction is clearly of the essence, except that in this case the *ponente* was on an extended leave of absence and would have been unable to act thereon seasonably. It cannot be gainsaid from the above Order that an acting member of a Division, like a regular member, has full authority to act on any and all matters presented to the Division for "final resolution and/or appropriate action," which surely includes an urgent application for a writ of preliminary injunction. Expressly excepted under the IRCA is the acting member rendering a ponencia in a case assigned or raffled for study and report to the absent Division member, whom the acting member is temporarily substituting in the Division.

3. ID.; ID.; SECTION 4, RULE VI OF THE 2009 IRCA PROVIDES THAT THE REQUIREMENT OF A HEARING FOR PRELIMINARY INJUNCTION IS SATISFIED WITH THE ISSUANCE OF A RESOLUTION REQUIRING THE PARTY SOUGHT TO BE ENJOINED TO COMMENT ON THE APPLICATION WITHIN 10 DAYS FROM NOTICE.— The complainants maintain that Justice Bato should first have set petitioners' application for a writ of preliminary injunction for hearing before granting the same, as provided in Section 5 of Rule 58 of the Rules of Court. We have already noted that there was no time to do this, because Justice Bato received the *rollos* of the consolidated CA petitions only on June 8, 2012, a Friday, and the stockholders' meeting was set for the very next Wednesday, June 13, 2012. Section 4 of Rule VI of the 2009 IRCA provides that "[T]he requirement of a hearing for preliminary injunction is satisfied with the issuance of a resolution served upon the party sought to be enjoined requiring him to comment on the said application within the period of not more than ten (10) days from notice." As discussed below, the CA was justified in dispensing with the requisite hearing on the application for injunctive writ, since the so-called "new and substantial matters" raised in the third urgent motion in CA-G.R. SP No. 122784 and in the supplement thereto were in fact not previously unknown to respondents Ricafort, and they had already been previously ordered to comment on the said application, at the time when the said "subsequent" matters were already obtaining.

4. ID.; ID.; THE MEMBERS OF THE SPECIAL 14TH DIVISION ACTED COLLECTIVELY AND IN GOOD FAITH AND THEIR RESOLUTION GRANTING A WRIT OF PRELIMINARY INJUNCTION IN THE CONSOLIDATED PETITIONS ENJOYS A PRESUMPTION OF REGULARITY.— The CA 11th Division conceded that the petitioners in CA-G.R. SP No. 122784 have reason to maintain the validity of the August 15, 2011 stockholders' meeting. It agreed that the voiding of the said meeting might seriously derail any necessary corporate actions needed on the demands of the St. Augustine, which could lead to serious delays in the development of the Pantukan mine, and eventually the recall by the DENR of its MPSA. Thus, the CA feared that serious damage could result to NADECOR and the stockholders'

investments if in fact St. Augustine had the resources and the willingness to develop its gold-copper mine. It is not denied that the group of Jose worked for the rescission of the MOUs with the St. Augustine group and facilitated the entry of Villar's company. Calalang and his group opposed the contemplated actions of JG Ricafort and his camp, and wanted to retain the MOUs with St. Augustine, because they believed the exit of the St. Augustine group would have serious repercussions on the attractiveness of NADECOR to foreign investors. Whoever will eventually be proven correct is anyone's guess, but this does not detract from the fact that the issuance of the writ of preliminary injunction in the consolidated CA petitions was discretionary, interlocutory and preservative in nature, and equally importantly, it was a collective and deliberated action of the former Special 14th Division upon an urgent application for writ of preliminary injunction.

5. ID.; ID.; THE COMPLAINANTS HAVE NO PERSONALITY TO ASSAIL THE INJUNCTIVE WRIT.— Section 1 of Rule 19 of the Rules of Court provides that a person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. Conversely, a person who is not a party in the main suit cannot be bound by an ancillary writ, such as a preliminary injunction. Indeed, he cannot be affected by any proceeding to which he is a stranger. Moreover, a person not an aggrieved party in the original proceedings that gave rise to the petition for *certiorari*, will not be permitted to bring the said action to annul or stay the injurious writ. Such is the clear import of Sections 1 and 2 of Rule 65 of the Rules of Court. Thus, a person not a party to the proceedings in the trial court or in the CA cannot maintain an action for *certiorari* in the Supreme Court to have the judgment reviewed. Stated differently, if a petition for *certiorari* or prohibition is filed by one who was not a party in the lower court, he has no standing to question the assailed order. The complainants, who at various times served as elected members of the Board of NADECOR, did not bother to intervene in the CA petitions, hence, they are not entitled to the service of pleadings and motions therein. Complainant Fernandez was

himself a defendant in SEC Case No. 11-164 in the RTC, but he chose not to join any of the four CA petitions. In this Court's Resolution dated July 18, 2012 in **G.R. No. 202218- 21**, entitled "*Jose G. Ricafort, et al. v. Court of Appeals [Special 14th Division], et al.*," involving a petition for *certiorari* and prohibition filed by JG Ricafort, De Jesus, Paolo A. Villar, and Ma. Nalen Rosero-Galang, also questioning the validity of the writ of preliminary injunction issued by the Special 14th Division of the CA, we ruled that persons who are not parties to any of the consolidated petitions have no personality to assail the said injunctive writ. In another Resolution, also promulgated on July 18, 2012, in **G.R. No. 202257-60**, a petition for *certiorari* and prohibition filed by herein complainants to assail the validity of the writ of preliminary injunction in the aforesaid consolidated CA petitions, we likewise dismissed the petition due to lack of personality of the petitioners, since they were non-parties and strangers to the consolidated CA petitions. We pointed out that they should first have intervened below, and then filed a motion for reconsideration from the questioned CA order. On September 19, 2012, we denied their motion for reconsideration from the dismissal of their petition. Having established that the herein complainants have no personality to assail the writ of preliminary injunction issued by the CA's former Special 14th Division, we cannot now permit them to harass the CA Justices who issued the same. For even granting that the issuance of the writ was erroneous, as a matter of public policy a magistrate cannot be held administratively liable for every discretionary but erroneous order he issues. The settled rule is that "a Judge cannot be held to account civilly, criminally or administratively for an erroneous decision rendered by him in good faith." The case of *Cortes v. Sandiganbayan* is instructive.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for complainants.

R E S O L U T I O N

REYES, *J.*:

Before us is a verified Joint Complaint-Affidavit[1] filed against Court of Appeals (CA) Associate Justices Ramon M. Bato, Jr. (Justice Bato), Isaias P. Dicdican (Justice Dicdican) and Eduardo B. Peralta, Jr. (Justice Peralta), all members of the former Special 14th Division, charging them with grave misconduct, conduct detrimental to the service, gross ignorance of the law, gross incompetence, and manifest partiality.

The complaint alleges that in a Resolution[2] dated June 13, 2012, Justice Bato, who was designated on May 31, 2012 by raffle as acting senior member of the aforesaid Division, *vice* the regular senior member, Associate Justice Jane Aurora C. Lantion (Justice Lantion), who was scheduled to take a 15-day wellness leave from June 1-15, 2012, "usurped" the office of *ponente* in four (4) consolidated petitions before the CA, namely, CA-G.R. Nos. 122782, 122784, 122853, and 122854. Notwithstanding that the said cases have been previously assigned to Justice Lantion, Justice Bato acted on unverified motions to resolve the petitioners' application for a writ of preliminary injunction, and granted the same, without conducting a prior hearing, with the connivance of the respondents as regular members of the Division; instead of the said regular members acting on the motions themselves.

Antecedent Facts

Complainants Ethelwoldo E. Fernandez (Fernandez) and Antonio A. Henson were elected in August 2010 to the Board of Directors (Board) of the Nationwide Development Corporation (NADECOR), a domestic corporation organized in 1956, which

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[1] *Rollo*, pp. 2-45.

[2] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Isaias P. Dicdican and Eduardo B. Peralta, Jr., concurring; *id.* at 48-55.

owns a gold-copper mining concession in Pantukan, Compostela Valley called *King-King Gold and Copper Mine* (King-King Mine), while complainant Angel S. Ong was among those elected to NADECOR's Board at its stockholders' meeting held on June 13, 2012.

At the regular annual stockholders' meeting held on August 15, 2011, wherein 94% of NADECOR's outstanding shares was represented and voted, two groups of stockholders were vying for control of the company, one group led by Jose G. Ricafort (JG Ricafort) who then personally controlled 42% of the issued shares, and the other group led by Conrado T. Calalang (Calalang), who owned 33%. Elected to the Board were Calalang, Jose, Jose P. De Jesus (De Jesus), Roberto R. Romulo (Romulo), Alfredo I. Ayala (Ayala), Victor P. Lazatin, Fernandez, Leocadio Nitorreda (Nitorreda), and John Engle (Engle). Later elected as Corporate Secretary was Luis Manuel L. Gatmaitan (Gatmaitan).

On October 20, 2011, two months after the August 15, 2011 stockholders' meeting, Corazon H. Ricafort (CH Ricafort), Jose Manuel H. Ricafort (JM Ricafort), Marie Grace H. Ricafort (MG Ricafort), and Maria Teresa R. Santos (MT Santos) (plaintiffs Ricafort), wife and children of JG Ricafort, claiming to be stockholders of record, sought to annul the said meeting by filing SEC Case No. 11-164 in the Regional Trial Court (RTC) of Pasig City, Branch 159. Impleaded as defendants were NADECOR, the members of the incumbent Board, and the Corporate Secretary, Gatmaitan.

The plaintiffs Ricafort alleged that they were not given prior notice of the August 15, 2011 stockholders' meeting, and thus failed to attend the same and to exercise their right to participate in the management and control of NADECOR; that they were served with notice only on August 16, 2011, a day after the meeting was held, in violation of the 3-day prior notice provided in NADECOR's Bylaws; and that moreover, the notice announced a time and venue of the meeting different from those set forth in the Bylaws. The plaintiffs Ricafort therefore asked the RTC to declare null and void the August 15, 2011 annual stockholders'

meeting, including all proceedings taken thereat, all the consequences thereof, and all acts carried out pursuant thereto.

On November 18, 2011, Gatmaitan filed his Answer to the complaint in SEC Case No. 11-164; Calalang, Romulo, Ayala, Fernandez, Engle and Nitorreda filed theirs on November 21, 2011; and NADECOR filed its Answer on November 23, 2011. On November 30, 2011, the plaintiffs Ricafort filed their Answer to the Compulsory Counterclaims.

In the Order dated December 21, 2011, the RTC agreed with the plaintiffs Ricafort that they were not given due notice of the annual stockholders' meeting of NADECOR, and that their complaint did not involve an election contest, and therefore was not subject to the 15-day prescriptive period to file an election protest.[3] The *fallo* of the Order reads, as follows:

IN VIEW OF THE FOREGOING, this Court ***GRANTS***, as it hereby ***GRANTS*** the relief prayed for in the Complaint and DEN[IES] all compulsory counterclaims for lack of merit. Consequently, Nationwide Development Corporation's 2011 Annual Stockholders' Meeting held on August 15, 2011 is hereby declared NULL and VOID, including ALL matters taken up during said Annual Stockholders' Meeting. Any other acts, decisions, deeds, incidents, matters taken up arising from and subsequent to the 2011 Annual Stockholders' Meeting are hereby likewise declared ***VOID and OF NO FORCE and EFFECT***.

Defendant Nationwide Development Corporation is hereby directed to: (a) issue a new notice to all stockholders for the conduct of an annual stockholders' meeting corresponding to the year 2011 since the annual stockholders' meeting held on August 15, 2011 was declared VOID, ensuring their receipt within three (3) days from the intended date of the annual meeting[;] and (b) hold the annual stockholders meeting within thirty (30) days from receipt of this Order.

No pronouncements as to cost.

SO ORDERED.[4] (Citation omitted and italics, and emphasis in the original)

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[3] See Interim Rules of Procedure on Intra-Corporate Controversies, Rule 6.

[4] *Rollo,* pp. 76-77.

Four separate petitions for *certiorari* were forthwith filed in the CA by some members of the new Board and by NADECOR to assail the validity of the RTC order, all with application for a temporary restraining order (TRO) and/or a writ of preliminary injunction, namely:

(a) **CA-G.R. SP No. 122782** - filed on January 5, 2012 by Director Romulo versus CH Ricafort, JM Ricafort, MG Ricafort and MT Santos (respondents Ricafort). The case was raffled to Justice Lantion, senior member of the 15th Division; the chairman of the Division was Justice Dicdican, while Justice Angelita A. Gacutan (Justice Gacutan) was the junior member.

(b) **CA-G.R. SP No. 122784** - filed on January 5, 2012 by Directors Calalang, Ayala, Engle and Nitorreda versus the respondents Ricafort. Justice Agnes Reyes-Carpio (Justice Reyes-Carpio) of the 11th Division was the *ponente*.

(c) **CA-G.R. SP No. 122853** - filed on January 6, 2012 by NADECOR versus the respondents Ricafort. Justice Samuel Gaerlan of the 6th Division was the *ponente*.

(d) **CA-G.R. SP No. 122854** - filed on January 6, 2012 by Gatmaitan versus the respondents Ricafort. Justice Rosalinda Asuncion-Vicente of the 9th Division was the *ponente*.

On January 16, 2012, the 15th Division of the CA denied the application for TRO and/or preliminary injunction in CA-G.R. SP No. 122782. On the same day, however, the 11th Division issued a TRO in CA-G.R. SP No. 122784,[5] stating that the three (3) conditions for the issuance of an injunctive relief were present in the said petition, namely: (a) the right to be protected exists *prima facie*; (b) the act sought to be enjoined is violative of that right; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. The *fallo* of the Resolution of the 11th Division reads:

WHEREFORE, in view of the foregoing, pending the determination by this Court of the merits of the Petition, the Court **GRANTS**

[5] *Id.* at 181-187.

petitioners' prayer for the issuance of a temporary restraining order (TRO), to prevent the implementation and execution of the assailed Order dated December 21, 2011 of the Regional Trial Court, Branch 159, Pasig City.

The **TRO** is conditioned upon the filing by the petitioners of the **bond** in the amount of ***ONE HUNDRED THOUSAND ([₱]100,000.00) PESOS*** each, which shall answer for whatever damages *that* [respondents Ricafort] may incur in the event that the Court finds petitioners not entitled to the injunctive relief issued. The **TRO** shall be **effective for sixty (60) days** upon posting of the required bond unless earlier lifted or dissolved by the Court.

During the effectivity of the TRO, the Board of Directors elected and serving before the August 15, 2011 Stockholders['] Meeting shall discharge their functions as Directors in a hold-over capacity in order to prevent any hiatus and so as not to unduly prejudice the corporation.

Respondents are **REQUIRED** to submit their Comment to petitioners' Petition and why a writ of preliminary injunction should not be issued within **TEN (10) days** from notice, and petitioners, their Reply thereon, within **FIVE (5) days** from receipt of the said Comment.

SO ORDERED.[6]

In light of the declaration by the RTC that the August 15, 2011 stockholders' meeting was "VOID and OF NO FORCE and EFFECT," the 11th Division ordered the preceding Board, elected in August 2010 (Old Board) to take over the company in a hold-over capacity during the effectivity of the TRO, "to prevent any hiatus and so as not to unduly prejudice the corporation," and until a new Board was elected in a stockholders' meeting to be called by the Old Board. The new Board, which entered into its duties on August 15, 2011 (New Board), had to cease acting and give way to the hold-over Board.

On February 8, 2012, the 15th Division ordered the consolidation of all four CA petitions. On February 24, 2012, the 9th Division

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[6] *Id.* at 186-187.

also ordered the consolidation of CA-G.R. SP No. 122854 with CA-G.R. SP No. 122782. On March 9, 2012, the 11th Division approved the consolidation of CA-G.R. SP CA-G.R. No. 122784 with CA-G.R. SP No. 122782. The assailed Resolution[7] dated June 13, 2012 of the Special 14th CA Division includes in its caption CA-G.R. SP No. 122853, implying that the 6th Division had also agreed to the consolidation.

On February 17, 2012, the respondents Ricafort filed their ***Comment Ad Cautelam***[8] to the petition in CA-G.R. No. 122784. The petitioners therein thereafter filed three (3) urgent motions to resolve their application for writ of preliminary injunction, on March 8,[9] on May 22,[10] and again on June 6, 2012.[11] However, after the lapse of the 60-day TRO but before the CA could resolve the application for writ of preliminary injunction, Deogracias G. Contreras, Corporate Secretary of the Old Board who replaced Gatmaitan, issued on June 6, 2012 a Notice of Annual Stockholders' Meeting to be held at the Jollibee Centre in Ortigas on June 13, 2012 at 12:30 p.m. The notice was published on June 7, 2012 in *The Philippine Star*,[12] and two of the main purposes of the meeting were:

(a) The ratification of the rescission by the Old Board of NADECOR's Memoranda of Understanding (MOUs) with the *St. Augustine Gold & Copper Ltd.* and the *St. Augustine Mining, Ltd*., (St. Augustine), both dated April 27, 2010; and

(b) The ratification of the sale of unissued shares of NADECOR comprising 25% of its authorized capital stock (for ₱1.8 billion) to a new investor, Queensberry Mining and

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[7] *Id.* at 48-55.

[8] *Id.* at 188-237.

[9] *Id.* at 238-244.

[10] *Id.* at 252-260.

[11] *Id.* at 261-277.

[12] *Id.* at 90.

Development Corporation (Queensberry), later disclosed as controlled by the Group of Senator Manuel Villar.

On the same day, the petitioners in CA-G.R. SP No. 122784 filed a Supplement to the Third Urgent Motion to Resolve with Manifestation[13] dated June 7, 2012, contending that the rescission of NADECOR's MOUs with St. Augustine would result in grave and irreparable injury to it since St. Augustine alone had the financial and technical capability to develop its 1,656-hectare area mining claim in Pantukan, Compostela Valley. NADECOR thus risked having its Mineral Production Sharing Agreement (MPSA) with the government, its only valuable asset, revoked by the Department of Environment and Natural Resources (DENR).

On June 13, 2012 at 12:30 p.m., the announced annual meeting of NADECOR's stockholders was held at the Jollibee Center in Ortigas as scheduled, with Calalang chosen as presiding officer. Midway through the meeting, however, Calalang received a facsimile copy of the now assailed Resolution of the CA's Special 14th Division, bearing the day's date. On motion, Calalang declared the meeting adjourned in view of the injunctive writ granted by the CA. But he was overruled by the stockholders and directors holding 64% of the shares, and Calalang and his group walked out of the assembly. The stockholders who remained in the meeting ignored the writ and the meeting resumed, with President De Jesus now presiding. In the meeting, the following were taken up: the election of the new Board; the ratification of the rescission by the Old Board of NADECOR's MOUs with the St. Augustine; and the ratification of the subscription of Queensberry to 25% of the capital stock of NADECOR.

The Writ of Preliminary Injunction

The assailed Resolution of the Special 14th Division of the CA granting the writ of preliminary injunction reads:

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[13] *Id.* at 278-286.

WHEREFORE, premises considered, the application for a writ of preliminary injunction is ***GRANTED***. Let a writ of preliminary injunction be issued enjoining the implementation of the Order dated December 21, 2011 of the Regional Trial Court of Pasig City, Branch 159 and allowing the Board of Directors elected during the August 15, 2011 [stockholders' meeting] to continue to act as Board of Directors of NADECOR.

Likewise, the parties, including the hold-over Board of Directors elected and acting before the August 15, 2011 Stockholders' Meeting are enjoined and prohibited from acting as hold-over board and from scheduling and holding any stockholders' meeting, including the scheduled June 13, 2012 stockholders' meeting. Any effects of said June 13, 2012 stockholders' meeting, including the ratification of the rescission of all MOUs dated April 27, 2010 and Related Transaction Agreements between NADECOR and St. Augustine Gold and Copper, Ltd. and St. Augustine Mining, Ltd., the election of any new Board of Directors and their acting as such thereafter and the sale and ratification of the sale of Unissued Certificates of Shares of NADECOR constituting 25% of its authorized capital stock to Queensberry are also hereby enjoined.

Petitioners are thus mandated to post a bond of Five Hundred Thousand Pesos ([₱]500,000.00) to answer for any damages which may result by virtue of the writ of preliminary injunction.

SO ORDERED.[14]

Significantly, the Resolution enjoined the Old Board from acting as a hold-over Board, thereby contravening the TRO issued by the 11th Division. It then allowed the New Board "to continue to act as Board of Directors of NADECOR." It also enjoined the holding of a stockholders' meeting on June 13, 2012, and ordered a freeze in the enforcement of all actions taken at the said meeting. In particular, the CA enjoined the ratification of the rescission of all MOUs and related Transaction Agreements with the St. Augustine, the election of a new Board of NADECOR, and the ratification of the sale to Queensberry of 25% of NADECOR's authorized capital stock, which would come from its unissued shares.

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[14] *Id.* at 54-55.

The CA Resolution was penned by Justice Bato, the acting senior member of the Special 14th Division (formerly 15th Division, following an internal CA reorganization), *vice* Justice Lantion who was on a 15-day wellness leave. Concurred in by Justices Dicdican and Peralta, the Resolution cited "new and subsequent matters" allegedly not contemplated in the RTC's Order dated December 21, 2011, like the rescission of NADECOR's MOUs with the St. Augustine, and the ratification of the 25% subscription of Queensberry. The CA reasoned that the above actions of the Board could have injurious consequences on the future viability of NADECOR, even as they were not intended to merely "prevent a hiatus [in the operations of NADECOR] and so as not to unduly prejudice the corporation." The CA thus determined that the petitioners, as stockholders and members of the Board elected on August 15, 2011, have a right in *esse* to seek the preservation of the only valuable property of NADECOR, its MPSA covering the *King-King Mine* in Compostela Valley. Since, according to the CA, the St. Augustine possessed technical and financial capabilities to develop the said mine, the rescission of the MOUs could lead to the recall of the MPSA by the government, to NADECOR's grave and irreparable injury.

The CA further stated that the June 13, 2012 stockholders' meeting would render moot and academic the four consolidated CA petitions, since a new Board would effectively supplant the one elected on August 15, 2011, although the validity of the latter was still being contested in the CA.

Administrative Case versus CA Justices

On July 3, 2012, the herein complainants filed with the Supreme Court a Petition for *Certiorari* and Prohibition, G.R. No. 202257, seeking to annul the writ of preliminary injunction issued by the CA's Special 14th Division. However, in a Resolution[15] dated July 18, 2012 in **G.R. No. 202257-60**, entitled *"Ethelwoldo E. Fernandez, Antonio A. Henson, and Angel S. Ong v. Court of*

[15] *Id.* at 300-303.

Appeals (14th Division), et al.," the Supreme Court dismissed the complainants' petition for lack of personality because they were non-parties and strangers to the consolidated CA petitions.

On July 9, 2012, the complainants also filed with this Court the present Administrative Case, A.M. OCA IPI No. 12-201-CA-J, against the members of the former Special 14th Division of the CA, namely: Justices Dicdican, Chairman; Bato, Senior Member; and Peralta, Junior Member. On August 28, 2012, the Court directed the respondent CA Justices to file their Comment to the administrative complaint 10 days from notice. Justices Bato and Peralta filed a joint Comment, while Justice Dicdican filed a separate Comment, both on October 18, 2012. On October 29, 2012, Justices Dicdican, Bato, and Peralta filed a joint Supplemental Comment with Very Urgent Motion to Dismiss.[16]

It is alleged in this administrative complaint that the respondent Justices are guilty of grave misconduct, conduct detrimental to the service, gross ignorance of the law, gross incompetence, and manifest partiality, to wit:

(a) They acted upon the unverified "Third Motion to Resolve" and "Supplement to the Third Urgent Motion to Resolve with Manifestation" in CA-G.R. SP No. 122784, which contained new factual matters, and then issued a writ of preliminary injunction, without notice and hearing as required in Section 5 of Rule 58;

(b) It was irregular for Justice Bato, who sat as acting senior member *vice* the regular *ponente,* Justice Lantion, who was on a 15-day leave of absence (later extended by 10 days), to have penned the questioned Resolution notwithstanding that the consolidated CA Petitions had not been re-raffled to him.

(c) Granting that the issuance of a writ of preliminary injunction was a matter of extreme urgency, Section 5 of Rule VI of the Internal Rules of the CA (IRCA) authorizes the two present regular Division members, Justices Dicdican and Peralta, to act on the application, not Justice Bato.

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[16] *Id.* at 296-299.

(d) The effect of the writ of preliminary injunction is not to merely preserve the *status quo* but to dispose of the main case on the merits.

Our Ruling

We dismiss the complaint.

Rule 140 of the Rules of Court provides the procedure for the discipline of Justices of the CA and the Sandiganbayan and Judges of regular and special courts.

Under Rule 140,[17] there are three ways by which administrative proceedings may be instituted against justices of the CA and the Sandiganbayan and judges of regular and special courts: (1)

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[17] RULES OF COURT, Rule 140. Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the Sandiganbayan.

Sec. 1. *How instituted.* ¯Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted *motu proprio* by the Supreme Court or upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

Sec. 2. *Action on the complaint.* ¯If the complaint is sufficient in form and substance, a copy thereof shall be served upon the respondent, and he shall be required to comment within ten (10) days from the date of service. Otherwise, the same shall be dismissed.

Sec. 3. *By whom complaint investigated.* ¯Upon the filing of the respondent comment, or upon the expiration of the time for filing the same and unless other pleadings or documents are required, the Court shall refer the matter to the Office of the Court Administrator for evaluation, report, and recommendation or assign the case for investigation, report, and recommendation to a retired member of the Supreme Court, if the respondent is a Justice of the Court of Appeals and the *Sandiganbayan*, or to a Justice of the Court of Appeals, if the respondent is a Judge of a Regional Trial Court or of a

motu proprio by the Supreme Court; (2) upon verified complaint (as in this complaint) with affidavits of persons having personal knowledge of the facts alleged therein or by documents which may substantiate said allegations; or (3) upon an anonymous complaint supported by public records of indubitable integrity.[18]

In this verified administrative complaint, the essential facts comprising the conduct of the respondent Justices of the CA complained of are not disputed, and are verifiable from the copies of orders and pleadings attached to the complaint and to the comments of the respondent Justices. There is, thus, no need to assign the matter to a retired member of the Supreme Court for evaluation, report, and recommendation.

The pertinent provisions of the 2009 IRCA relevant to the instant administrative complaint are Sections 2(d), 4 and 5 of Rule VI, quoted below as follows:

Sec. 2. *Justices Who May Participate in the Adjudication of Cases*.—

x x x x x x x x x

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special court of equivalent rank or, to a Judge of the Regional Trial Court if the respondent is a Judge of an inferior court.

Sec. 4. *Hearing.*—The investigating Justice or Judge shall set a day for the hearing and send notice thereof to both parties. At such hearing, the parties may present oral and documentary evidence. If, after due notice, the respondent fails to appear, the investigation shall, proceed *ex parte*.

The Investigating Justice or Judge shall terminate the investigation within ninety (90) days from the date of its commencement or within such extension as the Supreme Court may grant.

Sec. 5. *Report.*—Within thirty (30) days from the termination of the investigation, the investigating Justice or Judge shall submit to the Supreme Court a report containing findings of fact and recommendation. The report shall be accompanied by the record containing the evidence and the pleadings filed by the parties. The report shall be confidential and shall be for exclusive use of the Court.

x x x x x x x x x

[18] *Sinsuat v. Hidalgo,* A.M. No. RTJ-08-2133, August 6, 2008, 561 SCRA 38, 46.

(d) When, in an original action or petition for review, any of the following proceedings has been taken, namely: (i) giving due course; (ii) granting temporary restraining order, writ of preliminary injunction, or new trial; (iii) granting an application for writ of *habeas corpus, amparo*, or *habeas data*; (iv) granting an application for a freeze order; and (v) granting judicial authorization under the Human Security Act of 2007, the case shall remain with the Justice to whom the case is assigned and the Justices who participated therein, regardless of their transfer to other Divisions in the same station. x x x.

Sec. 4. *Hearing on Preliminary Injunction*.—The requirement of a hearing on an application for preliminary injunction is satisfied with the issuance by the Court of a resolution served upon the party sought to be enjoined requiring him to comment on said application within a period of not more than ten (10) days from notice. Said party may attach to his comment documents which may show why the application for preliminary injunction should be denied. The Court may require the party seeking the injunctive relief to file his reply to the comment within five (5) days from receipt of the latter.

If the party sought to be enjoined fails to file his comment as provided for in the preceding paragraph, the Court may resolve the application on the basis of the petition and its annexes.

The preceding paragraphs notwithstanding, the Court may, in its sound discretion, set the application for a preliminary injunction for hearing during which the parties may present their respective positions or submit evidence in support thereof.

Sec. 5. *Action by a Justice*.—All members of the Division shall act upon an application for temporary restraining order and preliminary injunction. However, if the matter is of extreme urgency and a Justice is absent, the two other Justices shall act upon the application. If only the *ponente* is present, then he/she shall act alone upon the application. The action of the two Justices or of the *ponente* shall, however, be submitted on the next working day to the absent member or members of the Division for ratification, modification or recall.

Justice Bato, sitting as acting senior member of the Special 14th Division of the CA, had authority to act on the urgent motions to resolve the

petitioners' application for writ of preliminary injunction.

Firstly, it must be stated that the designation of Justice Bato by raffle as acting senior member of the 14th Division, *vice* Justice Lantion who went on a 15-day wellness leave from June 1-15, 2012, was valid, transparent and regular (Justice Lantion later extended her official leave to a total of 25 days). The raffle to fill the extended absence of Justice Lantion was held on May 31, 2012, witnessed by the members of the CA's Raffle Committee, namely, Justices Magdangal De Leon, Francisco P. Acosta, and Gacutan. Office Order No. 201-12-ABR,[19] signed by Presiding Justice Andres B. Reyes, Jr., reads:

> In view of the leave of absence (*Wellness Program*) of Justice JANE AURORA C. LANTION, regular senior member of the FOURTEENTH DIVISION, Justice RAMON M. BATO, JR. has been designated by the Raffle Committee as the acting senior member of the FOURTEENTH DIVISION, in addition to his duties as regular senior member of the SECOND DIVISION, to act on all cases submitted to the FOURTEENTH DIVISION, for final resolution and/or appropriate action, ***except ponencia***, from ***June 1 to 15, 2012*** or until Justice Lantion reports back for duty.
>
> **THIS HOLDS TRUE WITH THE OTHER DIVISION/S WHEREIN JUSTICE JANE AURORA C. LANTION PARTICIPATED OR TOOK PART AS REGULAR MEMBER OR IN AN ACTING CAPACITY.**[20]

Note too, that the third urgent motion in CA-G.R. SP No. 122784 to resolve the application for writ of preliminary injunction[21] was filed on June 6, 2012, with Justice Bato now sitting as acting member of the 14th Division. On June 7, 2012, the complainants filed a supplement to their said third urgent motion.[22] On June 8, 2012, a Friday, the consolidated petitions

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[19] *Rollo*, p. 287.

[20] *Id.*

[21] *Id.* at 261-277.

[22] *Id.* at 278-286.

were forwarded to Justice Bato, per Re-agendum issued by the Division Clerk of Court, Attorney Michael F. Real (Atty. Real).[23] Since the meeting of NADECOR's stockholders was scheduled on June 13, 2012, a Wednesday, it will readily be seen that there was no time for Justice Bato to set for hearing the application for writ of preliminary injunction.

The complainants argue, citing Section 5, Rule VI of IRCA, that with the absence of Justice Lantion, the original *ponente* of the consolidated CA petitions, only the regular 14th Division members present, that is, Justices Dicdican and Peralta, could validly act on the Calalang group's urgent application for preliminary injunction. Noting that Office Order No. 201-12-ABR limited Justice Bato's authority as acting member of the 14th Division only "to act on all cases submitted to the FOURTEENTH DIVISION for final resolution and/appropriate action, ***except ponencia,"*** they reason that since Justice Bato penned the Resolution of a motion for injunctive relief in the consolidated petitions whose assigned *ponente* was Justice Lantion, he was in effect "usurping" the office of the *ponente* of the said cases, in gross violation of the IRCA.

That there was no re-raffle of the consolidated CA petitions to a new *ponente* is not denied, but rather only a designation of Justice Bato to sit as acting senior member of the 14th Division *vice* Justice Lantion. But because of the urgent nature of the application for writ of preliminary injunction, which was an offshoot of the consolidated CA petitions, and the assigned *ponente* thereof, Justice Lantion, was on a wellness leave, the Clerk of Court of the 14th Division, Atty. Real, transferred the said cases to Justice Bato, the acting senior member temporarily sitting in the place of the original *ponente*, Justice Lantion, so that he could promptly attend to the urgent motion.

There is nothing in the IRCA which would have required the Division Clerk of Court to transmit the urgent motion for action only to the two present regular members of the 14th Division,

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[23] See Note 1 of the CA Resolution dated June 13, 2012; *id.* at 49.

as the complainants seem to believe. We agree with Justice Dicdican that the complainants would have been correct if the absent member of the Division was not the *ponente* herself but either of the other members. This implies that the *ponente* if present can act upon the urgent motion alone or with another member present, provided that the action or resolution "is submitted on the next working day to the absent member or members of the Division for ratification, modification or recall."

The complainants need to realize that a preliminary injunction is not a *ponencia* but an order granted at any stage of an action *prior* to final judgment, requiring a person to refrain from a particular act. It is settled that as an ancillary or preventive remedy, a writ of preliminary injunction may be resorted to by a party to protect or preserve his rights and for no other purpose during the pendency of the principal action. Its object is to preserve the *status quo* until the merits of the case are passed upon. It is not a cause of action in itself but merely a provisional remedy, an adjunct to a main suit.[24] On the other hand, *ponencia* refers to the rendition of a decision in a case on the merits, which disposes of the main controversy. In this case, the main issue in the four CA petitions is the validity of the RTC's Order dated December 21, 2011 declaring as void and of no effect NADECOR's stockholders' meeting on August 15, 2011. Contrary to the complainants' insistence, the writ of preliminary injunction issued by the 14th Division in CA-G.R. SP No. 122784 did not settle the controversy therein, but is a mere interlocutory order to restore the *status quo ante*, that is, the state of things prior to the RTC's Order of December 21, 2011.

That Justice Bato was expected to act on the urgent motion to resolve in CA-G.R. SP No. 122784 is clearly implied from the instruction contained in Office Order No. 201-12-ABR. It authorized him to act "*on all cases submitted to the FOURTEENTH DIVISION for final resolution and/or appropriate action, except ponencia, from June 1 to 15, 2012 or until*

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[24] *Mabayo Farms, Inc. v. CA and Antonio Santos*, 435 Phil. 112, 118 (2002).

Justice Lantion reports back for duty."[25] The Office Order also states that the said authority *"HOLDS TRUE WITH THE OTHER DIVISION/S WHEREIN JUSTICE JANE AURORA C. LANTION PARTICIPATED OR TOOK PART AS REGULAR MEMBER OR IN AN ACTING CAPACITY."*

As a provisional remedy, the timing of the grant of a writ of preliminary injunction is clearly of the essence, except that in this case the *ponente* was on an extended leave of absence and would have been unable to act thereon seasonably. It cannot be gainsaid from the above Order that an acting member of a Division, like a regular member, has full authority to act on any and all matters presented to the Division for "final resolution and/or appropriate action," which surely includes an urgent application for a writ of preliminary injunction. Expressly excepted under the IRCA is the acting member rendering a *ponencia* in a case assigned or raffled for study and report to the absent Division member, whom the acting member is temporarily substituting in the Division.

Section 4, Rule VI of the 2009 IRCA provides that the requirement of a hearing for preliminary injunction is satisfied with the issuance of a resolution requiring the party sought to be enjoined to comment on the application within 10 days from notice.

The complainants maintain that Justice Bato should first have set petitioners' application for a writ of preliminary injunction for hearing before granting the same, as provided in Section 5 of Rule 58 of the Rules of Court. We have already noted that there was no time to do this, because Justice Bato received the *rollos* of the consolidated CA petitions only on June 8, 2012, a Friday, and the stockholders' meeting was set for the very next Wednesday, June 13, 2012.

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[25] *Rollo,* p. 287.

Section 4 of Rule VI of the 2009 IRCA provides that "*[T]he requirement of a hearing for preliminary injunction is satisfied with the issuance of a resolution served upon the party sought to be enjoined requiring him to comment on the said application within the period of not more than ten (10) days from notice.*"

As discussed below, the CA was justified in dispensing with the requisite hearing on the application for injunctive writ, since the so-called "new and substantial matters" raised in the third urgent motion in CA-G.R. SP No. 122784 and in the supplement thereto were in fact not previously unknown to respondents Ricafort, and they had already been previously ordered to comment on the said application, at the time when the said "subsequent" matters were already obtaining.

In its Resolution dated January 16, 2012 granting a TRO in CA-G.R. SP No. 122784, the CA 11th Division through Justice Reyes-Carpio found that the three conditions for the issuance of an injunctive relief in favor of petitioners Calalang, Ayala, Engle, and Nitorreda were present, namely: "(a) that the right to be protected exists *prima facie*; (b) that the act sought to be enjoined is violative of that right; and (c) that there is an urgent and paramount necessity for the writ to prevent serious damage."[26] It thus ordered respondents Ricafort to file their Comment to the petition 10 days from notice and to explain "why a writ of preliminary injunction should not be issued." In compliance with the said order, on February 17, 2012, respondents Ricafort filed their *Comment Ad Cautelam.*[27] The petitioners thereafter filed three (3) urgent motions to resolve their application for preliminary injunction.

The first urgent motion,[28] filed on March 8, 2012, called attention to a special board meeting of the Old Board on March 7, 2012 concerning, among others, the appointment of new

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[26] *Id.* at 78.

[27] *Id.* at 188-237.

[28] *Id.* at 238-244.

bank signatories and the need to establish NADECOR's official position *vis-á-vis* St. Augustine's non-remittance of US$200,000.00 allegedly demanded under their June 28, 2011 agreement. The group of Calalang feared that the Old Board was committing acts not contemplated in its hold-over authority, since they were "overhauling the management and business operations of NADECOR."

The petitioners' second urgent motion,[29] filed on May 22, 2012, cited a letter of JG Ricafort and De Jesus to St. Augustine notifying them that NADECOR was rescinding its MOUs/ Transaction Agreements with them. The Calalang group insisted that this act would be injurious to NADECOR, since allegedly St. Augustine alone had the technical know-how and funds to develop the *King-King Mine*.

The third urgent motion of petitioners,[30] filed on June 6, 2012, mentioned a special meeting of the Old Board held on June 1, 2012 which approved the subscription and recording of new shares in the name of Queensberry, and the calling of a stockholders' meeting to ratify the said subscription and to elect the new Board. The petitioners expressed surprise that the subscription of Queensberry had already been recorded in the books, and insisted that the election of a new Board would render moot their CA petitions and application for a writ of preliminary injunction.

On June 7, 2012, the petitioners filed a "Supplement to the Third Urgent Motion to Resolve with Manifestation,"[31] citing an announcement that same day in *The Philippine Star* calling for an annual stockholders' meeting on June 13, 2012 to elect a new Board and to ratify the rescission of the MOUs with St. Augustine and the subscription of Queensberry.

The complainants now insist that the petitioners' "Third Urgent Motion to Resolve" application for preliminary injunction as

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[29] *Id.* at 252-260.

[30] *Id.* at 261-277.

[31] *Id.* at 278-286.

well as their "Supplement to the third Urgent Motion to Resolve with Manifestation" in the four CA cases were unverified. No hearing was also held on the alleged new and substantial matters raised therein, yet as early as in the TRO Resolution dated January 16, 2012, the 11th Division already took into consideration the matter of a threat by NADECOR of rescission of its MOUs with St. Augustine. The CA also mentioned a letter from St. Augustine threatening to withdraw its "intended investment of around $2.5 Billion into the mining operations of NADECOR" because NADECOR "has 'no unquestioned board' to act on the conditions it set forth in its letter dated December 16, 2011."[32]

The TRO resolution also cited the claim of NADECOR that it needed to submit to the DENR its Mining Project Feasibility Plan (MPFP) by May 5, 2012, or risk losing both its investment in the Pantukan mine and potential foreign investments. The MPFP depended on the completion of the Bankable Financial Statement, which was funded by St. Augustine, and they were now threatening to cut off their funding.

Lastly, the CA 11th division noted that the plaintiffs Ricafort could not be ignorant of the August 15, 2011 meeting. The plaintiffs were the wife and children of JG Ricafort, who was then the NADECOR President, and JG Ricafort and CH Ricafort still lived as husband and wife in the same house at No. 8 Postdam Street, Northeast Greenhills, San Juan.[33] The CA also noted that the plaintiffs Ricafort executed proxies and nominee agreements in favor of JG Ricafort, as well as cited an affidavit of Raymond H. Ricafort, a son of JG Ricafort and CH Ricafort, that his mother CH Ricafort and his siblings had known about the August 15, 2011 stockholders' meeting, and that his mother never went to any of the stockholders' meetings of NADECOR.

From the foregoing, it will be seen that the CA Special 14th Division needed only to rely on the TRO resolution of the 11th Division as well as on the *Comment Ad Cautelam* of respondents

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[32] *Id.* at 77-78.

[33] *Id.* at 222.

Ricafort to find a basis to issue its preservative writ of preliminary injunction, and whether the third urgent motion of petitioners and their supplement thereto were verified, or whether a hearing was held thereon, were immaterial to the issuance of the writ.

The members of the Special 14th Division acted collectively and in good faith and their Resolution granting a writ of preliminary injunction in the consolidated CA petitions enjoys a presumption of regularity.

The CA 11th Division conceded that the petitioners in CA-G.R. SP No. 122784 have reason to maintain the validity of the August 15, 2011 stockholders' meeting. It agreed that the voiding of the said meeting might seriously derail any necessary corporate actions needed on the demands of the St. Augustine, which could lead to serious delays in the development of the Pantukan mine, and eventually the recall by the DENR of its MPSA. Thus, the CA feared that serious damage could result to NADECOR and the stockholders' investments if in fact St. Augustine had the resources and the willingness to develop its gold-copper mine.

It is not denied that the group of Jose worked for the rescission of the MOUs with the St. Augustine group and facilitated the entry of Villar's company. Calalang and his group opposed the contemplated actions of JG Ricafort and his camp, and wanted to retain the MOUs with St. Augustine, because they believed the exit of the St. Augustine group would have serious repercussions on the attractiveness of NADECOR to foreign investors. Whoever will eventually be proven correct is anyone's guess, but this does not detract from the fact that the issuance of the writ of preliminary injunction in the consolidated CA petitions was discretionary, interlocutory and preservative in nature, and equally importantly, it was a collective and deliberated action of the former Special 14th Division upon an urgent application for writ of preliminary injunction.

The complainants have no personality to assail the injunctive writ.

Section 1 of Rule 19 of the Rules of Court provides that a person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. Conversely, a person who is not a party in the main suit cannot be bound by an ancillary writ, such as a preliminary injunction. Indeed, he cannot be affected by any proceeding to which he is a stranger.[34]

Moreover, a person not an aggrieved party in the original proceedings that gave rise to the petition for *certiorari,* will not be permitted to bring the said action to annul or stay the injurious writ.[35] Such is the clear import of Sections 1 and 2 of Rule 65 of the Rules of Court. Thus, a person not a party to the proceedings in the trial court or in the CA cannot maintain an action for *certiorari* in the Supreme Court to have the judgment reviewed.[36] Stated differently, if a petition for *certiorari* or prohibition is filed by one who was not a party in the lower court, he has no standing to question the assailed order.[37]

The complainants, who at various times served as elected members of the Board of NADECOR, did not bother to intervene in the CA petitions, hence, they are not entitled to the service

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[34] *Supra* note 24.

[35] *Pascual v. Robles*, G. R. No. 182645, June 22, 2011, 652 SCRA 573, 580-581.

[36] *Id.* at 581, citing *Government Service Insurance System v. Court of Appeals (Eighth Division)*, G.R. Nos. 183905 and 184275, April 16, 2009, 585 SCRA 679, 697.

[37] *Id.*, citing *Macias v. Lim*, G.R. No. 139284, June 4, 2004, 431 SCRA 20, 36.

of pleadings and motions therein. Complainant Fernandez was himself a defendant in SEC Case No. 11-164 in the RTC, but he chose not to join any of the four CA petitions.

In this Court's Resolution[38] dated July 18, 2012 in **G.R. No. 202218-21**, entitled "*Jose G. Ricafort, et al. v. Court of Appeals [Special 14th Division], et al.,*" involving a petition for *certiorari* and prohibition filed by JG Ricafort, De Jesus, Paolo A. Villar, and Ma. Nalen Rosero-Galang, also questioning the validity of the writ of preliminary injunction issued by the Special 14th Division of the CA, we ruled that persons who are not parties to any of the consolidated petitions have no personality to assail the said injunctive writ.

In another Resolution,[39] also promulgated on July 18, 2012, in **G.R. No. 202257-60**, a petition for *certiorari* and prohibition filed by herein complainants to assail the validity of the writ of preliminary injunction in the aforesaid consolidated CA petitions, we likewise dismissed the petition due to lack of personality of the petitioners, since they were non-parties and strangers to the consolidated CA petitions. We pointed out that they should first have intervened below, and then filed a motion for reconsideration from the questioned CA order. On September 19, 2012, we denied their motion for reconsideration from the dismissal of their petition.

Having established that the herein complainants have no personality to assail the writ of preliminary injunction issued by the CA's former Special 14th Division, we cannot now permit them to harass the CA Justices who issued the same. For even granting that the issuance of the writ was erroneous, as a matter of public policy a magistrate cannot be held administratively liable for every discretionary but erroneous order he issues.[40] The settled rule is that "a Judge cannot be held to account civilly, criminally or administratively for an erroneous decision

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[38] *Rollo*, pp. 108-111.

[39] *Id.* at 300-303.

[40] *Pabalan v. Judge Guevarra*, 165 Phil. 677, 683 (1976).

rendered by him in good faith."[41] The case of *Cortes v. Sandiganbayan*[42] is instructive. We quote:

> It must be stressed that as a matter of policy, the acts of a judge in his judicial capacity are not subject to disciplinary action. He cannot be subjected to liability — civil, criminal or administrative — for any of his official acts, no matter how erroneous, as long as he acts in good faith. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.
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> It is also worth mentioning that the provisions of Article 204 of the Revised Penal Code as to "rendering knowingly unjust judgment" refer to an individual judge who does so "in any case submitted to him for decision" and has no application to the members of a collegiate court such as the Sandiganbayan or its divisions, who reach their conclusions in consultation and accordingly render their collective judgment after due deliberation. It also follows, consequently, that a charge of violation of the Anti-Graft and Corrupt Practices Act on the ground that such a collective decision is "unjust" cannot prosper.
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> The remedy of the aggrieved party is not to file an administrative complaint against the judge, but to elevate the assailed decision or order to the higher court for review and correction. An administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for *certiorari*, unless the assailed order or decision is tainted with fraud, malice, or dishonesty. x x x.[43] (Citations omitted)

It was also emphasized in the above case that as an established rule, an administrative, civil or criminal action against a judge cannot be a substitute for an appeal.[44]

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[41] *In Re: Petition for the dismissal from service and/or disbarment of Judge Dizon,* 255 Phil. 623, 627 (1989).

[42] 467 Phil. 155 (2004)

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

[44] *Id.* at 163, citing *In Re Joaquin T. Borromeo,* 311 Phil. 441, 512-513.

WHEREFORE, premises considered, A.M. OCA IPI No. 12-201-CA-J is hereby *DISMISSED*.

SO ORDERED.

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

EN BANC

[G.R. No. 191644. February 19, 2013]

DENNIS A.B. FUNA, *petitioner, vs.* **ACTING SECRETARY OF JUSTICE ALBERTO C. AGRA, IN HIS OFFICIAL CONCURRENT CAPACITIES AS ACTING SECRETARY OF THE DEPARTMENT OF JUSTICE AND AS ACTING SOLICITOR GENERAL, EXECUTIVE SECRETARY LEANDRO R. MENDOZA, OFFICE OF THE PRESIDENT,** *respondents.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; REQUISITES OF JUDICIAL REVIEW; NOT IN ISSUE IN CASE AT BAR.— The power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to assail the validity of the subject act or issuance, that is, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case. Here, the OSG does not

dispute the justiciability and ripeness for consideration and resolution by the Court of the matter raised by the petitioner. Also, the *locus standi* of the petitioner as a taxpayer, a concerned citizen and a lawyer to bring a suit of this nature has already been settled in his favor in rulings by the Court on several other public law litigations he brought. In *Funa v. Villar*, for one, the Court has held: To have legal standing, therefore, a suitor must show that he has sustained or will sustain a "direct injury" as a result of a government action, or have a "material interest" in the issue affected by the challenged official act. However, **the Court has time and again acted liberally on the *locus standi* requirements and has accorded certain individuals, not otherwise directly injured, or with material interest affected, by a Government act, standing to sue provided a constitutional issue of critical significance is at stake. The rule on *locus standi* is after all a mere procedural technicality in relation to which the Court, in a *catena* of cases involving a subject of transcendental import, has waived, or relaxed, thus allowing non-traditional plaintiffs, such as concerned citizens, taxpayers, voters or legislators, to sue in the public interest, albeit they may not have been personally injured by the operation of a law or any other government act.** x x x In *Funa v. Ermita,* the Court recognized the *locus standi* of the petitioner as a taxpayer, a concerned citizen and a lawyer because the issue raised therein involved a subject of transcendental importance whose resolution was necessary to promulgate rules to guide the Bench, Bar, and the public in similar cases.

2. ID.; ID.; ID.; ID.; INSTANT PETITION NOT RENDERED MOOT AND ACADEMIC DUE TO THE INTERVENING APPOINTMENT AND ASSUMPTION OF THE SOLICITOR GENERAL DURING THE PENDENCY OF THE SUIT; THE CASE COMES UNDER SEVERAL OF THE WELL-RECOGNIZED EXCEPTIONS ESTABLISHED IN JURISPRUDENCE WHERE THE COURT WILL NOT DESIST FROM RESOLVING AN ISSUE DESPITE ITS MOOT AND ACADEMIC NATURE.— A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Although the controversy could have ceased due to the intervening appointment of and

assumption by Cadiz as the Solicitor General during the pendency of this suit, and such cessation of the controversy seemingly rendered moot and academic the resolution of the issue of the constitutionality of the concurrent holding of the two positions by Agra, the Court should still go forward and resolve the issue and not abstain from exercising its power of judicial review because this case comes under several of the well-recognized exceptions established in jurisprudence. Verily, the Court did not desist from resolving an issue that a supervening event meanwhile rendered moot and academic if any of the following recognized exceptions obtained, namely: (1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the constitutional issue raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition, yet evading review.

3. ID.; ID.; ID.; ID.; THE ISSUE RAISED IN CASE AT BAR RELATES TO A SITUATION OF EXCEPTIONAL CHARACTER AND OF PARAMOUNT PUBLIC INTEREST BY REASON OF ITS TRANSCENDENTAL IMPORTANCE TO THE PEOPLE; THE RESOLUTION OF THE ISSUE WILL BE ALSO OF THE GREATEST VALUE TO THE BENCH AND BAR IN VIEW OF THE BROAD POWERS WIELDED THROUGH SAID POSITIONS.— It is the same here. The constitutionality of the concurrent holding by Agra of the two positions in the Cabinet, albeit in acting capacities, was an issue that comes under all the recognized exceptions. The issue involves a probable violation of the Constitution, and relates to a situation of exceptional character and of paramount public interest by reason of its transcendental importance to the people. The resolution of the issue will also be of the greatest value to the Bench and the Bar in view of the broad powers wielded through said positions. The situation further calls for the review because the situation is capable of repetition, yet evading review. In other words, many important and practical benefits are still to be gained were the Court to proceed to the ultimate resolution of the constitutional issue posed.

4. ID.; ID.; EXECUTIVE DEPARTMENT; PROHIBITION AGAINST HOLDING OF ANY OTHER OFFICE OR

EMPLOYMENT DURING AN OFFICIAL'S TENURE; IT IS IMMATERIAL THAT SECRETARY AGRA'S DESIGNATION WAS IN AN ACTING OR TEMPORARY CAPACITY, THE PROHIBITION MUST BE CONSTRUED AS TO APPLY TO ALL APPOINTMENTS OR DESIGNATIONS, WHEHTER PERMANENT OR TEMPORARY.— Being designated as the Acting Secretary of Justice concurrently with his position of Acting Solicitor General, therefore, Agra was undoubtedly covered by Section 13, Article V II, *supra*, whose text and spirit were too clear to be differently read. Hence, Agra could not validly hold any other office or employment during his tenure as the Acting Solicitor General, because the Constitution has not otherwise so provided. It was of no moment that Agra's designation was in an acting or temporary capacity. The text of Section 13, *supra*, plainly indicates that the intent of the Framers of the Constitution was to impose a stricter prohibition on the President and the Members of his Cabinet in so far as holding other offices or employments in the Government or in government-owned or government controlled-corporations was concerned. In this regard, *to hold an office* means to possess or to occupy the office, or to be in possession and administration of the office, which implies nothing less than the actual discharge of the functions and duties of the office. Indeed, in the language of Section 13 itself, *supra*, the Constitution makes no reference to the nature of the appointment or designation. The prohibition against dual or multiple offices being held by one official must be construed as to apply to all appointments or designations, whether permanent or temporary, for it is without question that the avowed objective of Section 13, *supra*, is to prevent the concentration of powers in the Executive Department officials, specifically the President, the V ice-President, the Members of the Cabinet and their deputies and assistants. To construe differently is to "open the veritable floodgates of circumvention of an important constitutional disqualification of officials in the Executive Department and of limitations on the President's power of appointment in the guise of temporary designations of Cabinet Members, undersecretaries and assistant secretaries as officers-in-charge of government agencies, instrumentalities, or government-owned or controlled corporations."

5. ID.; ID.; ID.; ID.; SECRETARY AGRA'S DESIGNATION AS ACTING SECRETARY OF JUSTICE WAS NOT IN AN *EX*

***OFFICIO* CAPACITY, BY WHICH HE WOULD HAVE BEEN VALIDLY AUTHORIZED TO CONCURRENTLY HOLD THE TWO POSITIONS DUE TO THE HOLDING OF ONE OFFICE BEING THE CONSEQUENCE OF HOLDING THE OTHER.—** It is equally remarkable, therefore, that Agra's designation as the Acting Secretary of Justice was not in an *ex officio* capacity, by which he would have been validly authorized to concurrently hold the two positions due to the holding of one office being the consequence of holding the other. Being included in the stricter prohibition embodied in Section 13*, supra,* Agra cannot liberally apply in his favor the broad exceptions provided in Section 7, paragraph 2, Article IX -B of the Constitution ("Unless otherwise allowed by law or the primary functions of his position") to justify his designation as A cting Secretary of Justice concurrently with his designation as A cting Solicitor General, or vice versa. x x x To underscore the obvious, it is not sufficient for Agra to show that his holding of the other office was "allowed by law or the primary functions of his position." To claim the exemption of his concurrent designations from the coverage of the stricter prohibition under Section 13, *supra,* he needed to establish herein that his concurrent designation was expressly allowed by the Constitution. But, alas, he did not do so. To be sure, Agra's concurrent designations as Acting Secretary of Justice and Acting Solicitor General did not come within the definition of an *ex officio* capacity. Had either of his concurrent designations been in an *ex officio* capacity in relation to the other, the Court might now be ruling in his favor.

6. ID.; ID.; ID.; ID.; ID.; THE PROVISIONS OF THE ADMINISTRATIVE CODE SHOW THAT ONE POSITION WAS NOT DERIVED FROM THE OTHER; THE POWERS AND FUNCTIONS OF THE OFFICE OF THE SOLICITOR GENERAL (OSG) ARE NEITHER REQUIRED BY THE PRIMARY FUNCTIONS NOR INCLUDED BY THE POWERS OF THE DEPARTMENT OF JUSTICE (DOJ) AND VICE VERSA.— The provisions of the applicable laws show that one position was not derived from the other. Indeed, the powers and functions of the OSG are neither required by the primary functions nor included by the powers of the DOJ, and vice versa. The OSG, while attached to the DOJ, is not a constituent unit of the latter, as, in fact, the *Administrative*

Code of 1987 decrees that the OSG is independent and autonomous. W ith the enactment of Republic A ct No. 9417, the Solicitor General is now vested with a cabinet rank, and has the same qualifications for appointment, rank, prerogatives, salaries, allowances, benefits and privileges as those of the Presiding Justice of the Court of Appeals.

7. ID.; ID.; ID.; ID.; APART FROM THE SURE PERIL OF POLITICAL PRESSURE, THE CONCURRENT HOLDING OF THE TWO POSITIONS, EVEN IF THEY ARE NOT ENTIRELY INCOMPATIBLE, MAY AFFECT SOUND GOVERNMENT OPERATIONS AND THE PROPER PERFORMANCE OF DUTIES.— The magnitude of the scope of work of the Solicitor General, if added to the equally demanding tasks of the Secretary of Justice, is obviously too much for any one official to bear. A part from the sure peril of political pressure, the concurrent holding of the two positions, even if they are not entirely incompatible, may affect sound government operations and the proper performance of duties. Heed should be paid to what the Court has pointedly observed in *Civil Liberties Union v. Executive Secretary*: Being head of an executive department is no mean job. It is more than a full-time job, requiring full attention, specialized knowledge, skills and expertise. If maximum benefits are to be derived from a department head's ability and expertise, he should be allowed to attend to his duties and responsibilities without the distraction of other governmental offices or employment. He should be precluded from dissipating his efforts, attention and energy among too many positions of responsibility, which may result in haphazardness and inefficiency. Surely the advantages to be derived from this concentration of attention, knowledge and expertise, particularly at this stage of our national and economic development, far outweigh the benefits, if any, that may be gained from a department head spreading himself too thin and taking in more than what he can handle.

8. ID.; ID.; ID.; ID.; ASSUMING THAT SECRETARY AGRA, AS THE ACTING SOLICITOR GENERAL, WAS NOT COVERED BY THE STRICTER PROHIBITION UNDER SECTION 13, ARTICLE VII OF THE 1987 CONSTITUTION, DUE TO SUCH POSITION BEING MERELY VESTED WITH A CABINET RANK UNDER SECTION 3 OF REPUBLIC ACT NO. 9417, HE NONETHELESS REMAINED

COVERED BY THE GENERAL PROHIBITION UNDER SECTION 7 OF THE SAME ARTICLE.— It is not amiss to observe, lastly, that assuming that Agra, as the Acting Solicitor General, was not covered by the stricter prohibition under Section 13, supra, due to such position being merely vested with a cabinet rank under Section 3, Republic Act No. 9417, he nonetheless remained covered by the general prohibition under Section 7, supra. Hence, his concurrent designations were still subject to the conditions under the latter constitutional provision. In this regard, the Court aptly pointed out in *Public Interest Center, Inc. v. Elma*: The general rule contained in Article IX -B of the 1987 Constitution permits an appointive official to hold more than one office only if "allowed by law or by the primary functions of his position." In the case of *Quimson v. Ozaeta*, this Court ruled that, "[t]here is no legal objection to a government official occupying two government offices and performing the functions of both *as long as there is no incompatibility*." The crucial test in determining whether incompatibility exists between two offices was laid out in People v. Green - whether one office is subordinate to the other, in the sense that one office has the right to interfere with the other.

9. ID.; ID.; ID.; ID.; CONSIDERING THE NATURE AND DUTIES OF THE TWO OFFICES ARE SUCH AS TO RENDER IT IMPROPER, FROM CONSIDERATIONS OF PUBLIC POLICY, FOR ONE PERSON TO RETAIN BOTH, AN INCOMPATIBILITY BETWEEN THE TWO OFFICES EXISTS.— The primary functions of the Office of the Solicitor General are not related or necessary to the primary functions of the Department of Justice. Considering that the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both, an incompatibility between the offices exists, further warranting the declaration of Agra's designation as the Acting Secretary of Justice, concurrently with his designation as the A cting Solicitor General, to be void for being in violation of the express provisions of the Constitution.

10. ID.; ID.; ID.; ID.; SECRETARY AGRA WAS A *DE FACTO* OFFICER DURING HIS TENURE AS ACTING SECRETARY OF JUSTICE; ALL HIS OFFICIAL ACTIONS AS ACTING SECRETARY OF JUSTICE ARE PRESUMED

VALID, BINDING AND EFFECTIVE IF HE WAS THE OFFICER LEGALLY APPOINTED AND QUALIFIED FOR THE OFFICE.— In view of the application of the stricter prohibition under Section 13, supra, Agra did not validly hold the position of Acting Secretary of Justice concurrently with his holding of the position of Acting Solicitor General. Accordingly, he was not to be considered as a de jure officer for the entire period of his tenure as the Acting Secretary of Justice. A de jure officer is one who is deemed, in all respects, legally appointed and qualified and whose term of office has not expired. That notwithstanding, Agra was a *de facto* officer during his tenure as Acting Secretary of Justice. A *de facto* officer is one who derives his appointment from one having colorable authority to appoint, if the office is an appointive office, and whose appointment is valid on its face. He may also be one who is in possession of an office, and is discharging its duties under color of authority, by which is meant authority derived from an appointment, however irregular or informal, so that the incumbent is not a mere volunteer. Consequently, the acts of the *de facto* officer are just as valid for all purposes as those of a de jure officer, in so far as the public or third persons who are interested therein are concerned. In order to be clear, therefore, the Court holds that all official actions of Agra as a *de facto* Acting Secretary of Justice, assuming that was his later designation, were presumed valid, binding and effective as if he was the officer legally appointed and qualified for the office. This clarification is necessary in order to protect the sanctity of the dealings by the public with persons whose ostensible authority emanates from the State. Agra's official actions covered by this clarification extend to but are not limited to the promulgation of resolutions on petitions for review filed in the Department of Justice, and the issuance of department orders, memoranda and circulars relative to the prosecution of criminal cases.

APPEARANCES OF COUNSEL

Funa Balayan Fortes Galandines & Villagonzalo Law Offices for petitioner.

The Solicitor General for respondents.

Lally C. Ortilla for Atty. Alberto C. Agra.

D E C I S I O N

BERSAMIN, *J.*:

Section 13, Article VII of the 1987 Constitution expressly prohibits the President, Vice-President, the Members of the Cabinet, and their deputies or assistants from holding any other office or employment during their tenure unless otherwise provided in the Constitution. Complementing the prohibition is Section 7, paragraph (2), Article IX-B of the 1987 Constitution, which bans any appointive official from holding any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries, unless otherwise allowed by law or the primary functions of his position.

These prohibitions under the Constitution are at the core of this special civil action for *certiorari* and prohibition commenced on April 7, 2010 to assail the designation of respondent Hon. Alberto C. Agra, then the Acting Secretary of Justice, as concurrently the Acting Solicitor General.

Antecedents

The petitioner alleges that on March 1, 2010, President Gloria M. Macapagal-Arroyo appointed Agra as the Acting Secretary of Justice following the resignation of Secretary Agnes VST Devanadera in order to vie for a congressional seat in Quezon Province; that on March 5, 2010, President Arroyo designated Agra as the Acting Solicitor General in a concurrent capacity;[1] that on April 7, 2010, the petitioner, in his capacity as a taxpayer, a concerned citizen and a lawyer, commenced this suit to challenge the constitutionality of Agra's concurrent appointments or designations, claiming it to be prohibited under Section 13, Article VII of the 1987 Constitution; that during the pendency of the suit, President Benigno S. Aquino III appointed Atty.

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[1] *Rollo,* p. 13.

Jose Anselmo I. Cadiz as the Solicitor General; and that Cadiz assumed as the Solicitor General and commenced his duties as such on August 5, 2010.[2]

Agra renders a different version of the antecedents. He represents that on January 12, 2010, he was then the Government Corporate Counsel when President Arroyo designated him as the Acting Solicitor General in place of Solicitor General Devanadera who had been appointed as the Secretary of Justice;[3] that on March 5, 2010, President Arroyo designated him also as the Acting Secretary of Justice vice Secretary Devanadera who had meanwhile tendered her resignation in order to run for Congress representing a district in Quezon Province in the May 2010 elections; that he then relinquished his position as the Government Corporate Counsel; and that pending the appointment of his successor, Agra continued to perform his duties as the Acting Solicitor General.[4]

Notwithstanding the conflict in the versions of the parties, the fact that Agra has admitted to holding the two offices concurrently in acting capacities is settled, which is sufficient for purposes of resolving the constitutional question that petitioner raises herein.

The Case

In *Funa v. Ermita*,[5] the Court resolved a petition for *certiorari*, prohibition and *mandamus* brought by herein petitioner assailing the constitutionality of the designation of then Undersecretary of the Department of Transportation and Communications (DOTC) Maria Elena H. Bautista as concurrently the Officer-in-Charge of the Maritime Industry Authority. The petitioner has adopted here the arguments he advanced in *Funa v. Ermita*,

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[2] *Id.* at 172.

[3] *Id.* at 76.

[4] *Id.* at 77.

[5] G.R. No. 184740, February 11, 2010, 612 SCRA 308.

and he has rested his grounds of challenge mainly on the pronouncements in *Civil Liberties Union v. Executive Secretary*[6] and *Public Interest Center, Inc. v. Elma.*[7]

What may differentiate this challenge from those in the others is that the appointments being hereby challenged were in acting or temporary capacities. Still, the petitioner submits that the prohibition under Section 13, Article VII of the 1987 Constitution does not distinguish between an appointment or designation of a Member of the Cabinet in an acting or temporary capacity, on the one hand, and one in a permanent capacity, on the other hand; and that Acting Secretaries, being nonetheless Members of the Cabinet, are not exempt from the constitutional ban. He emphasizes that the position of the Solicitor General is not an *ex officio* position in relation to the position of the Secretary of Justice, considering that the Office of the Solicitor General (OSG) is an independent and autonomous office attached to the Department of Justice (DOJ).[8] He insists that the fact that Agra was extended an appointment as the Acting Solicitor General shows that he did not occupy that office in an *ex officio* capacity because an *ex officio* position does not require any further warrant or appointment.

Respondents contend, in contrast, that Agra's concurrent designations as the Acting Secretary of Justice and Acting Solicitor General were only in a temporary capacity, the only effect of which was to confer additional duties to him. Thus, as the Acting Solicitor General and Acting Secretary of Justice, Agra was not "holding" both offices in the strict constitutional sense.[9] They argue that an appointment, to be covered by the constitutional prohibition, must be regular and permanent, instead of a mere designation.

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[6] G.R. Nos. 83896 and 83815, February 22, 1991, 194 SCRA 317.

[7] G.R. No. 138965, June 30, 2006, 494 SCRA 53.

[8] Section 34, Chapter 12, Title III, Book 4 of the Administrative Code of 1987.

[9] *Rollo*, p. 83.

Respondents further contend that, even on the assumption that Agra's concurrent designation constituted "holding of multiple offices," his continued service as the Acting Solicitor General was akin to a hold-over; that upon Agra's designation as the Acting Secretary of Justice, his term as the Acting Solicitor General expired in view of the constitutional prohibition against holding of multiple offices by the Members of the Cabinet; that under the principle of hold-over, Agra continued his service as the Acting Solicitor General "until his successor is elected and qualified"[10] to "prevent a hiatus in the government pending the time when a successor may be chosen and inducted into office;"[11] and that during his continued service as the Acting Solicitor General, he did not receive any salaries and emoluments from the OSG after becoming the Acting Secretary of Justice on March 5, 2010.[12]

Respondents point out that the OSG's independence and autonomy are defined by the powers and functions conferred to that office by law, not by the person appointed to head such office;[13] and that although the OSG is attached to the DOJ, the DOJ's authority, control and supervision over the OSG are limited only to budgetary purposes.[14]

In his reply, petitioner counters that there was no "prevailing special circumstance" that justified the non-application to Agra of Section 13, Article VII of the 1987 Constitution;[15] that the temporariness of the appointment or designation is not an excuse to disregard the constitutional ban against holding of multiple offices by the Members of the Cabinet;[16] that Agra's invocation

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[10] *Id.* at 86.

[11] *Id.* at 87.

[12] *Id.* at 91, 100.

[13] *Id.* at 94.

[14] *Id.*

[15] *Id.* at 126.

[16] *Id.* at 128-129.

of the principle of hold-over is misplaced for being predicated upon an erroneous presentation of a material fact as to the time of his designation as the Acting Solicitor General and Acting Secretary of Justice; that Agra's concurrent designations further violated the *Administrative Code of 1987* which mandates that the OSG shall be autonomous and independent.[17]

Issue

Did the designation of Agra as the Acting Secretary of Justice, concurrently with his position of Acting Solicitor General, violate the constitutional prohibition against dual or multiple offices for the Members of the Cabinet and their deputies and assistants?

Ruling

The petition is meritorious.

The designation of Agra as Acting Secretary of Justice concurrently with his position of Acting Solicitor General was unconstitutional and void for being in violation of the constitutional prohibition under Section 13, Article VII of the 1987 Constitution.

1.
Requisites of judicial review not in issue

The power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to assail the validity of the subject act or issuance, that is, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[18]

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[17] *Id.* at 137.

[18] *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management,* G.R. No. 164987, April 24, 2012, 670 SCRA 373, 382.

Here, the OSG does not dispute the justiciability and ripeness for consideration and resolution by the Court of the matter raised by the petitioner. Also, the *locus standi* of the petitioner as a taxpayer, a concerned citizen and a lawyer to bring a suit of this nature has already been settled in his favor in rulings by the Court on several other public law litigations he brought. In *Funa v. Villar*,[19] for one, the Court has held:

> To have legal standing, therefore, a suitor must show that he has sustained or will sustain a "direct injury" as a result of a government action, or have a "material interest" in the issue affected by the challenged official act. However, **the Court has time and again acted liberally on the *locus standi* requirements and has accorded certain individuals, not otherwise directly injured, or with material interest affected, by a Government act, standing to sue provided a constitutional issue of critical significance is at stake. The rule on *locus standi* is after all a mere procedural technicality in relation to which the Court, in a *catena* of cases involving a subject of transcendental import, has waived, or relaxed, thus allowing non-traditional plaintiffs, such as concerned citizens, taxpayers, voters or legislators, to sue in the public interest, albeit they may not have been personally injured by the operation of a law or any other government act. In *David*, the Court laid out the bare minimum norm before the so-called "non-traditional suitors" may be extended standing to sue**, thusly:
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> 1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
>
> 2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question;
>
> 3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
>
> 4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.

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[19] G.R. No. 192791, April 24, 2012, 670 SCRA 579.

This case before Us is of transcendental importance, since it obviously has "far-reaching implications," and there is a need to promulgate rules that will guide the bench, bar, and the public in future analogous cases. We, thus, assume a liberal stance and allow petitioner to institute the instant petition.[20] **(Bold emphasis supplied)**

In *Funa v. Ermita*,[21] the Court recognized the *locus standi* of the petitioner as a taxpayer, a concerned citizen and a lawyer because the issue raised therein involved a subject of transcendental importance whose resolution was necessary to promulgate rules to guide the Bench, Bar, and the public in similar cases.

But, it is next posed, did not the intervening appointment of and assumption by Cadiz as the Solicitor General during the pendency of this suit render this suit and the issue tendered herein moot and academic?

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value.[22] Although the controversy could have ceased due to the intervening appointment of and assumption by Cadiz as the Solicitor General during the pendency of this suit, and such cessation of the controversy seemingly rendered moot and academic the resolution of the issue of the constitutionality of the concurrent holding of the two positions by Agra, the Court should still go forward and resolve the issue and not abstain from exercising its power of judicial review because this case comes under several of the well-recognized exceptions established in jurisprudence. Verily, the Court did not desist from resolving an issue that a supervening event meanwhile rendered moot and academic if any of the following recognized exceptions obtained, namely: (1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public

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[20] *Id.* at 594-595.

[21] *Supra* note 4.

[22] *Id.* at 319.

interest; (3) the constitutional issue raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition, yet evading review.[23]

It is the same here. The constitutionality of the concurrent holding by Agra of the two positions in the Cabinet, albeit in acting capacities, was an issue that comes under all the recognized exceptions. The issue involves a probable violation of the Constitution, and relates to a situation of exceptional character and of paramount public interest by reason of its transcendental importance to the people. The resolution of the issue will also be of the greatest value to the Bench and the Bar in view of the broad powers wielded through said positions. The situation further calls for the review because the situation is capable of repetition, yet evading review.[24] In other words, many important and practical benefits are still to be gained were the Court to proceed to the ultimate resolution of the constitutional issue posed.

2.
Unconstitutionality of Agra's concurrent designation as Acting Secretary of Justice and Acting Solicitor General

At the center of the controversy is the correct application of Section 13, Article VII of the 1987 Constitution, *viz*:

Section 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision,

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[23] See *Funa v. Villar, supra* note 18, at 592-593; *David v. Macapagal-Arroyo,* G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 160, 214-215.

[24] *Javier v. Commission on Elections,* Nos. L-68379-81, September 22, 1986, 144 SCRA 194, 198.

agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

A relevant and complementing provision is Section 7, paragraph (2), Article IX-B of the 1987 Constitution, to wit:

> Section 7. x x x
>
> Unless otherwise allowed by law or the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

The differentiation of the two constitutional provisions was well stated in *Funa v. Ermita*,[25] a case in which the petitioner herein also assailed the designation of DOTC Undersecretary as concurrent Officer-in-Charge of the Maritime Industry Authority, with the Court reiterating its pronouncement in *Civil Liberties Union v. The Executive Secretary*[26] on the intent of the Framers behind these provisions of the Constitution, *viz*:

> Thus, while all other appointive officials in the civil service are allowed to hold other office or employment in the government during their tenure when such is allowed by law or by the primary functions of their positions, members of the Cabinet, their deputies and assistants may do so only when expressly authorized by the Constitution itself. **In other words, Section 7, Article IX-B is meant to lay down the general rule applicable to all elective and appointive public officials and employees, while Section 13, Article VII is meant to be the exception applicable only to the President, the Vice-President, Members of the Cabinet, their deputies and assistants.**
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> x x x x x x x x x
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> Since the evident purpose of the framers of the 1987 Constitution is to impose a stricter prohibition on the President, Vice-President, members of the Cabinet, their deputies and assistants with respect

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[25] *Supra* note 4.

[26] *Supra* note 5, at 329-331.

to holding multiple offices or employment in the government during their tenure, the exception to this prohibition must be read with equal severity. On its face, the language of Section 13, Article VII is prohibitory so that it must be understood as intended to be a positive and unequivocal negation of the privilege of holding multiple government offices or employment. Verily, wherever the language used in the constitution is prohibitory, it is to be understood as intended to be a positive and unequivocal negation. **The phrase "unless otherwise provided in this Constitution" must be given a literal interpretation to refer only to those particular instances cited in the Constitution itself, to wit**: the Vice-President being appointed as a member of the Cabinet under Section 3, par. (2), Article VII; or acting as President in those instances provided under Section 7, pars. (2) and (3), Article VII; and, **the Secretary of Justice being *ex-officio* member of the Judicial and Bar Council by virtue of Section 8 (1), Article VIII.** (Bold emphasis supplied.)

Being designated as the Acting Secretary of Justice concurrently with his position of Acting Solicitor General, therefore, Agra was undoubtedly covered by Section 13, Article VII, *supra*, whose text and spirit were too clear to be differently read. Hence, Agra could not validly hold any other office or employment during his tenure as the Acting Solicitor General, because the Constitution has not otherwise so provided.[27]

It was of no moment that Agra's designation was in an acting or temporary capacity. The text of Section 13, *supra*, plainly indicates that the intent of the Framers of the Constitution was to impose a stricter prohibition on the President and the Members of his Cabinet in so far as holding other offices or employments in the Government or in government-owned or government controlled-corporations was concerned.[28] In this regard, *to hold an office* means to possess or to occupy the office, or to be in possession and administration of the office, which implies

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[27] *E.g.,* the Constitution, under its Section (1), Article VIII, provides that the Secretary of Justice sits as an *ex officio* member of the Judicial and Bar Council.

[1] *Civil Liberties Union v. The Executive Secretary, supra* note 5, at 326-327.

nothing less than the actual discharge of the functions and duties of the office.[29] Indeed, in the language of Section 13 itself, *supra*, the Constitution makes no reference to the nature of the appointment or designation. The prohibition against dual or multiple offices being held by one official must be construed as to apply to all appointments or designations, whether permanent or temporary, for it is without question that the avowed objective of Section 13, *supra*, is to prevent the concentration of powers in the Executive Department officials, specifically the President, the Vice-President, the Members of the Cabinet and their deputies and assistants.[30] To construe differently is to "open the veritable floodgates of circumvention of an important constitutional disqualification of officials in the Executive Department and of limitations on the President's power of appointment in the guise of temporary designations of Cabinet Members, undersecretaries and assistant secretaries as officers-in-charge of government agencies, instrumentalities, or government-owned or controlled corporations."[31]

According to *Public Interest Center, Inc. v. Elma*,[32] the only two exceptions against the holding of multiple offices are: (1) those provided for under the Constitution, such as Section 3, Article VII, authorizing the Vice President to become a member of the Cabinet; and (2) posts occupied by Executive officials specified in Section 13, Article VII without additional compensation in *ex officio* capacities as provided by law and as required by the primary functions of the officials' offices. In this regard, the decision in *Public Interest Center, Inc. v. Elma* adverted to the resolution issued on August 1, 1991 in *Civil Liberties Union v. The Executive Secretary*, whereby the Court held that the phrase "the Members of the Cabinet, and their deputies or assistants" found in Section 13, *supra*, referred

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[29] *Funa v. Ermita, supra* note 4, at 329.

[30] *Id.* at 330.

[31] *Id.* at 331.

[32] *Supra* note 6.

only to the heads of the various executive departments, their undersecretaries and assistant secretaries, and did not extend to other public officials given the rank of Secretary, Undersecretary or Assistant Secretary.[33] Hence, in *Public Interest Center, Inc. v. Elma*, the Court opined that the prohibition under Section 13 did not cover Elma, a Presidential Assistant with the rank of Undersecretary.[34]

It is equally remarkable, therefore, that Agra's designation as the Acting Secretary of Justice was not in an *ex officio* capacity, by which he would have been validly authorized to concurrently hold the two positions due to the holding of one office being the consequence of holding the other. Being included in the stricter prohibition embodied in Section 13, *supra*, Agra cannot liberally apply in his favor the broad exceptions provided in

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[33] The clarification was the Court's action on the motion for clarification filed in *Civil Liberties Union v. The Executive Secretary*, and revises the main opinion promulgated on February 22, 1991 (194 SCRA 317) *totally invalidating* Executive Order No. 284 dated July 25, 1987 (whose questioned Section 1 states: "Even if allowed by law or by the ordinary functions of his position, a member of the Cabinet, undersecretary or assistant secretary or other appointive officials of the Executive Department may, in addition to his primary position, hold not more than two positions in the government and government corporations and receive the corresponding compensation therefor; Provided, that this limitation shall not apply to ad hoc bodies or committees, or to boards, councils or bodies of which the President is the Chairman."). The clarifying dictum now considered Executive Order No. 284 *partly valid* to the extent that it included in its coverage "other appointive officials" aside from the members of the Cabinet, their undersecretaries and assistant secretaries, with the dispositive part of the clarificatory resolution of August 1, 1991 stating: "WHEREFORE, subject to the qualification above-stated, the petitions are GRANTED. Executive Order No. 284 is hereby declared null and void insofar as it allows a member of the Cabinet, undersecretary or assistant secretary to hold other positions in the government and government-owned and controlled corporations."

[34] *Public Interest Center, Inc. v. Elma, supra* note 6 at 64, with the Court summing up at the end with the statement: "In sum, the prohibition in Section 13, Article VII of the 1987 Constitution does not apply to respondent Elma since neither the PCGG Chairman nor the (Chief Presidential Legal Counsel) is a Cabinet secretary, undersecretary, or assistant secretary. x x x."

Section 7, paragraph 2, Article IX-B of the Constitution ("Unless otherwise allowed by law or the primary functions of his position") to justify his designation as Acting Secretary of Justice concurrently with his designation as Acting Solicitor General, or vice versa. Thus, the Court has said —

> [T]he qualifying phrase "unless otherwise provided in this Constitution" in Section 13, Article VII cannot possibly refer to the broad exceptions provided under Section 7, Article IX-B of the 1987 Constitution. To construe said qualifying phrase as respondents would have us do, would render nugatory and meaningless the manifest intent and purpose of the framers of the Constitution to impose a stricter prohibition on the President, Vice-President, Members of the Cabinet, their deputies and assistants with respect to holding other offices or employment in the government during their tenure. Respondents' interpretation that Section 13 of Article VII admits of the exceptions found in Section 7, par. (2) of Article IX-B would obliterate the distinction so carefully set by the framers of the Constitution as to when the high-ranking officials of the Executive Branch from the President to Assistant Secretary, on the one hand, and the generality of civil servants from the rank immediately below Assistant Secretary downwards, on the other, may hold any other office or position in the government during their tenure.[35]

To underscore the obvious, it is not sufficient for Agra to show that his holding of the other office was "allowed by law or the primary functions of his position." To claim the exemption of his concurrent designations from the coverage of the stricter prohibition under Section 13, *supra*, he needed to establish herein that his concurrent designation was expressly allowed by the Constitution. But, alas, he did not do so.

To be sure, Agra's concurrent designations as Acting Secretary of Justice and Acting Solicitor General did not come within the definition of an *ex officio* capacity. Had either of his concurrent designations been in an *ex officio* capacity in relation to the other, the Court might now be ruling in his favor.

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[35] *Civil Liberties Union v. The Executive Secretary, supra* note 5, at 329-330.

The import of an *ex officio* capacity has been fittingly explained in *Civil Liberties Union v. Executive Secretary*,[36] as follows:

> x x x. The term *ex officio* means "from office; by virtue of office." It refers to an "authority derived from official character merely, not expressly conferred upon the individual character, but rather annexed to the official position." *Ex officio* likewise denotes an "act done in an official character, or as a consequence of office, and without any other appointment or authority other than that conferred by the office." An *ex officio* member of a board is one who is a member by virtue of his title to a certain office, and without further warrant or appointment. x x x.
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> x x x x x x x x x
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> The *ex officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office. x x x.

Under the *Administrative Code of 1987*, the DOJ is mandated to "provide the government with a principal law agency which shall be both its legal counsel and prosecution arm; administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders and administration of the correctional system; implement the laws on the admission and stay of aliens, citizenship, land titling system, and settlement of land problems involving small landowners and members of indigenous cultural minorities; and provide free legal services to indigent members of the society."[37] The DOJ's specific powers and functions are as follows:

(1) Act as principal law agency of the government and as legal counsel and representative thereof, whenever so required;

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[36] *Id.* at 333-335.

[37] Sections 1 and 2, Chapter 1, Title III, Book IV of the Administrative Code of 1987.

(2) Investigate the commission of crimes, prosecute offenders and administer the probation and correction system;

(3) Extend free legal assistance/representation to indigents and poor litigants in criminal cases and non-commercial civil disputes;

(4) Preserve the integrity of land titles through proper registration;

(5) Investigate and arbitrate untitled land disputes involving small landowners and members of indigenous cultural communities;

(6) Provide immigration and naturalization regulatory services and implement the laws governing citizenship and the admission and stay of aliens;

(7) Provide legal services to the national government and its functionaries, including government-owned or controlled corporations and their subsidiaries; and

(8) Perform such other functions as may be provided by law.[38]

On the other hand, the *Administrative Code of 1987* confers upon the Office of the Solicitor General the following powers and functions, to wit:

The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:

1. Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

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[38] Section 3, Chapter 1, Title III, Book IV of the Administrative Code of 1987.

2. Investigate, initiate court action, or in any manner proceed against any person, corporation or firm for the enforcement of any contract, bond, guarantee, mortgage, pledge or other collateral executed in favor of the Government. Where proceedings are to be conducted outside of the Philippines the Solicitor General may employ counsel to assist in the discharge of the aforementioned responsibilities.

3. Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court.

4. Appear in all proceedings involving the acquisition or loss of Philippine citizenship.

5. Represent the Government in all land registration and related proceedings. Institute actions for the reversion to the Government of lands of the public domain and improvements thereon as well as lands held in violation of the Constitution.

6. Prepare, upon request of the President or other proper officer of the National Government, rules and guidelines for government entities governing the preparation of contracts, making investments, undertaking of transactions, and drafting of forms or other writings needed for official use, with the end in view of facilitating their enforcement and insuring that they are entered into or prepared conformably with law and for the best interests of the public.

7. Deputize, whenever in the opinion of the Solicitor General the public interest requires, any provincial or city fiscal to assist him in the performance of any function or discharge of any duty incumbent upon him, within the jurisdiction of the aforesaid provincial or city fiscal. When so deputized, the fiscal shall be under the control and supervision of the Solicitor General with regard to the conduct of the proceedings assigned to the fiscal, and he may be required to render reports or furnish information regarding the assignment.

8. Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cased involving their respective offices, brought before the courts and exercise supervision and control over such legal Officers with respect to such cases.

9. Call on any department, bureau, office, agency or instrumentality of the Government for such service, assistance and cooperation as may be necessary in fulfilling its functions and responsibilities and for this purpose enlist the services of any government official or employee in the pursuit of his tasks.

10. Departments, bureaus, agencies, offices, instrumentalities and corporations to whom the Office of the Solicitor General renders legal services are authorized to disburse funds from their sundry operating and other funds for the latter Office. For this purpose, the Solicitor General and his staff are specifically authorized to receive allowances as may be provided by the Government offices, instrumentalities and corporations concerned, in addition to their regular compensation.

11. Represent, upon the instructions of the President, the Republic of the Philippines in international litigations, negotiations or conferences where the legal position of the Republic must be defended or presented.

12. Act and represent the Republic and/or the people before any court, tribunal, body or commission in any matter, action or proceedings which, in his opinion affects the welfare of the people as the ends of justice may require; and

13. Perform such other functions as may be provided by law.[39]

The foregoing provisions of the applicable laws show that one position was not derived from the other. Indeed, the powers and functions of the OSG are neither required by the primary functions nor included by the powers of the DOJ, and vice versa. The OSG, while attached to the DOJ,[40] is not a constituent unit of the latter,[41] as, in fact, the *Administrative Code of 1987* decrees that the OSG is independent and autonomous.[42] With

[39] Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987.

[40] Section 34, Chapter 12, Title III, Book IV of the Administrative Code of 1987.

[41] Section 4, Chapter 1, Title III, Book IV of the Administrative Code of 1987.

[42] Section 34, Chapter 12, Title III, Book IV of the Administrative Code of 1987.

the enactment of Republic Act No. 9417,[43] the Solicitor General is now vested with a cabinet rank, and has the same qualifications for appointment, rank, prerogatives, salaries, allowances, benefits and privileges as those of the Presiding Justice of the Court of Appeals.[44]

Moreover, the magnitude of the scope of work of the Solicitor General, if added to the equally demanding tasks of the Secretary of Justice, is obviously too much for any one official to bear. Apart from the sure peril of political pressure, the concurrent holding of the two positions, even if they are not entirely incompatible, may affect sound government operations and the proper performance of duties. Heed should be paid to what the Court has pointedly observed in *Civil Liberties Union v. Executive Secretary*: [45]

> Being head of an executive department is no mean job. It is more than a full-time job, requiring full attention, specialized knowledge, skills and expertise. If maximum benefits are to be derived from a department head's ability and expertise, he should be allowed to attend to his duties and responsibilities without the distraction of other governmental offices or employment. He should be precluded from dissipating his efforts, attention and energy among too many positions of responsibility, which may result in haphazardness and inefficiency. Surely the advantages to be derived from this concentration of attention, knowledge and expertise, particularly at this stage of our national and economic development, far outweigh the benefits, if any, that may be gained from a department head spreading himself too thin and taking in more than what he can handle.

It is not amiss to observe, lastly, that assuming that Agra, as the Acting Solicitor General, was not covered by the stricter prohibition under Section 13, *supra*, due to such position being

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[43] *An Act to Strengthen the Office of the Solicitor General, by Expanding and Streamlining its Bureaucracy, Upgrading Employee Skills, and Augmenting Benefits, and Appropriating funds therefor and for Other Purposes*.

[44] Section 3, Republic Act No. 9417.

[45] *Supra* note 5, at 339.

merely vested with a cabinet rank under Section 3, Republic Act No. 9417, he nonetheless remained covered by the general prohibition under Section 7, *supra*. Hence, his concurrent designations were still subject to the conditions under the latter constitutional provision. In this regard, the Court aptly pointed out in *Public Interest Center, Inc. v. Elma*:[46]

> The general rule contained in Article IX-B of the 1987 Constitution permits an appointive official to hold more than one office only if "allowed by law or by the primary functions of his position." In the case of *Quimson v. Ozaeta*, this Court ruled that, "[t]here is no legal objection to a government official occupying two government offices and performing the functions of both *as long as there is no incompatibility*." The crucial test in determining whether incompatibility exists between two offices was laid out in *People v. Green* — whether one office is subordinate to the other, in the sense that one office has the right to interfere with the other.
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> > [I]ncompatibility between two offices, is an inconsistency in the functions of the two; x x x Where one office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant, there is not that incompatibility from which the law declares that the acceptance of the one is the vacation of the other. The force of the word, in its application to this matter is, that from the nature and relations to each other, of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one, toward the incumbent of the other. x x x The offices must subordinate, one [over] the other, and they must, per se, have the right to interfere, one with the other, before they are incompatible at common law. x x x.
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> x x x x x x x x x
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> While Section 7, Article IX-B of the 1987 Constitution applies in general to all elective and appointive officials, Section 13, Article VII, thereof applies in particular to Cabinet secretaries, undersecretaries and assistant secretaries. In the Resolution in *Civil*

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[46] *Supra* note 6.

Liberties Union v. Executive Secretary, this Court already clarified the scope of the prohibition provided in Section 13, Article VII of the 1987 Constitution. Citing the case of *US v. Mouat*, it specifically identified the persons who are affected by this prohibition as secretaries, undersecretaries and assistant secretaries; and categorically excluded public officers who merely have the rank of secretary, undersecretary or assistant secretary.

> Another point of clarification raised by the Solicitor General refers to the persons affected by the constitutional prohibition. The persons cited in the constitutional provision are the "Members of the Cabinet, their deputies and assistants." These terms must be given their common and general acceptation as referring to the heads of the executive departments, their undersecretaries and assistant secretaries. *Public officials given the rank equivalent to a Secretary, Undersecretary, or Assistant Secretary are not covered by the prohibition, nor is the Solicitor General affected thereby*. (Italics supplied).

It is clear from the foregoing that the strict prohibition under Section 13, Article VII of the 1987 Constitution is not applicable to the PCGG Chairman nor to the CPLC, as neither of them is a secretary, undersecretary, nor an assistant secretary, even if the former may have the same rank as the latter positions.

It must be emphasized, however, that despite the non-applicability of Section 13, Article VII of the 1987 Constitution to respondent Elma, he remains covered by the general prohibition under Section 7, Article IX-B and his appointments must still comply with the standard of compatibility of officers laid down therein; failing which, his appointments are hereby pronounced in violation of the Constitution.[47]

Clearly, the primary functions of the Office of the Solicitor General are not related or necessary to the primary functions of the Department of Justice. Considering that the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both,[48] an incompatibility between the offices exists, further

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

[48] *Summers v. Ozaeta,* 81 Phil. 754, 764 (1948); see Mechem, *A Treatise on the Law of Public Offices and Officers,* pp. 268-269 (1890).

warranting the declaration of Agra's designation as the Acting Secretary of Justice, concurrently with his designation as the Acting Solicitor General, to be void for being in violation of the express provisions of the Constitution.

3.

Effect of declaration of unconstitutionality of Agra's concurrent appointment; the *de facto* officer doctrine

In view of the application of the stricter prohibition under Section 13, *supra*, Agra did not validly hold the position of Acting Secretary of Justice concurrently with his holding of the position of Acting Solicitor General. Accordingly, he was not to be considered as a *de jure* officer for the entire period of his tenure as the Acting Secretary of Justice. A *de jure* officer is one who is deemed, in all respects, legally appointed and qualified and whose term of office has not expired.[49]

That notwithstanding, Agra was a *de facto* officer during his tenure as Acting Secretary of Justice. In *Civil Liberties Union v. Executive Secretary*,[50] the Court said:

> During their tenure in the questioned positions, respondents may be considered *de facto* officers and as such entitled to emoluments for actual services rendered. It has been held that "in cases where there is no *de jure,* officer, a *de facto* officer, who, in good faith has had possession of the office and has discharged the duties pertaining thereto, is legally entitled to the emoluments of the office, and may in an appropriate action recover the salary, fees and other compensations attached to the office. This doctrine is, undoubtedly, supported on equitable grounds since it seems unjust that the public should benefit by the services of an officer *de facto* and then be freed from all liability to pay any one for such services. Any per diem, allowances or other emoluments received by the respondents by virtue of actual services rendered in the questioned positions may therefore be retained by them.

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[49] *Topacio v. Ong,* G.R. No. 179895, December 18, 2008, 574 SCRA 817, 830.

[50] *Supra* note 5, at 339-340.

A *de facto* officer is one who derives his appointment from one having colorable authority to appoint, if the office is an appointive office, and whose appointment is valid on its face.[51] He may also be one who is in possession of an office, and is discharging its duties under color of authority, by which is meant authority derived from an appointment, however irregular or informal, so that the incumbent is not a mere volunteer.[52] Consequently, the acts of the *de facto* officer are just as valid for all purposes as those of a *de jure* officer, in so far as the public or third persons who are interested therein are concerned.[53]

In order to be clear, therefore, the Court holds that all official actions of Agra as a *de facto* Acting Secretary of Justice, assuming that was his later designation, were presumed valid, binding and effective as if he was the officer legally appointed and qualified for the office.[54] This clarification is necessary in order to protect the sanctity of the dealings by the public with persons whose ostensible authority emanates from the State.[55] Agra's official actions covered by this clarification extend to but are not limited to the promulgation of resolutions on petitions for review filed in the Department of Justice, and the issuance of department orders, memoranda and circulars relative to the prosecution of criminal cases.

WHEREFORE, the Court *GRANTS* the petition for *certiorari* and prohibition; *ANNULS AND VOIDS* the designation of Hon. Alberto C. Agra as the Acting Secretary of Justice in a concurrent capacity with his position as the Acting Solicitor General for being unconstitutional and violative of Section 13, Article VII

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[51] *Dimaandal v. Commission on Audit,* G.R. No. 122197, June 26, 1998, 291 SCRA 322, 330.

[52] Id; see also *The Civil Service Commission v. Joson, Jr.,* G.R. No. 154674, May 27, 2004, 429 SCRA 773, 786-787.

[53] See Mechem, *supra* note 47, at 10 and 218; *Topacio v. Ong, supra* note 48, at 829-830.

[54] *Id.*; *Señeres v. Commission on Elections,* G.R. No. 178678, April 16, 2009, 585 SCRA 557, 575.

[55] *Topacio v. Ong, supra* note 48 at 830.

of the 1987 Constitution; and *DECLARES* that Hon. Alberto C. Agra was a *de facto* officer during his tenure as Acting Secretary of Justice.

No pronouncement on costs of suit.

SO ORDERED.

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

EN BANC

[G.R. No. 204528. February 19, 2013]

SECRETARY LEILA M. DE LIMA, DIRECTOR NONNATUS R. ROJAS and DEPUTY DIRECTOR REYNALDO O. ESMERALDA, *petitioners, vs.* **MAGTANGGOL B. GATDULA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; WRIT OF *AMPARO* (A.M. NO. 07-9-12-SC); AN EQUITABLE AND EXTRAORDINARY REMEDY WHICH IT AIMS TO ADDRESS CONCERNS SUCH AS, AMONG OTHERS, EXTRAJUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES.— The remedy of the Writ of *Amparo* is an equitable and extraordinary remedy to safeguard the right of the people to life, liberty and security as enshrined in the 1987 Constitution. The Rule on the Writ of *Amparo* issued as an exercise of the Supreme Court's power to promulgate rules concerning the protection and enforcement of constitutional rights. It aims to address concerns such as, among others, extrajudicial killings and enforced disappearances.

2. ID.; ID.; PROCEDURE; EXPOUNDED.— Due to the delicate and urgent nature of these controversies, the procedure was devised to afford swift but decisive relief. It is initiated through a **petition** to be filed in a Regional Trial Court, Sandiganbayan, the Court of Appeals, or the Supreme Court. The judge or justice then makes an "immediate" evaluation of the facts as alleged in the petition and the affidavits submitted "with the attendant circumstances detailed". After evaluation, the judge has the option to **issue the Writ** of *Amparo* or immediately dismiss the case. Dismissal is proper if the petition and the supporting affidavits do not show that the petitioner's right to life, liberty or security is under threat or the acts complained of are not unlawful. On the other hand, the issuance of the writ itself sets in motion presumptive judicial protection for the petitioner. The court compels the respondents to appear before a court of law to show whether the grounds for more permanent protection and interim reliefs are necessary. The respondents are required to file a **Return** after the issuance of the writ through the clerk of court. The Return serves as the responsive pleading to the petition. Unlike an Answer, the Return has other purposes aside from identifying the issues in the case. Respondents are also required to detail the actions they had taken to determine the fate or whereabouts of the aggrieved party. If the respondents are public officials or employees, they are also required to state the actions they had taken to: (i) verify the identity of the aggrieved party; (ii) recover and preserve evidence related to the death or disappearance of the person identified in the petition; (iii) identify witnesses and obtain statements concerning the death or disappearance; (iv) determine the cause, manner, location, and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance; and (vi) bring the suspected offenders before a competent court. Clearly these matters are important to the judge so that s/he can calibrate the means and methods that will be required to further the protections, if any, that will be due to the petitioner. There will be a **summary hearing** only after the Return is filed to determine the merits of the petition and whether interim reliefs are warranted. If the Return is not filed, the hearing will be done ex parte. After the hearing, the court will render the **judgment** within ten (10) days from the time the petition is

submitted for decision. If the allegations are proven with substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate. The judgment should contain measures which the judge views as essential for the continued protection of the petitioner in the *Amparo* case. These measures must be detailed enough so that the judge may be able to verify and monitor the actions taken by the respondents. It is this judgment that could be subject to **appeal** to the Supreme Court via Rule 45. After the measures have served their purpose, the judgment will be satisfied. In Amparo cases, this is when the threats to the petitioner's life, liberty and security cease to exist as evaluated by the court that renders the judgment. Parenthetically, the case may also be terminated through consolidation should a subsequent case be filed — either criminal or civil. Until the full satisfaction of the judgment, the extraordinary remedy of *Amparo* allows vigilant judicial monitoring to ensure the protection of constitutional rights.

3. ID.; ID.; ID.; THE "*DECISION*" DATED 20 MARCH 2012 ASSAILED BY PETITIONERS COULD NOT BE THE JUDGMENT OR FINAL ORDER THAT IS APPEALABLE UNDER SECTION 19 OF THE RULE; IT IS AN INTERLOCUTORY ORDER, AS SUGGESTED BY THE FACT THAT TEMPORARY PROTECTION, PRODUCTION AND INSPECTION ORDERS WERE GIVEN TOGETHER WITH THE DECISION.— The "*Decision*" dated 20 March 2012 assailed by the petitioners **could not be** the judgment or final order that is appealable under Section 19 of the Rule on the Writ of *Amparo*. This is clear from the tenor of the dispositive portion of the "Decision". x x x This "Decision" pertained to the **issuance of the writ** under Section 6 of the Rule on the Writ of *Amparo*, not the **judgment** under Section 18. The "Decision" is thus an interlocutory order, as suggested by the fact that temporary protection, production and inspection orders were given together with the decision. The temporary protection, production and inspection orders are **interim reliefs** that may be granted by the court upon filing of the petition but before final judgment is rendered.

4. ID.; ID.; ID.; THE TRIAL COURT'S INSISTENCE ON THE FILING OF AN ANSWER WAS INAPPRORIATE; IT IS THE RETURN THAT SERVES AS THE RESPONSIVE

PLEADING FOR PETITIONS FOR THE ISSUANCE OF WRITS OF *AMPARO*.— The confusion of the parties arose due to the procedural irregularities in the RTC. First, the insistence on filing of an Answer was inappropriate. It is the Return that serves as the responsive pleading for petitions for the issuance of Writs of *Amparo*. The requirement to file an Answer is contrary to the intention of the Court to provide a speedy remedy to those whose right to life, liberty and security are violated or are threatened to be violated. In utter disregard of the Rule on the Writ of *Amparo*, Judge Pampilo insisted on issuing summons and requiring an Answer.

5. ID.; ID.; ID.; THE APPLICATION OF THE REVISED RULES OF SUMMARY PROCEDURE IS SERIOUSLY MISPLACED; THE SUMMARY PROCEDURE ONLY APPLIES TO CERTAIN CRIMINAL AND CIVIL CASES IN MTC/MTCC/MCTCs; A WRIT OF *AMPARO* IS A SPECIAL PROCEEDING AND IS NOT A CIVIL NOR A CRIMINAL ACTION.— Judge Pampilo's basis for requiring an Answer was mentioned in his Order dated 2 March 2012: Under Section 25 of the same rule [on the Writ of *Amparo*], the Rules of Court shall apply suppletorily insofar as it is not inconsistent with the said rule. Considering the summary nature of the petition, Section 5 of the Revised Rules of Summary Procedure shall apply. x x x It is clear from this rule that this type of summary procedure only applies to MTC/MTCC/MCTCs. It is mind-boggling how this rule could possibly apply to proceedings in an RTC. A side from that, this Court limited the application of summary procedure to certain **civil** and **criminal** cases. A writ of *Amparo* is a **special proceeding**. It is a remedy by which a party seeks to establish a status, a right or particular fact. It is not a civil nor a criminal action, hence, the application of the Revised Rule on Summary Procedure is seriously misplaced.

6. ID.; ID.; ID.; IT WAS HIGHLY IRREGULAR TO HOLD A HEARING ON THE MAIN CASE PRIOR TO THE ISSUANCE OF THE WRIT AND FILING OF THE RETURN BECAUSE WITHOUT A RETURN, THE ISSUES COULD NOT HAVE BEEN PROPERLY JOINED; A MEMORANDUM IS A PROHIBITED PLEADING UNDER THE RULE ON THE WRIT OF *AMPARO*.— The second irregularity was the holding of a hearing on the main case prior to the issuance of the writ

and the filing of a Return. Without a Return, the issues could not have been properly joined. Worse, is the trial court's third irregularity: it required a memorandum in lieu of a responsive pleading (A nswer) of De Lima, et al. The Return in *Amparo* cases allows the respondents to frame the issues subject to a hearing. Hence, it should be done prior to the hearing, not after. A memorandum, on the other hand, is a synthesis of the claims of the party litigants and is a final pleading usually required before the case is submitted for decision. One cannot substitute for the other since these submissions have different functions in facilitating the suit. More importantly, a memorandum is a prohibited pleading under the Rule on the Writ of *Amparo*.

7. ID.; ID.; ID.; THE PRIVILEGE OF THE WRIT OF *AMPARO* SHOULD BE DISTINGUISHED FROM THE ACTUAL ORDER CALLED THE WRIT OF *AMPARO*; A JUDGMENT WHICH SIMPLY GRANTS "THE PRIVILEGE OF THE WRIT" CANNOT BE EXECUTED AND IS TANTAMOUNT TO A FAILURE OF THE JUDGE TO INTERVENE AND GRANT JUDICIAL SUCCOR TO THE PETITIONER.— The fourth irregularity was in the "Decision" dated 20 March 2012 itself. In the body of its decision, the RTC stated: "A ccordingly this court **GRANTS the privilege of the writ and the** interim **reliefs** prayed for by the petitioner." This gives the impression that the decision was the **judgment** since the phraseology is similar to Section 18 of the Rule on the Writ of *Amparo*: "SEC. 18. Judgment. — The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall **grant the privilege of the writ and such reliefs** as may be proper and appropriate; otherwise, the privilege shall be denied." **The privilege of the Writ of *Amparo*** should be distinguished from the **actual order** called the *Writ of Amparo*. The privilege includes availment of the entire procedure outlined in A .M. No. 07-9-12-SC, the Rule on the Writ of *Amparo*. A fter examining the petition and its attached affidavits, the Return and the evidence presented in the summary hearing, the judgment should detail the required acts from the respondents that will mitigate, if not totally eradicate, the violation of or the threat to the petitioner's life, liberty or security. A judgment which simply grants "the privilege of the

writ" cannot be executed. It is tantamount to a failure of the judge to intervene and grant judicial succor to the petitioner. Petitions filed to avail of the privilege of the Writ of *Amparo* arise out of very real and concrete circumstances. Judicial responses cannot be as tragically symbolic or ritualistic as "granting the privilege of the *Writ of Amparo*."

8. ID.; ID.; ID.; THE PROCEDURAL IRREGULARITIES IN THE TRIAL COURT AFFECTED THE MODE OF APPEAL THAT PETITIONERS USED IN ELEVATING THE MATTER TO THE COURT.— The procedural irregularities in the RTC affected the mode of appeal that petitioners used in elevating the matter to this Court. It is the responsibility of counsels for the parties to raise issues using the proper procedure at the right time. Procedural rules are meant to assist the parties and courts efficiently deal with the substantive issues pertaining to a case. *When it is the judge himself who disregards the rules of procedure, delay and confusion result. The Petition for Review* is not the proper remedy to assail the interlocutory order denominated as "*Decision*" dated 20 March 2012. A Petition for *Certiorari*, on the other hand, is prohibited. Simply dismissing the present petition, however, will cause grave injustice to the parties involved. It undermines the salutary purposes for which the Rule on the Writ of *Amparo* were promulgated.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Espejo and Associates for respondent.

R E S O L U T I O N

LEONEN, *J.*:

Submitted for our resolution is a prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction to enjoin "the Regional Trial Court, Branch 26, in Manila from implementing its Decision x x x in Civil Case No. 12-127405 granting respondent's application for the issuance of inspection

and production orders x x x."[1] This is raised through a *Petition for Review on Certiorari* under Rule 45 from the *"Decision"* rendered by the Regional Trial Court dated 20 March 2012.

From the records, it appears that on 27 February 2012, respondent Magtanggol B. Gatdula filed a *Petition for the Issuance of a Writ of Amparo* in the Regional Trial Court of Manila.[2] This case was docketed as *In the Matter of the Petition for Issuance of Writ of Amparo of Atty. Magtanggol B. Gatdula*, SP No. 12-127405. It was raffled to the sala of Judge Silvino T. Pampilo, Jr. on the same day.

The *Amparo* was directed against petitioners Justice Secretary Leila M. De Lima, Director Nonnatus R. Rojas and Deputy Director Reynaldo O. Esmeralda of the National Bureau of Investigation (DE LIMA, ET AL. for brevity). Gatdula wanted De Lima, et al. "to cease and desist from framing up Petitioner [Gatdula] for the fake ambush incident by filing bogus charges of Frustrated Murder against Petitioner [Gatdula] in relation to the alleged ambush incident."[3]

Instead of deciding on whether to issue a Writ of *Amparo*, the judge issued summons and ordered De Lima, et al. to file an Answer.[4] He also set the case for hearing on 1 March 2012. The hearing was held allegedly for determining whether a temporary protection order may be issued. During that hearing, counsel for De Lima, et al. manifested that a Return, not an Answer, is appropriate for *Amparo* cases.[5]

In an *Order* dated 2 March 2012,[6] Judge Pampilo insisted that "[s]ince no writ has been issued, return is not the required

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[1] *Rollo,* p. 63.

[2] *Id.* at 81-95.

[3] *Id.* at 92.

[4] *Id.* at 10.

[5] *Id.*

[6] *Id.* at 182-183.

pleading but answer".[7] The judge noted that the Rules of Court apply suppletorily in *Amparo* cases.[8] He opined that the Revised Rules of Summary Procedure applied and thus required an Answer.[9]

Judge Pampilo proceeded to conduct a hearing on the main case on 7 March 2012.[10] Even without a Return nor an Answer, he ordered the parties to file their respective memoranda within five (5) working days after that hearing. Since the period to file an Answer had not yet lapsed by then, the judge also decided that the memorandum of De Lima, et al. would be filed in lieu of their Answer.[11]

On 20 March 2012, the RTC rendered a "*Decision"* granting the issuance of the Writ of *Amparo*. The RTC also granted the interim reliefs prayed for, namely: temporary protection, production and inspection orders. The production and inspection orders were in relation to the evidence and reports involving an on-going investigation of the attempted assassination of Deputy Director Esmeralda. It is not clear from the records how these pieces of evidence may be related to the alleged threat to the life, liberty or security of the respondent Gatdula.

In an *Order* dated 8 October 2012, the RTC denied the *Motion for Reconsideration* dated 23 March 2012 filed by De Lima, et al.

Petitioners Sec. De Lima, et al. thus came to this Court assailing the RTC "*Decision"* dated 20 March 2012 through a *Petition for Review on Certiorari (With Very Urgent Application for the Issuance of a Temporary Restraining Order/Writ of Preliminary Injunction)* via Rule 45, as enunciated in Section 19

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[7] *Id.* at 182.

[8] Rule on the *Writ of Amparo*, A.M. No. 07-9-12-SC, 25 September 2007, Sec. 25.

[9] *Rollo*, p. 183.

[10] *Id.* at 12.

[11] *Id.* at 13.

of the Rule on the *Writ of Amparo* (A.M. No. 07-9-12-SC, 25 September 2007), viz:

> SEC. 19. *Appeal.* – Any party may appeal from the **final judgment** or **order** to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both. x x x (Emphasis supplied).

It is the Court's view that the "*Decision"* dated 20 March 2012 granting the writ of *Amparo* is not the judgment or final order contemplated under this rule. Hence, a Petition for Review under Rule 45 may not yet be the proper remedy at this time.

The RTC and the Parties must understand the nature of the remedy of *Amparo* to put its procedures in the proper context.

The remedy of the Writ of *Amparo* is an equitable and extraordinary remedy to safeguard the right of the people to life, liberty[12] and security[13] as enshrined in the 1987 Constitution.[14] The Rule on the Writ of *Amparo* was issued as an exercise of the Supreme Court's power to promulgate rules concerning the protection and enforcement of constitutional rights.[15] It aims to address concerns such as, among others, extrajudicial killings and enforced disappearances.[16]

Due to the delicate and urgent nature of these controversies, the procedure was devised to afford swift but decisive relief.[17] It is initiated through a **petition**[18] to be filed in a Regional Trial

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[12] CONSTITUTION, Art III, Sec. 1.

[13] CONSTITUTION, Art. III, Sec. 2.

[14] *Secretary of Defense v. Manalo*, G.R. No. 180906, 7 October 2008, 568 SCRA 1 at 43. This case is a landmark decision wherein Chief Justice Reynato Puno, the proponent of the creation of the Rule on the *Writ of Amparo*, explains the historical and constitutional roots of the remedy.

[15] CONSTITUTION, Art. VIII, Sec. 5 (5).

[16] *Secretary of Defense v. Manalo, supra* at 42.

[17] *Id.*

[18] Rule on the *Writ of Amparo*, A.M. No. 07-9-12-SC, 25 September 2007, Sec. 1.

Court, Sandiganbayan, the Court of Appeals, or the Supreme Court.[19] The judge or justice then makes an "immediate" evaluation[20] of the facts as alleged in the petition and the affidavits submitted "with the attendant circumstances detailed".[21] After evaluation, the judge has the option to **issue the Writ** of *Amparo*[22] or immediately dismiss the case. Dismissal is proper if the petition and the supporting affidavits do not show that the petitioner's right to life, liberty or security is under threat or the acts complained of are not unlawful. On the other hand, the issuance of the writ itself sets in motion presumptive judicial protection for the petitioner. The court compels the respondents to appear before a court of law to show whether the grounds for more permanent protection and interim reliefs are necessary.

The respondents are required to file a **Return**[23] after the issuance of the writ through the clerk of court. The Return serves as the responsive pleading to the petition.[24] Unlike an Answer, the Return has other purposes aside from identifying the issues in the case. Respondents are also required to detail the actions they had taken to determine the fate or whereabouts of the aggrieved party.

If the respondents are public officials or employees, they are also required to state the actions they had taken to: (i) verify the identity of the aggrieved party; (ii) recover and preserve evidence related to the death or disappearance of the person identified in the petition; (iii) identify witnesses and obtain statements concerning the death or disappearance; (iv) determine

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[19] *Id.* at Sec. 3.

[20] *Id.* at Sec. 6, *states* "x x x Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if **on its face it ought to issue.** x x x". (Emphasis supplied)

[21] *Id.* at Sec. 5 (c).

[22] *Id.* at Sec. 6.

[23] *Id.* at Sec. 9.

[24] Annotation to the Writ of *Amparo* at 7 <http://sc.judiciary.gov.ph/Annotation_Amparo.pdf> (visited 6 Feb. 2013).

the cause, manner, location, and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance; and (vi) bring the suspected offenders before a competent court.[25] Clearly these matters are important to the judge so that s/he can calibrate the means and methods that will be required to further the protections, if any, that will be due to the petitioner.

There will be a **summary hearing**[26] only after the Return is filed to determine the merits of the petition and whether interim reliefs are warranted. If the Return is not filed, the hearing will be done *ex parte*.[27] After the hearing, the court will render the **judgment** within ten (10) days from the time the petition is submitted for decision.[28]

If the allegations are proven with substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate.[29] The judgment should contain measures which the judge views as essential for the continued protection of the petitioner in the *Amparo* case. These measures must be detailed enough so that the judge may be able to verify and monitor the actions taken by the respondents. It is this judgment that could be subject to **appeal** to the Supreme Court via Rule 45.[30] After the measures have served their purpose, the judgment will be satisfied. In *Amparo* cases, this is when the threats to the petitioner's life, liberty and security cease to exist as evaluated by the court that renders the judgment. Parenthetically, the case may also be terminated through consolidation should a subsequent case be filed — either criminal or civil.[31] Until the full satisfaction of the judgment, the

[25] Rule on the Writ of *Amparo*, A.M. No. 07-9-12-SC, 25 September 2007, Sec. 9.

[26] *Id.* at Sec. 13.

[27] *Id.* at Sec. 12.

[28] *Id.* at Sec. 18.

[29] *Id.*

[30] *Id.* at Sec. 19.

[31] *Id.* at Sec. 23.

extraordinary remedy of *Amparo* allows vigilant judicial monitoring to ensure the protection of constitutional rights.

The "*Decision"* dated 20 March 2012 assailed by the petitioners ***could not be*** the judgment or final order that is appealable under Section 19 of the Rule on the Writ of *Amparo*. This is clear from the tenor of the dispositive portion of the "*Decision"*, to wit:

> The Branch Clerk of Court of Court [sic] is hereby DIRECTED to issue the Writ of *Amparo*.
>
> Likewise, the Branch Clerk of Court is hereby DIRECTED to effect the service of the Writ of *Amparo* in an expeditious manner upon all concerned, and for this purpose may call upon the assistance of any military or civilian agency of the government.

This "*Decision"* pertained to the **issuance of the writ** under Section 6 of the Rule on the Writ of *Amparo*, not the **judgment** under Section 18. The "*Decision"* is thus an interlocutory order, as suggested by the fact that temporary protection, production and inspection orders were given together with the decision. The temporary protection, production and inspection orders are **interim reliefs** that may be granted by the court upon filing of the petition but *before* final judgment is rendered.[32]

The confusion of the parties arose due to the procedural irregularities in the RTC.

First, the insistence on filing of an Answer was inappropriate. It is the Return that serves as the responsive pleading for petitions for the issuance of Writs of *Amparo*. The requirement to file an Answer is contrary to the intention of the Court to provide a speedy remedy to those whose right to life, liberty and security are violated or are threatened to be violated. In utter disregard of the Rule on the *Writ of Amparo*, Judge Pampilo insisted on issuing summons and requiring an Answer.

Judge Pampilo's basis for requiring an Answer was mentioned in his *Order* dated 2 March 2012:

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[32] *Id.* at Sec.14.

Under Section 25 of the same rule [on the Writ of *Amparo*], the Rules of Court shall apply suppletorily insofar as it is not inconsistent with the said rule.

Considering the summary nature of the petition, Section 5 of the Revised Rules of Summary Procedure shall apply.

> Section 5. Answer — Within ten (10) days from service of summons, the defendant shall file his Answer to the complaint and serve a copy thereof on the plaintiff. x x x

WHEREFORE, based on the foregoing, the respondents are required to file their Answer ten (days) from receipt of this Order.[33]

The 1991 Revised Rules of Summary Procedure is a special rule that the Court has devised for the following circumstances:

SECTION 1. *Scope.* – This rule shall govern the summary procedure in the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts in the following cases falling within their jurisdiction:

A. *Civil Cases:*

(1) All cases of forcible entry and unlawful detainer, x x x.

(2) All other cases, except probate proceedings, where the total amount of the plaintiff's claim does not exceed x x x.

B. *Criminal Cases:*

(1) Violations of traffic laws, rules and regulations;

(2) Violations of the rental law;

(3) Violations of municipal or city ordinances;

(4) All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six months, or a fine not exceeding one thousand pesos (₱1,000.00), or both, x x x.

x x x x x x x x x

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[33] *Rollo,* p. 183.

It is clear from this rule that this type of summary procedure only applies to MTC/MTCC/MCTCs. It is mind-boggling how this rule could possibly apply to proceedings in an RTC. Aside from that, this Court limited the application of summary procedure to certain **civil** and **criminal** cases. A writ of *Amparo* is a **special proceeding**. It is a remedy by which a party seeks to establish a status, a right or particular fact.[34] It is not a civil nor a criminal action, hence, the application of the Revised Rule on Summary Procedure is seriously misplaced.

The second irregularity was the holding of a hearing on the main case *prior* to the issuance of the writ and the filing of a Return. Without a Return, the issues could not have been properly joined.

Worse, is the trial court's third irregularity: it required a memorandum in lieu of a responsive pleading (Answer) of De Lima, et al.

The Return in *Amparo* cases allows the respondents to frame the issues subject to a hearing. Hence, it should be done prior to the hearing, not after. A memorandum, on the other hand, is a synthesis of the claims of the party litigants and is a final pleading usually required before the case is submitted for decision. One cannot substitute for the other since these submissions have different functions in facilitating the suit.

More importantly, a memorandum is a prohibited pleading under the Rule on the Writ of *Amparo*.[35]

The fourth irregularity was in the "*Decision"* dated 20 March 2012 itself. In the body of its decision, the RTC stated:

"Accordingly this court **GRANTS the privilege of the writ and the** interim **reliefs** prayed for by the petitioner." (Emphasis supplied).

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[34] RULES OF COURT, Rule 1, Sec. 3 (c).

[35] Rule on the Writ of *Amparo*, A.M. No. 07-9-12-SC, 25 September 2007, Sec. 11 (j).

This gives the impression that the decision was the **judgment** since the phraseology is similar to Section 18 of the Rule on the Writ of *Amparo*:

"SEC. 18. *Judgment.* — The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall **grant the privilege of the writ and such reliefs** as may be proper and appropriate; otherwise, the privilege shall be denied." (Emphasis supplied).

The privilege of the *Writ of Amparo* should be distinguished from the **actual order** called the *Writ of Amparo*. The privilege includes availment of the entire procedure outlined in A.M. No. 07-9-12-SC, the Rule on the Writ of *Amparo*. After examining the petition and its attached affidavits, the Return and the evidence presented in the summary hearing, the judgment should detail the required acts from the respondents that will mitigate, if not totally eradicate, the violation of or the threat to the petitioner's life, liberty or security.

A judgment which simply grants "the privilege of the writ" cannot be executed. It is tantamount to a failure of the judge to intervene and grant judicial succor to the petitioner. Petitions filed to avail of the privilege of the Writ of *Amparo* arise out of very real and concrete circumstances. Judicial responses cannot be as tragically symbolic or ritualistic as "granting the privilege of the Writ of *Amparo*."

The procedural irregularities in the RTC affected the mode of appeal that petitioners used in elevating the matter to this Court.

It is the responsibility of counsels for the parties to raise issues using the proper procedure at the right time. Procedural rules are meant to assist the parties and courts efficiently deal with the substantive issues pertaining to a case. *When it is the judge himself who disregards the rules of procedure, delay and confusion result.*

The *Petition for Review* is not the proper remedy to assail the interlocutory order denominated as *"Decision"* dated 20

March 2012. A Petition for Certiorari, on the other hand, is prohibited.[36] Simply dismissing the present petition, however, will cause grave injustice to the parties involved. It undermines the salutary purposes for which the Rule on the Writ of *Amparo* were promulgated.

In many instances, the Court adopted a policy of liberally construing its rules in order to promote a just, speedy and inexpensive disposition of every action and proceeding.[37] The rules can be suspended on the following grounds: (1) matters of life, liberty, honor or property, (2) the existence of special or compelling circumstances, (3) the merits of the case, (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (5) a lack of any showing that the review sought is merely frivolous and dilatory, and (6) the other party will not be unjustly prejudiced thereby.[38]

WHEREFORE, in the interest of justice, as a prophylactic to the irregularities committed by the trial court judge, and by virtue of its powers under Article VIII, Section 5 (5) of the Constitution, the Court *RESOLVES* to:

(1) *NULLIFY* all orders that are subject of this *Resolution* issued by Judge Silvino T. Pampilo, Jr. after respondent Gatdula filed the *Petition for the Issuance of a Writ of Amparo*;

(2) *DIRECT* Judge Pampilo to determine within forty-eight (48) hours from his receipt of this *Resolution* whether the issuance of the Writ of *Amparo* is proper on the basis of the petition and its attached affidavits.

The Clerk of Court is *DIRECTED* to cause the personal service of this *Resolution* on Judge Silvino T. Pampilo, Jr. of Branch 26 of the Regional Trial Court of Manila for his proper guidance together with a *WARNING* that further deviation or improvisation

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[36] *Id.* at Sec.11 (l).

[37] RULES OF COURT, Rule 1, Sec. 6.

[38] *Ginete v. CA*, 357 Phil. 36, 54 (1998).

from the procedure set in A.M. No. 07-9-12-SC shall be meted with severe consequences.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-12-3032. February 20, 2013]
(Formerly A.M. OCA IPI No. 11-3652-P)

RAY ANTONIO C. SASING, *complainant, vs.* **CELESTIAL VENUS G. GELBOLINGO, Sheriff IV, Regional Trial Court, Branch 20, Cagayan de Oro City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; COURT PERSONNEL; SHERIFFS; CHARGE OF GROSSS NEGLECT OF DUTY FOUND BASELESS.— Gross neglect of duty refers to negligence that is characterized by glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. "It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable." Gross inefficiency is intimately akin to gross neglect as both involve specific acts of omission on the part of the employee resulting in damage to the employer or to the latter's business. In this regard, the Court finds the charge baseless. Sheriff Gelbolingo

did not disregard the standard procedure for implementing a writ of execution. Contrary to Sasing's allegation that she levied their personal effects, it was found that she never took away their belongings. Perhaps due to confusion or other pressing matters, it appears that Sasing's wife left without pulling out their personal belongings from the premises. Forced by this circumstance, Sheriff Gelbolingo took it upon herself to look for a temporary storage for the personal effects. Basic is the rule that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence. In administrative proceedings, the complainant bears the onus of establishing, by substantial evidence, the averments of his complaint. A complainant cannot rely on mere conjectures and suppositions. If a complainant fails to substantiate his allegations, the administrative complaint must be dismissed for lack of merit.

2. ID.; ID.; ID.; ID.; RESPONDENT SHERIFF IS GUILTY OF DISCOURTESY IN THE COURSE OF OFFICIAL DUTIES FOR HER FAILURE TO PROPERLY RESPOND TO THE COMPLAINANT'S COMMUNICATION.— The Court, however, agrees that Sheriff Gelbolingo's failure to properly respond to the communication of Sasing is tantamount to discourtesy. A simple note as to where their personal effects were temporarily stored could have assured him that their belongings were not confiscated but merely stored for safekeeping until the same could be properly turned over to them. The Court is fully aware that a sheriff's schedule can be hectic, but she could have easily relayed the information to the other court staff to address Sasing's concerns. This simple gesture could have avoided this controversy. Section 1 of Article XI of the Constitution states that a public office is a public trust. "It enjoins public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency and to, at all times, remain accountable to the people." As front liners of the justice system, sheriffs and deputy sheriffs must always strive to maintain public trust in the performance of their duties. As agents of the law, they are "called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing the orders of the court, they cannot afford to

err without affecting the integrity of their office and the efficient administration of justice."

3. ID.; ID.; ID.; ID.; CONSIDERING THAT THERE WAS AN EFFORT ON RESPONDENT'S PART TO MEET COMPLAINANT TWICE, BUT THE LATTER DID NOT APPEAR ON THE SECOND SCHEDULED MEETING, RESPONDENT IS GIVEN THE BENEFIT OF THE DOUBT DUE TO SUCH MITIGATING CIRCUMSTANCE AND NEED NOT BE PENALIZED.— The administrative offense committed by Sheriff Gelbolingo is discourtesy in the course of official duties which, under the Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52 (C) (1), is a light offense. The penalty imposable for such an offense is either a reprimand for the first offense, a suspension from 1 day to 30 days for the second offense, and dismissal from public service for the third offense. x x x In this case, considering that there was an effort on her part to meet with Sasing twice, but the latter did not appear on the second scheduled meeting, Sheriff Gelbolingo is hereby given the benefit of the doubt due to such mitigating circumstance and need not be penalized. Nevertheless, the Court reminds Sheriff Gelbolingo to be more mindful of how she deals with party litigants or with anyone who comes before the court for relief. The Court expects that every person with an office charged with the dispensation of justice to perform his duty to the best of his ability, free from any suspicion and to be, all times, at their best behavior.

D E C I S I O N

MENDOZA, *J.*:

This refers to a complaint[1] for "Gross Neglect of Duty, Inefficiency, Incompetence in the Performance of Official Duties and Refusal to Perform an Official Duty" filed against respondent Celestial Venus G. Gelbolingo *(Sheriff Gelbolingo)*, Sheriff IV, Regional Trial Court, Branch 20, Cagayan de Oro City, concerning the implementation of the Writ of Execution Pending Appeal[2]

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

[2] *Id.* at 29.

in Civil Case No. 2010-331, entitled *Annabelle N. Amores and Nelson Calandria v. Spouses Ray Antonio and Bema Sasing.*

The Facts

Complainant Ray Antonio Sasing *(Sasing)* and his wife were the defendants in Civil Action No. 2010-331, an action for ejectment instituted by Annabelle N. Amores *(Amores)* and Nelson Calandria *(Calandria)* before the Municipal Trial Court in Cities, Branch 5, Cagayan de Oro City *(MTCC).* In its October 15, 2010 Decision,[3] the MTCC rendered a verdict, unfavorable to Sasing, which he immediately appealed before the Regional Trial Court of Cagayan de Oro City *(RTC).* Eventually, their appeal was raffled to Branch 20, where Sheriff Gelbolingo was holding office. In the Order, dated December 10, 2010, the RTC granted the Motion for Issuance of a Writ of Execution Pending Appeal filed by Amores and Calandria, which it amended on January 31, 2011.[4] Thereafter, Sheriff Gelbolingo was tasked to implement the Writ of Execution Pending Appeal[5] issued on March 10, 2011.

On the day of the execution of the writ, Sasing alleged that Sheriff Gelbolingo took personal belongings supposedly exempt from execution. Thus, in a letter,[6] dated March 25, 2011, Sasing wrote Sheriff Gelbolingo asking her to return the said items on March 28, 2011. As he received no response from her, Sasing wrote a letter,[7] dated April 5, 2011, addressed to the Court Administrator, expressing his intention to lodge a complaint against her for her failure to turn over their belongings despite previous requests. The Office of the Court Administrator *(OCA)* replied in a letter,[8] dated April 25, 2011, advising Sasing to fill up the

[3] *Id.* at 10-27.

[4] *Id.* at 28.

[5] *Id.* at 29.

[6] *Id.* at 32.

[7] *Id.* at 37.

[8] *Id.* at 38.

required form in filing an administrative case should he decide to pursue his complaint against Sheriff Gelbolingo.

Determined, Sasing formally charged Sheriff Gelbolingo with "Gross Neglect of Duty, Inefficiency, Incompetence in the Performance of Official Duties and Refusal to Perform an Official Duty" in an Affidavit-Complaint,[9] dated May 20, 2011.

In her Comment,[10] Sheriff Gelbolingo denied all the charges against her. She clarified that prior to the implementation of the writ, she, along with the winning party, requested for two *barangay* officials to be present during the implementation of the writ and to check the inventory of the personal effects found in the premises.[11] Sasing and his wife were also present at the time of the execution of the writ and their belongings were properly packed, inventoried and witnessed by the *barangay* officials. The couple apparently preoccupied with other matters, left the place without retrieving their belongings.[12] She asked the *barangay* officials if they could spare a space in their office, but they declined because the area would be used during the upcoming *barangay*'s *Kauswagan* fiesta. Eventually, she left Sasing's personal effects beside their house for safekeeping until she could properly turn them over to them.[13]

Sheriff Gelbolingo confirmed receipt of the March 25 and March 31, 2011 letters, but she explained that they were not able to meet. On March 25, she arrived late at the designated meeting place because of other court-related tasks, while on their supposed second appointment date, Sasing failed to appear.[14]

The OCA, in its Report, dated November 18, 2011,[15] recommended a formal investigation for the examination of the

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

[10] *Id.* at 42-49.

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

[12] *Id.* at 44.

[13] *Id.* at 45.

[14] *Id.* at 45-46.

[15] *Id.* at 92-97.

records and the verification of the allegations of Sasing to determine whether Sheriff Gelbolingo performed her duties within the bounds of her authority. The recommendation of the OCA reads:

> **RECOMMENDATION**: It is respectfully recommended for the consideration of the Honorable Court that the instant administrative complaint against **Celestial Venus G. Gelbolingo**, Sheriff IV, Regional Trial Court, Branch 20, Cagayan de Oro City, be **RE-DOCKETED** as a regular administrative matter and that the same be **REFERRED** to the Executive Judge of the Regional Trial Court, Cagayan de Oro City, for investigation, report and recommendation within sixty (60) days from receipt of the records hereof.[16]

On January 25, 2012, the Court resolved to re-docket the administrative complaint as a regular administrative matter and referred the same to the Executive Judge of the RTC, Cagayan de Oro City, for investigation, report and recommendation.[17]

Executive Judge Evelyn Gamotin Nery *(Judge Nery)*, in a resolution,[18] dated July 30, 2012, found the charges of gross neglect of duty, inefficiency and incompetence unsubstantiated. Judge Nery pointed out that the wife of Sasing was present when the eviction was carried out, but she "did not even bother to retrieve and/or get by herself things they own, from the premises."[19] In fact, "respondent had the personal things of the Sasings inventoried and placed inside boxes and sacks in the presence of two *Barangay Kagawads* of their place."[20]

Judge Nery, however, found that Sheriff Gelbolingo was remiss in her duty to reply to Sasing's two prior letters. Judge Nery stated that if Sheriff Gelbolingo only had the courtesy to reply and request for a contact number, then it could have saved the day for her.[21]

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[16] *Id.* at 97.

[17] *Id.* at 98-99.

[18] *Id.* at 108-113.

[19] *Id.* at 112.

[20] *Id.*

[21] *Id.* at 113.

After a careful examination of the records of this case, the Court agrees with the findings of Judge Nery.

Gross neglect of duty refers to negligence that is characterized by glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected.[22] "It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable."[23] Gross inefficiency is intimately akin to gross neglect as both involve specific acts of omission on the part of the employee resulting in damage to the employer or to the latter's business.[24]

In this regard, the Court finds the charge baseless. Sheriff Gelbolingo did not disregard the standard procedure for implementing a writ of execution. Contrary to Sasing's allegation that she levied their personal effects, it was found that she never took away their belongings. Perhaps due to confusion or other pressing matters, it appears that Sasing's wife left without pulling out their personal belongings from the premises. Forced by this circumstance, Sheriff Gelbolingo took it upon herself to look for a temporary storage for the personal effects.

Basic is the rule that mere allegation is not evidence and is not equivalent to proof.[25] Charges based on mere suspicion and speculation likewise cannot be given credence. In administrative proceedings, the complainant bears the *onus* of establishing, by substantial evidence, the averments of his complaint.[26] A

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[22] *Brucal v. Desierto*, 501 Phil. 453, 465-466 (2005).

[23] *Id.* at 466.

[24] *St. Luke's Medical Center, Incorporated v. Fadrigo*, G.R. No. 185933, November 25, 2009, 605 SCRA 728, 736.

[25] *Nedia v. Laviña*, 508 Phil. 10, 20 (2005).

[26] *Hon. Barbers v. Judge Laguio, Jr.*, 404 Phil. 443, 475 (2001).

complainant cannot rely on mere conjectures and suppositions. If a complainant fails to substantiate his allegations, the administrative complaint must be dismissed for lack of merit.[27]

The Court, however, agrees that Sheriff Gelbolingo's failure to properly respond to the communication of Sasing is tantamount to discourtesy. A simple note as to where their personal effects were temporarily stored could have assured him that their belongings were not confiscated but merely stored for safekeeping until the same could be properly turned over to them. The Court is fully aware that a sheriff's schedule can be hectic, but she could have easily relayed the information to the other court staff to address Sasing's concerns. This simple gesture could have avoided this controversy.

Section 1 of Article XI of the Constitution states that a public office is a public trust. "It enjoins public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency and to, at all times, remain accountable to the people."[28] As front liners of the justice system, sheriffs and deputy sheriffs must always strive to maintain public trust in the performance of their duties.[29] As agents of the law, they are "called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing the orders of the court, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice."[30]

The administrative offense committed by Sheriff Gelbolingo is discourtesy in the course of official duties which, under the Uniform Rules on Administrative Cases in the Civil Service,

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[27] *Manalabe v. Cabie*, A.M. No. P-05-1984, July 6, 2007, 526 SCRA 582, 589; See also *Adajar v. Develos*, 512 Phil. 9, 24-25 (2005); *Ong v. Rosete,* 484 Phil. 102, 114 (2004); *Datuin, Jr. v. Soriano*, 439 Phil. 592, 596 (2002).

[28] *Geolingo v. Albayda,* 516 Phil. 389, 395 (2006).

[29] *Fajardo v. Sheriff Quitalig,* 448 Phil. 29, 31 (2003).

[30] *Mamanteo v. Deputy Sheriff Magumun*, 370 Phil. 278, 286-287(1999).

Rule IV, Section 52 (C) (1), is a light offense. The penalty imposable for such an offense is either a reprimand for the first offense, a suspension from 1 day to 30 days for the second offense, and dismissal from public service for the third offense. In the case of *Perez v. Cunting*,[31] it was written:

> Under Rule XIV, Sec. 23 of the Civil Service Law and Rules, a first offense of discourtesy, which is a light penalty, in the course of one's official duties shall be meted the penalty of reprimand. In *Peñalosa v. Viscaya, Jr.*,[32] respondent deputy sheriff was reprimanded for gross discourtesy in connection with his actuations towards the complainant (therein private complainant in a criminal case) when the latter requested for an explanation for his failure to serve a warrant of arrest upon the accused. In *Paras v. Lofranco*,[33] the respondent, Clerk III of a lower court, was charged with discourtesy and conduct unbecoming a court employee for her acts and utterances directed against the complainant, the counsel for the accused in a pending case before the said court. This Court found the arrogant gesture and discourteous utterances of the respondent in treating the complainant to be improper. Accordingly, it imposed on respondent the penalty of reprimand. In *Reyes v. Patiag*,[34] respondent clerk of court was censured for discourtesy for two acts, when, in a very rude manner, she denied complainant's request to see the records of a civil case and treated her as if she was not an interested party by telling complainant that she seemed to be more knowledgeable than the court because complainant asked why a "preliminary investigation," actually a preliminary examination, was necessary. Considering that this is the first offense of the respondent, we find the penalty of reprimand to be appropriate in this case.

In this case, considering that there was an effort on her part to meet with Sasing twice, but the latter did not appear on the second scheduled meeting, Sheriff Gelbolingo is hereby given

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[31] 436 Phil. 618, 626-627 (2002)..

[32] 173 Phil. 487 (1978) [as cited].

[33] 407 Phil. 329 (2001) [as cited].

[34] A.M. No. P-01-1528, December 7, 2001 [as cited].

the benefit of the doubt due to such mitigating circumstance and need not be penalized.

Nevertheless, the Court reminds Sheriff Gelbolingo to be more mindful of how she deals with party litigants or with anyone who comes before the court for relief. The Court expects that every person with an office charged with the dispensation of justice to perform his duty to the best of his ability, free from any suspicion and to be, all times, at their best behavior.

WHEREFORE, respondent Celestial Venus G. Gelbolingo, Sheriff IV of the Regional Trial Court, Branch 20, Cagayan de Oro City, is hereby *ADMONISHED* for her discourteous acts and she is also warned that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 145336. February 20, 2013]

REYNANTE TADEJA, RICKY TADEJA, RICARDO TADEJA and FERDINAND TADEJA, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; NEW TRIAL OR RECONSIDERATION; FUNDAMENTAL CONSIDERATIONS OF PUBLIC POLICY AND SOUND PRACTICE NECESSITATE THAT, AT THE RISK OF OCCASIONAL ERRORS, THE JUDGMENT OR ORDERS

OF COURTS SHOULD ATTAIN FINALITY AT SOME DEFINITE TIME FIXED BY LAW, OTHERWISE, THERE WOULD BE NO END TO LITIGATION.— Fundamental considerations of public policy and sound practice necessitate that, at the risk of occasional errors, the judgment or orders of courts should attain finality at some definite time fixed by law. Otherwise, there would be no end to litigation. This is the reason why we have consistently denied petitioners' motions for reconsideration of this Court's Decision and subsequent pleas for the reopening of the case. Section 1 of Rule 121 of the Rules of Court provides that a new trial may only be granted by the court on motion of the accused, or *motu proprio* with the consent of the accused "(a)t any time before a judgment of conviction becomes final." In this case, petitioners' judgment of conviction already became final and executory on 26 July 2007 – the date on which the Decision of this Court denying the petition and affirming the ruling of the CA was recorded in the Book of Entries of Judgments. Thus, pleas for the remand of this case to the trial court for the conduct of a new trial may no longer be entertained.

2. ID.; ID.; NEWLY DISCOVERED EVIDENCE; REFERS TO EVIDENCE THAT COULD NOT HAVE BEEN DISCOVERED AND PRODUCED AT THE TRIAL EVEN WITH REASONABLE DILIGENCE; THE CONFESSION OF PETITIONERS' CO-ACCUSED DOES NOT MEET THE REQUISITE CONSIDERING THAT HE PARTICIPATED IN THE TRIAL AND EVEN GAVE TESTIMONY AS TO HIS DEFENSE, WHICH NEGATED THEIR CONTENTION THAT HIS CONFESSION COULD NOT HAVE BEEN OBTAINED DURING THE TRIAL.— Newly discovered evidence refers to that which (a) is discovered after trial; (b) could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) is material, not merely cumulative, corroborative or impeaching; and (d) is of such weight that it would probably change the judgment if admitted. The most important requisite is that the evidence could not have been discovered and produced at the trial even with reasonable diligence; hence, the term "newly discovered." The confession of Plaridel does not meet this requisite. He participated in the trial before the RTC and even gave testimony as to his defense. It was only after he and petitioners had been

convicted by the trial court that he absconded. Thus, the contention that his confession could not have been obtained during trial does not hold water.

3. ID.; ID.; ID.; PETITIONERS CHOSE NOT TO TELL THE TRUTH DURING THE TRIAL; WHATEVER THEIR REASONS WERE, THE INEVITABLE CONCLUSION IS THAT THE VERSION OF THEIR CO-ACCUSED IN HIS EXTRAJUDICIAL CONFESSION IS NOT A NEWLY DISCOVERED EVIDENCE THAT CAN BE A GROUND FOR NEW TRIAL WITHIN THE COMPTEMPLATION OF THE RULES.— It is also noteworthy that Plaridel's confession does not jibe with Reynante's narration of what happened during the incident. According to Reynante, Ruben stabbed him in his right chest and the left side of his body. Upon seeing him bleeding profusely, Ruben ran away. This narration contradicted the confession of Plaridel that when he saw the stabbing incident, he approached and grabbed the knife from Ruben and immediately stabbed the latter with it. Furthermore, Plaridel stated in his confession that as he stabbed Ruben, Reynante was being transported to the hospital. Plaridel then left Ruben on the road and followed Reynante. If this version is true, then in no way can the story of Reynante be plausible, considering that he allegedly still saw Ruben about 15 meters away holding the knife while the former was being transported to the hospital. Clearly, the cousins chose not to tell the truth during trial. Whatever their reasons were, the inevitable conclusion is that Plaridel's version in his extrajudicial confession is not newly discovered evidence that can be a ground for a new trial within the contemplation of the rules.

4. ID.; ID.; ID.; THE CASE CITED BY PETITIONERS FAVORABLE TO THEIR PREDICAMENT WAS GRANTED BY THE COURT *PRO HAC VICE* WHICH CANNOT BE RELIED UPON AS A PRECEDENT TO GOVERN OTHER CASES; THE COURT DEEMED IT PROPER WITHIN THE PREMISES TO REFER THE MATTER TO THE PRESIDENT THROUGH THE SECRETARY OF JUSTICE FOR A POSSIBLE GRANT OF CLEMENCY.— Petitioners point out that this Court has had occasion to grant a motion for a new trial after the judgment of conviction had become final and executory. In *People v. Licayan,* all the accused were convicted of the crime of kidnapping for ransom and sentenced

to death by the trial court. More than two years after their conviction became final and executory, the accused Lara and Licayan filed an Urgent Motion to Re-Open the Case with Leave of Court. They attached thereto the *Sinumpaang Salaysay* executed by two of their co-accused in the case, to the effect that Lara and Licayan had not participated in the commission of the crime. Since the OSG also recommended the reopening of the case, this Court remanded the case to the trial court for the reception of newly discovered evidence. It is worth pointing out that the motion in *Licayan* was granted *pro hac vice*, which is a Latin term used by courts to refer to rulings rendered "for this one particular occasion." A ruling expressly qualified as such cannot be relied upon as a precedent to govern other cases. We do not presume to know the predicament of petitioners, who will face incarceration in view of the instant Resolution. Courts are bound to apply the rules they have laid down in order to facilitate their duty to dispense justice. However, we deem it proper within the premises to refer the matter to the President through the Secretary of Justice for a possible grant of clemency to petitioners.

APPEARANCES OF COUNSEL

Moya Ablola Ebarle Law Firm for petitioners.
The Solicitor General for respondent.

R E S O L U T I O N

SERENO, *CJ*:

On the strength of their co-accused Plaridel Tadeja's extrajudicial confession, taken after his apprehension on 29 November 2006, petitioners pray for the reopening of the homicide case against them. Their prayer is for the reception of newly discovered evidence, despite the fact that this Couti's Decision affirming their conviction already became final and executory on 26 July 2007. Notably, the Office of the Solicitor General (OSG) does not object to the reopening of the case.

As found by the trial court,[1] the incident happened while prosecution witnesses Maria Elena Bernardo Almaria (Elena) and Jacinta del Fierro (Jacinta) were watching a public dance around midnight on 3 May 1994, during the celebration of the annual *fiesta* of *Barangay* Talabaan, Mamburao, Occidental Mindoro. It was then that they witnessed Ruben Bernardo (Elena's brother and Jacinta's uncle) being hacked to death by the brothers Reynante, Ricky, Ricardo, and Ferdinand (petitioners), and petitioners' first cousin Plaridel – all surnamed Tadeja. They also testified that Plaridel accidentally hit Reynante while trying to hack Ruben; hence, Reynante's injuries. According to them, they stayed at the scene of the incident until Ruben was brought to the hospital.[2]

On the other hand, petitioners alleged[3] that Ruben and his sons, Russell and Robenson Bernardo, went to the *barangay* plaza shortly after Rusell had been twice prevented by *barangay tanods* from entering the dance hall due to his drunken state and inappropriate attire (no upper garment). Ruben was brandishing a knife and cursing at the crowd. The Bernardos challenged Reynante, who was then waiting for his children and sisters still inside the dance hall. Reynante's brothers (Ricky, Ricardo, and Ferdinand) testified that they were together at their mother's house at the time.

Reynante was able to evade the first knife attack by Ruben. *Barangay* Chairperson Lolito Tapales tried to intervene, but he was threatened by Ruben as well. The latter then turned his attention back to Reynante, who tried to run away, and gave chase. Russell and Robenson blocked the path of Reynante, causing him to lose his balance and fall to the ground. The Bernardos then took turns in attacking him. Ruben got hold of

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[1] *Rollo,* pp. 333-340, Decision in Criminal Case No. Z-814 dated 15 July 1997 issued by the Regional Trial

Court, Branch 44, Mamburao, Occidental Mindoro.

[2] *Id*. at 23.

[3] *Id*. at 10-47.

Reynante's right hand and shouted to his two sons to run away. He then stabbed Reynante on the right part of the chest and the left side of the body before running away.

Reynante struggled back to the plaza. From there, he was taken to the hospital by Eddie Eraso (Eddie) and two others, using a jeep. Upon boarding the jeep and turning on its lights and engine, they all saw Ruben about 15 meters away, still holding a knife. Thereafter, Eddie reported the incident to the police. In response, Police Officer 3 Ronaldo Flores went to the hospital to question Reynante. The latter narrated how he was stabbed by the Bernardos. The inquiry was interrupted when Ruben arrived at the emergency room of the hospital in serious condition. He later died of "hypovolemic shock secondary to acute blood loss" due to multiple stab wounds and a hacking wound.

The next day, 4 May 1994, Senior Police Officer 3 Rogelio Tomayosa went to the hospital to continue questioning Reynante. Based on the latter's account, an Official Signal Dispatch was sent to the Philippine National Police Provincial Headquarters in San Jose, Occidental Mindoro, stating: "VICTIM REYNANTE TADEJA ARRIVED TO FETCH HIS CHILDREN BUT WAS CHASED BY RUBEN BERNARDO AND STABBED [BY] HIM WHEN HE LOST BALANCE."[4]

On 15 July 1994, an Information[5] for homicide for the death of Ruben was filed against Reynante, Ricky, Ricardo, Ferdinand, and Plaridel. Thus, Criminal Case No. Z-814 was filed with the Regional Trial Court, Branch 44, Mamburao, Occidental Mindoro (RTC).

Meanwhile, Reynante filed a complaint for frustrated homicide against Russell and Robenson, later docketed as Criminal Case No. Z-815 before the RTC. Criminal Case Nos. Z-814 and Z-815 were tried jointly.[6]

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[4] *Id*. at 14.

[5] *Id*. at 50.

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

On 15 July 1997, the RTC issued a Decision[7] in Criminal Case No. Z-814 finding Reynante, Ferdinand, Plaridel, Ricardo and Ricky guilty beyond reasonable doubt of homicide. The trial court sentenced them to an indeterminate penalty of imprisonment from six (6) years and one day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one day of *reclusion temporal* as maximum. It also ordered them to indemnify the heirs of Ruben in the amount of 50,000 and to pay the costs.

In Criminal Case No. Z-815, the RTC acquitted Russell and Robenson of frustrated homicide in its 14 July 1997 Decision.

Except for Plaridel, who absconded, all the other accused (petitioners herein) appealed to the Court of Appeals (CA).

On 8 March 2000, the CA issued a Decision[8] in CA-G.R. CR No. 21740 affirming the findings and Decision of the RTC in Criminal Case No. Z-814. The CA held that although the prosecution witnesses were relatives of the victim, they had no evil motive to testify falsely or to concoct a story against petitioners. In fact, the injuries sustained by Ruben matched the stab wounds as testified to by Elena and Jacinta. While three of the petitioners claimed to have been asleep in their mother's house during the incident, the place was only about one kilometer away and may be reached in twenty (20) minutes by foot or five (5) minutes by tricycle. Thus, it was not physically impossible for them to be at the scene of the crime at the time it was committed.

The CA also found that conspiracy was properly appreciated by the RTC on the basis of sufficient evidence. It did not give credence to the apparently conflicting testimonies of Reynante,

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[7] *Id*. at 333-340.

[8] *Id*. at 49-64. The Decision of the Court of Appeals (CA) Fifth Division in CA-GR No. 21740 was penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Angelina Sandoval-Gutierrez (later a member of this Court) and Salvador Valdez, Jr. concurring.

Plaridel and Ricky regarding what happened at the time of the incident. The CA explained:

> The defenses of Reynante and Plaridel were even more confusing. Both claimed that at that precise time, around 12:00 midnight, Ruben Bernardo, for no reason at all, chased Reynante and hit him with his knife. Then Reynante was brought to the hospital. At the same time, Ruben Bernardo again without any reason, chased Plaridel Tadeja. But this time, Ruben Bernardo was holding a stainless bladed weapon and was with his two (2) sons Russel, holding a .29 knife (Balisong) and Robenson with a bat (panggarote). However, despite the alleged attack of the Bernardos on Plaridel, Plaridel was not hurt. It was Ruben Bernardo, who was killed, not by Plaridel but by two (2) men who allegedly held Ruben Bernardo. What is unbelievable, Plaridel did not see or know these two (2) men that he claimed killed Ruben Bernardo. On the other hand, Ricky Tadeja testified that Plaridel Tadeja was with him in their house sleeping.[9]

Petitioners moved for reconsideration and submitted the transcripts of the testimonies of Leticia Bernardo, Maria Regina Cortuna (Regina), and Eduardo Eraso.[10] These witnesses, whose testimonies were missing from the records of Criminal Case No. Z-814 forwarded to the CA, testified in Criminal Case No. Z-815.[11] Petitioners believed their testimonies could debunk the main basis of the RTC Decision.

The CA denied the motion for reconsideration in a Resolution[12] dated 25 September 2000 on the ground that nothing in the transcripts provided would affect the positive testimonies of prosecution witnesses Elena and Jacinta.

Petitioners then filed with this Court a Petition for Review[13] under Rule 45 of the Rules of Court, seeking to set aside the CA Decision and Resolution.

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[9] *Id*. at 62.

[10] *Id*. at 66-67.

[11] *Id*. at 24, 28.

[12] *Id*. at 66- 67.

[13] *Id*. at 10-47.

Petitioners claimed that since Criminal Case Nos. Z-814 and Z-815 were tried jointly, and all pieces of evidence presented by the parties in one case were adopted in the other, all the evidence in both cases should have been considered and given due weight in the resolution of the two cases. The testimonies of the prosecution witnesses in Criminal Case No. Z-814 as to how Ruben was killed ran counter to the testimony given by Regina (neighbor to both parties), who was presented by Russel and Robenson as defense witness in Criminal Case No. Z-815. Elena and Jacinta testified that they had witnessed the stabbing of Ruben and stayed with him until he was brought to the hospital. However, Regina testified that the two women were with her in *Lola* Tinay's house that night. They allegedly stayed on after Regina proceed to Amado Alfaro's house, where she saw Ruben leaning on the fence alone, already wounded.

Petitioners stressed that the testimonies of Elena and Jacinta were not credible since, among other objections, these were given nearly a year after the incident; and Jacinta never executed a statement immediately thereafter to aid her later recollection.

Petitioners also alleged that while alibi is a weak defense, there are times when it is the plain and simple truth.[14] Moreover, considering the surrounding circumstances in this case, their non-flight was allegedly a "logical and favorable consideration pointing to their innocence."[15]

When required[16] to comment on the petition, the OSG countered[17] that the testimony of a witness may be believed in part and disbelieved in another, depending on the corroborative evidence and probabilities of the case. Thus, even if the narration of Regina was true, "the same cannot pose a legal obstacle to the finding of the court *a quo* in regard [to] petitioners' direct

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[14] *Id.* at 41-42.

[15] *Id.* at 42.

[16] *Id.* at 68.

[17] *Id.* at 76-91.

and actual participation in the killing of Ruben Bernardo as the court a quo has the discretion to believe or not to believe a witness' testimony."[18]

Also, while Elena and Jacinta were relatives of the victim, it did not necessarily make them biased in his favor.[19] As to petitioners' claim that it was unnatural for the prosecution witnesses to have noticed and recalled every blow to Ruben and who inflicted it, the OSG alleged[20] that the natural reaction of the victims of criminal violence was to note the appearance of their assailant and observe the manner in which the crime was committed. The same reaction was expected from the victim's relatives, who would also naturally want to bring the malefactors to justice. Finally, the OSG asserted that while flight is indicative of guilt, there is no jurisprudence holding that non-flight is an indication of innocence.

This Court issued a Decision[21] dated 21 July 2006 affirming the Decision and Resolution of the CA. We held that while petitioners were correct in asserting that the totality of the evidence in Criminal Case Nos. Z-814 and Z-815 should have been considered and given due weight, the testimonies of Leticia, Regina and Eduardo would not have altered the judgment of conviction by the RTC. For instance, Regina's testimony did not indicate that there were no witnesses to the incident, or that Ruben was alone at the time. Contrary to petitioners' argument, we held that blood relationship may even fortify credibility, because it would be unnatural for an aggrieved relative to falsely accuse a person other than the actual culprit. As regards the defense of alibi put forward by Ferdinand, Ricky and Ricardo, we saw that it was not physically impossible on their part to be at the scene of the crime at the time of its occurrence.

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[18] *Id.* at 81.

[19] *Id.* at 85.

[20] *Id.* at 165-185.

[21] *Id.* at 217-228. The Decision of the Court's Second Division was penned by Associate Justice Cancio C. Garcia with Associate Justices Reynato S. Puno (later Chief Justice), Angelina Sandoval-Gutierrez, Renato C. Corona (later Chief Justice) and Adolfo S. Azcuna concurring.

Petitioners moved for reconsideration,[22] alleging that this Court had failed to reconcile the testimonies of witnesses Elena and Jacinta on the one hand and Regina on the other. On 23 October 2006,[23] we denied the motion with finality.

On 6 November 2006, petitioners filed a Motion with Leave of Court to Vacate Judgment,[24] invoking the power of the Supreme Court to suspend its own rules for the purpose of substantial justice and to remand the case to the RTC for further reception of evidence. Petitioners attached the sworn statements of Maryjane Togas,[25] Dennis Laudiangco,[26] Heneroso Anoba[27] and Francisco de Veyra, Jr.[28] The affiants all corroborated the story of Reynante that it was Ruben who had chased and stabbed the former when he lost his footing. However, the affiants added that Reynante was aided by Plaridel, who slashed (*kinilik*) Ruben in the neck and repeatedly stabbed the latter until he fell. Thereafter, Plaridel scurried away (*tumalilis palayo*), while the people brought Reynante and Ruben to the hospital. The affiants also stated that Ricky, Ricardo, and Ferdinand were not at the place during the incident. It was only then that the affiants stepped forward and told the truth about the incident out of fear of reprisal from Plaridel, who was a known criminal.

Also attached was the *Pinagsamang Salaysay*[29] signed by 228 residents of *Barangay* Talabaan attesting to petitioners' innocence of the crime charged.

Later, petitioners filed a Supplemental Motion to Motion with Leave of Court to Vacate Judgment Due to Supervening Event[30]

[22] *Id*. at 238-252.

[23] *Id*. at 253.

[24] *Id*. at 254-261.

[25] *Id*. at 262-263.

[26] *Id*. at 264-265.

[27] *Id*. at 266-267.

[28] *Id*. at 268-269.

[29] *Id*. at 270-283.

[30] *Id*. at 284-295, filed on 14 December 2006.

alleging that on 29 November 2006, the Mamburao Municipal Police Force of Occidental Mindoro finally arrested Plaridel at Area 1, Talanay, Batasan Hills, Quezon City. Attached was the Spot Report Re– Apprehension of a Long Time Wanted Person.[31]

Also attached was a statement,[32] executed by Plaridel with the assistance of Atty. Cirilo Tejoso, Jr. admitting therein that he had killed Ruben, Plaridel narrated that on 3 May 1994, he was at Highway, Talabaan. He was looking for his child when he saw his first cousin Reynante being chased by Ruben. He aided Reynante by grabbing the knife of Ruben and stabbing the latter with it. Reynante was then transported to the hospital and Plaridel followed him there, leaving Ruben in the street. Upon reaching the hospital, Plaridel was arrested by the police.

Plaridel did not know why Ruben had chased Reynante with a knife. Neither did he see Ricardo, Ricky or Ferdinand at the scene of the incident. Plaridel admitted to the crime only later, because he allegedly felt afraid during the trial of the case and thus absconded. He did not know why petitioners were also charged with Ruben's killing.

With the arrest of Plaridel and his account of what happened, petitioners argued that the situation called for the application of the rules on newly discovered evidence, which provided grounds for a new trial. Since the statement of Plaridel was obtained only after his arrest, it was not produced or presented during the trial and even during the pendency of the appeal. Petitioners then reiterated their prayer that the judgment of conviction meted out to them be vacated and the entire records of the criminal case remanded to the RTC for the conduct of a new trial.

We treated[33] the motion of petitioners as a second motion for reconsideration of the 21 July 2006 Decision and denied it on the ground that it was a prohibited pleading under the Rules.

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[31] *Id*. at 289.

[32] *Id*. at 290-295.

[33] *Id*. at 296, Resolution dated 22 January 2007.

We noted without action their supplemental motion, stated that no further pleadings would be entertained, and directed that entry of judgment be made in due course.

Petitioners moved for reconsideration[34] and later filed a Supplemental Motion for Reconsideration and/or Motion to Set Aside Minute Resolution Dated 22 January 2007.[35] They argued that their motion to vacate judgment could not be considered as a second motion for reconsideration, because the relief prayed for was different from that which had already been passed upon for review. Instead, the motion prayed for the reopening of the case and its remand to the RTC for a new trial on grounds of newly discovered evidence and supervening event.

We denied[36] the motion of petitioners with finality for lack of merit. The 21 July 2006 Decision was then recorded in the Book of Entries of Judgments on 26 July 2007.[37]

In a letter[38] dated 7 August 2007 addressed to then Chief Justice Reynato S. Puno, Ferdinand prayed for the reopening of the case on the basis of the confession of Plaridel. We required the OSG to file its comment thereon.[39]

In its Comment,[40] the OSG manifested that it was not posing any objection to the reopening of the case. Ferdinand then filed an Urgent Manifestation and/or Motion to Suspend or Hold in Abeyance the Execution of the Decision Pending Resolution of the Letter dated 7 August 2007.[41]

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[34] *Id*. at 299-302.

[35] *Id*. at 304-316.

[36] *Id*. at 323, Resolution dated 6 June 2007.

[37] *Id*. at 325.

[38] *Id*. at 330-406.

[39] *Id*. at 407.

[40] *Id*. at 411-415, dated 20 December 2007.

[41] *Id*. at 416-427.

Meanwhile, the Court received a letter[42] from Sonia A. Bernardo, widow of Ruben, manifesting her objection to the reopening of the case.

Following the receipt of another letter[43] from Ferdinand reiterating the request to reopen the case, we issued a Resolution[44] denying the motion to suspend the execution of our Decision, on the ground that there was no legal basis to justify the reopening of the case.

Petitioners filed a Motion for Reconsideration,[45] which we denied[46] with finality for lack of merit, with a statement that no further pleading or motion shall be entertained in the case.

On 27 January 2009, petitioners filed a Motion for Leave to File Second Motion for Reconsideration and/or for Review by En Banc,[47] which we denied[48] on the grounds that it was a prohibited pleading, and that the Court *En Banc* is not an appellate court to which decisions/resolutions of a Division may be appealed.

A letter sent by Ferdinand and a Motion to Suspend Procedural Rules with Prayer to Declare the Proceedings Below as a Mistrial and/or to Grant Petitioners a New Trial Due to Newly Discovered Evidence were ordered expunged[49] from the records. This action was taken in view of the entry of judgment on the case made on 26 July 2007 and of the Resolutions dated 26 November 2008 and 23 September 2009 declaring that no further pleadings shall be entertained.

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[42] *Id*. at 464-468, received on 3 June 2008.

[43] *Id*. at 470-480, dated 23 July 2008.

[44] *Id*. at 483, dated 6 October 2008.

[45] *Id*. at 484-501, dated 5 November 2008.

[46] *Id*. at 502.

[47] *Id*. at 504-511.

[48] *Id*. (no pagination); Special Second Division Resolution dated 30 March 2009.

[49] *Id*. at 675; First Division Resolutions dated 9 and 23 September 2009.

Also expunged were another letter from Ferdinand and various pleadings filed by petitioners, on the ground that entry of judgment had already been made on 26 July 2007.[50]

In a letter[51] dated 17 May 2010 addressed to Chief Justice Renato Corona, Ferdinand reiterated the request for the reopening of the case. Petitioners later filed a Plea for Alteration, Modification and/or Reversal of Resolutions (In the Sublime Interest of Justice, Equity and Fair Play) with Leave of Court.[52] He alleged that, in a parallel case,[53] we had granted *pro hac vice* a motion to reopen a case for further reception of evidence filed by the accused, whose judgment of conviction had already been entered in the Book of Entry of Judgments.

On 2 November 2010, petitioners filed a letter manifesting the hope that their last motion would be favorably acted upon by this Court and reiterating their request for the reopening of the case to receive newly discovered evidence.[54] Petitioners also filed an Omnibus Motion for Leave to Set Aside Conviction and Remand the Case to the Trial Court for Reception of Newly Discovered Evidence.[55]

We resolve to DENY petitioners' motion to reopen the case for reception of further evidence in the trial court.

Fundamental considerations of public policy and sound practice necessitate that, at the risk of occasional errors, the judgment

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[50] *Id*. at 914-915, 963 and 964-A; Resolutions dated 23 November 2009, 27 January 2010 and 10 March

2010, respectively.

[51] *Id*. at 968-1046.

[52] *Id*. at 1049-1080.

[53] *People v. Licayan,* G.R. No. 140900 and 140911, Resolution dated 17 February 2004.

[54] *Rollo*, pp. 1083-1110.

[55] *Id*. at 1150-1165.

or orders of courts should attain finality at some definite time fixed by law.[56] Otherwise, there would be no end to litigation.[57]

This is the reason why we have consistently denied petitioners' motions for reconsideration of this Court's Decision and subsequent pleas for the reopening of the case.

Section 1 of Rule 121 of the Rules of Court provides that a new trial may only be granted by the court on motion of the accused, or *motu proprio* with the consent of the accused "(a)t any time before a judgment of conviction becomes final." In this case, petitioners' judgment of conviction already became final and executory on 26 July 2007 – the date on which the Decision of this Court denying the petition and affirming the ruling of the CA was recorded in the Book of Entries of Judgments. Thus, pleas for the remand of this case to the trial court for the conduct of a new trial may no longer be entertained.

Petitioners premise their motion for a new trial on the ground of newly discovered evidence, i.e. Plaridel's extrajudicial confession, executed with the assistance of Atty. Cirilo Tejoso, Jr., and the spot report of the police on Plaridel's apprehension.

Newly discovered evidence refers to that which (a) is discovered after trial; (b) could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) is material, not merely cumulative, corroborative or impeaching; and (d) is of such weight that it would probably change the judgment if admitted.[58]

The most important requisite is that the evidence could not have been discovered and produced at the trial even with reasonable diligence; hence, the term "newly discovered." The confession of Plaridel does not meet this requisite. He participated in the trial before the RTC and even gave testimony as to his defense.[59] It was only after he and petitioners had been convicted

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[56] *So v. CA*, 415 Phil. 705, 711 (2001).

[57] *Id*.

[58] *People v. Judavar*, 430 Phil. 366, 380 (2002).

[59] *Rollo*, p. 338.

by the trial court that he absconded. Thus, the contention that his confession could not have been obtained during trial does not hold water.

It is also noteworthy that Plaridel's confession does not jibe with Reynante's narration of what happened during the incident. According to Reynante, Ruben stabbed him in his right chest and the left side of his body. Upon seeing him bleeding profusely, Ruben ran away. This narration contradicted the confession of Plaridel that when he saw the stabbing incident, he approached and grabbed the knife from Ruben and immediately stabbed the latter with it.

Furthermore, Plaridel stated in his confession that as he stabbed Ruben, Reynante was being transported to the hospital. Plaridel then left Ruben on the road and followed Reynante. If this version is true, then in no way can the story of Reynante be plausible, considering that he allegedly still saw Ruben about 15 meters away holding the knife while the former was being transported to the hospital.

Clearly, the cousins chose not to tell the truth during trial. Whatever their reasons were, the inevitable conclusion is that Plaridel's version in his extrajudicial confession is not newly discovered evidence that can be a ground for a new trial within the contemplation of the rules.

Petitioners point out that this Court has had occasion to grant a motion for a new trial after the judgment of conviction had become final and executory. In *People v. Licayan,*[60] all the accused were convicted of the crime of kidnapping for ransom and sentenced to death by the trial court. More than two years after their conviction became final and executory,[61] the accused Lara and Licayan filed an Urgent Motion to Re-Open the Case with Leave of Court. They attached thereto the *Sinumpaang Salaysay* executed by two of their co-accused in the case, to

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[60] 415 Phil. 459,476 (:WOI).

[61] Supra note 51.

the effect that Lara and Licayan had not participated in the commission of the crime. Since the OSG also recommended the reopening of the case, this Court remanded the case to the trial court for the reception of newly discovered evidence.

It is worth pointing out that the motion in *Licayan* was granted *pro hac vice,* which is a Latin term used by courts to refer to rulings rendered "for this one particular occasion."[62] A ruling expressly qualified as such cannot be relied upon as a precedent to govern other cases.[63]

We do not presume to know the predicament of petitioners, who will face incarceration in view of the instant Resolution. Courts are bound to apply the rules they have laid down in order to facilitate their duty to dispense justice. However, we deem it proper within the premises to refer the matter to the President through the Secretary of Justice for a possible grant of clemency to petitioners.

WHEREFORE, the motion of petitioners to reopen the case for reception of further evidence in the trial com1 is *DENIED*.

Let a copy of this Resolution be furnished the President of the Philippines, through the Secretary of Justice, for consideration of the propriety of extending to petitioners the benefits of executive clemency.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[62] *Partido ng Manggagawa v. COA1ELEC,* 519 Phil. 644, 671 (2006).

[63] *ld*.

FIRST DIVISION

[G.R. No. 161596. February 20, 2013]

ROBERTO BORDOMEO, JAYME SARMIENTO and GREGORIO BARREDO, *petitioners, vs.* **COURT OF APPEALS, HON. SECRETARY OF LABOR, and INTERNATIONAL PHARMACEUTICALS, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; PROPER REMEDY AVAILABLE TO THE PETITIONERS IN CASE AT BAR; THEIR AVERMENT THAT THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION DOES NOT WARRANT THE FILLING OF THE PETITION FOR *CERTIORARI* UNDER RULE 65, UNLESS THE PETITION FURTHER SHOWED HOW AN APPEAL IN DUE COURSE UNDER RULE 45 WAS NOT AN ADEQUATE REMEDY FOR THEM.— We dismiss the petition for *certiorari*. Firstly, an appeal by petition for review on *certiorari* under Rule 45 of the Rules of Court, to be taken to this Court within 15 days from notice of the judgment or final order raising only questions of law, was the proper remedy available to the petitioners. Hence, their filing of the petition for *certiorari* on January 9, 2004 to assail the CA 's May 30, 2003 decision and October 30, 2003 resolution in C.A .-G.R. SP No. 65970 upon their allegation of grave abuse of discretion committed by the CA was improper. The averment therein that the CA gravely abused its discretion did not warrant the filing of the petition for *certiorari*, unless the petition further showed how an appeal in due course under Rule 45 was not an adequate remedy for them. By virtue of its being an extraordinary remedy, *certiorari* cannot replace or substitute an adequate remedy in the ordinary course of law, like an appeal in due course. We remind them that an appeal may also avail to review and correct any grave abuse of discretion committed by an inferior court, provided it will be adequate for that purpose. It is the adequacy of a remedy in the ordinary course of law that determines whether

a special civil action for *certiorari* can be a proper alternative remedy.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES; SITUATIONS WHEN THE EXTRAORDINARY REMEDY OF *CERTIORARI*; MAY BE DEEMED PROPER.— Rule 65 of the Rules of Court still requires the petition for *certiorari* to comply with the following requisites, namely: (1) the writ of *certiorari* is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. Jurisprudence recognizes certain situations when the extraordinary remedy of *certiorari* may be deemed proper, such as: (a) when it is necessary to prevent irreparable damages and injury to a party; (b) where the trial judge capriciously and whimsically exercised his judgment; (c) where there may be danger of a failure of justice; (d) where an appeal would be slow, inadequate, and insufficient; (e) where the issue raised is one purely of law; (f) where public interest is involved; and (g) in case of urgency.[47] Y et, a reading of the petition for *certiorari* and its annexes reveals that the petition does not come under any of the situations. Specifically, the petitioners have not shown that the grant of the writ of *certiorari* will be necessary to prevent a substantial wrong or to do substantial justice to them.

3. ID.; ID.; ID.; NO JUST CAUSE TO ISSUE THE WRIT OF *CERTIORARI* IN CASE AT BAR; THE COURT OF APPEALS COMMITTED NO ABUSE OF DISCRETION, LEAST OF ALL GRAVE, BECAUSE ITS JUSTIFICATIONS WERE SUPPORTED BY THE HISTORY OF THE DISPUTE AND BORNE OUT BY THE APPLICABLE LAWS AND JURISPRUDENCE.— We do not agree. We find no just cause to now issue the writ of *certiorari* in order to set aside the CA 's assailed May 30, 2003 decision. Indeed, the following well stated justifications for the dismissal of the petition show that the CA was correct. x x x In a special civil action for *certiorari* brought against a court with jurisdiction over a case, the petitioner carries the burden to prove that the respondent tribunal committed not a merely reversible error but a grave

abuse of discretion amounting to lack or excess of jurisdiction in issuing the impugned order. Showing mere abuse of discretion is not enough, for the abuse must be shown to be grave. Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. Under the circumstances, the CA committed no abuse of discretion, least of all grave, because its justifications were supported by the history of the dispute and borne out by the applicable laws and jurisprudence.

4. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; RIGHTS OF ILLEGALL DISMISSED EMPLOYEES; SEPARATION PAY; THE COMPUTATION OF SEPARATION PAY AND BACKWAGES DUE TO ILLEGALLY DISMISSED EMPLOYEES SHOULD NOT GO BEYOND THE DATE WHEN THEY WERE DEEMED TO HAVE BEEN ACTUALLY SEPARATED FROM THEIR EMPLOYMENT, OR BEYOND THE DATE WHEN THEIR REINSTATEMENT WAS RENDERED IMPOSSIBLE.— The records contradict the petitioners' insistence that the two writs of execution to enforce the December 26, 1990 and December 5, 1991 orders of the DOLE Secretary were only partially satisfied. To recall, the two writs of execution issued were the one for ₱4,162,361.50, later reduced to ₱3,416,402.10, in favor of the 15 employees represented by Atty. Arnado, and that for ₱1,200,378.92 in favor of the second group of employees led by Banquerigo. There is no question that the 15 employees represented by Atty. Arnado, inclusive of the petitioners, received their portion of the award covered by the September 3, 1996 writ of execution for the amount of ₱3,416,402.10 through the release of the garnished deposit of IPI at China Banking Corporation. That was why they then executed the satisfaction of judgment and quitclaim/release, the basis for the DOLE Secretary to expressly declare in her July 4, 2001 decision that the full satisfaction of the writ of execution

"completely CLOSED and TERMINA TED this case." Still, the 15 employees demand payment of their separation pay and backwages from March 16, 1995 onwards pursuant to their reservation reflected in the satisfaction of judgment and quitclaim/release they executed on September 11, 1996. The demand lacked legal basis. Although the decision of the DOLE Secretary dated December 5, 1991 had required IPI to reinstate the affected workers to their former positions with full backwages reckoned from December 8, 1989 until actually reinstated without loss of seniority rights and other benefits, the reinstatement thus decreed was no longer possible. Hence, separation pay was instead paid to them. This alternative was sustained in law and jurisprudence, for "separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties. Separation pay in lieu of reinstatement may likewise be awarded if the employee decides not to be reinstated." Under the circumstances, the employment of the 15 employees or the possibility of their reinstatement terminated by March 15, 1995. Thereafter, their claim for separation pay and backwages beyond March 15, 1995 would be unwarranted. The computation of separation pay and backwages due to illegally dismissed employees should not go beyond the date when they were deemed to have been actually separated from their employment, or beyond the date when their reinstatement was rendered impossible.

APPEARANCES OF COUNSEL

Arnado & Associates for petitioners.
Baduel Espina & Associates for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

As an extraordinary remedy, *certiorari* cannot replace or supplant an adequate remedy in the ordinary course of law, like an appeal in due course. It is the inadequacy of a remedy in the ordinary course of law that determines whether *certiorari* can be a proper alternative remedy.

The Case

The petitioners implore the Court to reverse and set aside the Decision[1] of the Court of Appeals (CA) promulgated on May 30, 2003 in C.A.-G.R. SP No. 65970 entitled *Roberto Bordomeo, Anecito Cupta, Jaime Sarmiento and Virgilio Saragena v. Honorable Secretary of Labor and Employment and International Pharmaceuticals, Inc.*, dismissing their petition for *certiorari* by which they had assailed the Order[2] issued on July 4, 2001 by Secretary Patricia A. Sto. Tomas of the Department of Labor and Employment (DOLE), to wit:

> WHEREFORE, the Order of this Office dated March 27, 1998 **STANDS** and having become final and having been fully executed, completely CLOSED and TERMINATED this case.
>
> No further motion shall be entertained.
>
> SO ORDERED.[3]

and the CA's resolution promulgated on October 30, 2003, denying their motion for reconsideration.

In effect, the Court is being called upon again to review the March 27, 1998 order issued by the DOLE Secretary in response to the petitioners' demand for the execution in full of the final orders of the DOLE issued on December 26, 1990 and December 5, 1991 arising from the labor dispute in International Pharmaceuticals, Inc. (IPI).

Antecedents

In 1989, the IPI Employees Union-Associated Labor Union (Union), representing the workers, had a bargaining deadlock with the IPI management. This deadlock resulted in the Union staging a strike and IPI ordering a lockout.

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[1] *Rollo*, pp. 240-247; penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Rodrigo V. Cosico, and Hakim S. Abdulwahid concurring.

[2] *Id.* at 167-170.

[3] *Id.* at 170.

On December 26, 1990, after assuming jurisdiction over the dispute, DOLE Secretary Ruben D. Torres rendered the following Decision,[4] to wit:

WHEREFORE, PREMISES CONSIDERED, decision is hereby rendered as follows:

1. finding the IPI Employees Union-ALU as the exclusive bargaining agent of all rank and file employees of ALU including sales personnel;

2. dismissing, for lack of merit, the charges of contempt filed by the Union against the IPI officials and reiterating our strict directive for a restoration of the status quo ante the strike as hereinbefore discussed;

3. dismissing the Union's complaint against the Company for unfair labor practice through refusal to bargain;

4. dismissing the IPI petition to declare the strike of the Union as illegal; and

5. directing the IPI Employees Union-ALU and the International Pharmaceuticals, Inc. to enter into their new CBA, incorporating therein the dispositions hereinbefore stated. All other provisions in the old CBA not otherwise touched upon in these proceedings are, likewise, to be incorporated in the new CBA.

SO ORDERED.[5]

Resolving the parties' ensuing respective motions for reconsideration or clarification,[6] Secretary Torres rendered on December 5, 1991 another ruling,[7] disposing thus:

WHEREFORE, in the light of the forgoing considerations, judgment is hereby rendered:

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[4] *Id.* at 40-53.

[5] *Id.* at 52-53.

[6] *Id.* at 55.

[7] *Id.* at 55-66.

1. Dismissing the motions for reconsideration filed by the International Pharmaceutical, Inc. and the Workers Trade Alliance Unions (WATU) for lack of merit;

1. Reynaldo C. Menor
2. Geronimo S. Banquirino
3. Rogelio Saberon
4. Estefanio G. Maderazo
5. Herbert G. Veloso
6. Rogelio G. Enricoso
7. Colito Virtudazo
8. Gilbert Encontro
9. Bebiano Pancho
10. Merlina Gomez
11. Lourdes Mergal
12. Anecito Cupta
13. Prescillano O. Naquines
14. Alejandro O. Rodriguez
15. Godofredo Delposo
16. Jovito Jayme
17. Emma L. Lana
18. Koannia M. Tangub
19. Violeta Pancho
20. Roberto Bordomeo
21. Mancera Vevincio
22. Caesar Sigfredo
23. Trazona Roldan
24. Carmelita Ygot
25. Gregorio Barredo
26. Dario Abella
27. Artemio Pepito
28. Anselmo Tareman
29. Merope Lozada
30. Agapito Mayorga
31. Narciso M. Leyson
32. Ananias Dinolan
33. Cristy L. Caybot
34. Johnnelito S. Corilla
35. Noli Silo
36. Danilo Palioto
37. Winnie dela Cruz
38. Edgar Montecillo
39. Pompio Senador
40. Ernesto Palomar
41. Reynante Germininano
42. Pelagio Arnaiz
43. Ireneo Russiana
44. Benjamin Gellangco, Jr.
45. Nestor Ouano (listed in paragraphs 1 & 9 of the IPI Employees Union - ALU's Supplemental Memorandum dated 6 March 1991)

2. Ordering the International Pharmaceutical Inc. to reinstate to their former positions with full backwages reckoned from 8 December 1989 until actually reinstated without loss of seniority rights and other benefits the "affected workers" herein-below listed:

3. Ordering the International Pharmaceutical Inc. to reinstate to their former positions the following employees, namely:

a. Alexander Aboganda
b. Pacifico Pestano

c. Carlito Torregano
d. Clemencia Pestano
e. Elisea Cabatingan

(listed in paragraph 3 of the IPI Employees Union-ALU's Supplemental Memorandum dated 6 March 1991).

No further motions of the same nature shall be entertained.[8]

IPI assailed the issuances of Secretary Torres directly in this Court through a petition for *certiorari* (G.R. No. 103330), but the Court dismissed its petition on October 14, 1992 on the ground that no grave abuse of discretion had attended the issuance of the assailed decisions.[9] Considering that IPI did not seek the reconsideration of the dismissal of its petition, the entry of judgment issued in due course on January 19, 1994.[10]

With the finality of the December 26, 1990 and December 5, 1991 orders of the DOLE Secretary, the Union, represented by the Seno, Mendoza and Associates Law Office, moved in the National Conciliation and Mediation Board in DOLE, Region VII on June 8, 1994 for their execution.[11]

On November 21, 1994, one Atty. Audie C. Arnado, who had meanwhile entered his appearance on October 4, 1994 as the counsel of 15 out of the 50 employees named in the December 5, 1991 judgment of Secretary Torres, likewise filed a so-called Urgent Motion for Execution.[12]

After conducting conferences and requiring the parties to submit their position papers, Regional Director Alan M. Macaraya of DOLE Region VII issued a Notice of Computation/Execution on April 12, 1995,[13] the relevant portion of which stated:

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[8] *Id.* at 68-69; 94-95.

[9] *Id.* at 67.

[10] *Id.* at 67 and 69.

[11] *Id.* at 68.

[12] *Id.* at 119-120.

[13] *Id.* at 68-70.

To speed-up the settlement of the issue, the undersigned on 7 February 1995 issued an order directing the parties to submit within ten (10) calendar days from receipt of the Order, their respective Computations. To date, only the computation from complainants including those that were not specifically mentioned in the Supreme Court decision were submitted and received by this office.

Upon verification of the Computation available at hand, management is hereby directed to pay the employees including those that were not specifically mentioned in the decision but are similarly situated, the aggregate amount of FORTY-THREE MILLION SIX HUNDRED FIFTY THOUSAND NINE HUNDRED FIVE AND 87/100 PESOS (₱43,650,905.87) involving NINE HUNDRED SIXTY-TWO (962) employees, in the manner shown in the attached Computation forming part of this Order. This is without prejudice to the final Order of the Court to reinstate those covered employees.

This Order is to take effect immediately and failure to comply as instructed will cause the issuance of a WRIT OF EXECUTION.[14]

In effect, Regional Director Macaraya increased the number of the workers to be benefitted to 962 employees — classified into six groups — and allocated to each group a share in the ₱43,650,905.87 award,[15] as follows:

GROUP	NO. OF EMPLOYEES	TOTAL CLAIM
Those represented by Atty. Arnado	15	₱4,162,361.50
Salesman	9	₱6,241,535.44
For Union Members	179	₱6,671,208.86
For Non-Union Members	33	₱1,228,321.09
Employees who ratified the CBA	642	₱23,982,340.14
Separated Employees	84	₱1,365,136.84
TOTAL	962	₱43,650,905.87

[14] *Id.* at 70.

[15] *Id.* at 72.

On May 24, 1995, Assistant Regional Director Jalilo dela Torre of DOLE Region VII issued a writ of execution for the amount of ₱4,162,361.50 (which covered monetary claims corresponding to the period from January 1, 1989 to March 15, 1995) in favor of the 15 employees represented by Atty. Arnado,[16] to be distributed thusly:[17]

1. Barredo, Gregorio		₱278,700.10
2. Bordomeo, Roberto		₱278,700.10
3. Cupta, Anecito		₱278,700.10
4. Delposo, Godofredo		₱278,700.10
5. Dinolan, Ananias		₱278,700.10
6. Jayme, Jovito		₱278,700.10
7. Lozada, Merope		₱278,700.10
8. Mayorga, Agapito		₱278,700.10
9. Mergal, Lourdes		₱278,700.10
10. Pancho, Bebiano		₱278,700.10
11. Pancho, Violeta		₱278,700.10
12. Rodriguez, Alejandro		₱278,700.10
13. Russiana, Ireneo		₱263,685.10
14. Tangub, Joannis		₱278,700.10
15. Trazona, Rolsan		₱275,575.10
	TOTAL	₱4,162,361.50

On June 5, 1995, Assistant Regional Director dela Torre issued another Writ of Execution for the amount of ₱1,200,378.92 in favor of the second group of employees. Objecting to the reduced computation for them, however, the second group of employees filed a Motion Declaring the Writ of Execution dated June 5, 1995 null and void.

On July 11, 1995, IPI challenged the May 24, 1995 writ of execution issued in favor of the 15 employees by filing its Appeal

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[16] *Id.* at 73.

[17] *Id.* at 100-101.

and Prohibition with Prayer for Temporary Restraining Order in the Office of then DOLE Undersecretary Cresenciano Trajano.[18]

On December 22, 1995,[19] Acting DOLE Secretary Jose Brillantes, acting on IPI's appeal, recalled and quashed the May 24, 1995 writ of execution, and declared and considered the case closed and terminated.[20]

Aggrieved, the 15 employees sought the reconsideration of the December 22, 1995 Order of Acting DOLE Secretary Brillantes.

On August 27, 1996, DOLE Secretary Leonardo A. Quisumbing granted the Motion for Reconsideration,[21] and reinstated the May 24, 1995 writ of execution, subject to the deduction of the sum of ₱745,959.39 already paid pursuant to quitclaims from the award of ₱4,162,361.50.[22] Secretary Quisumbing declared the quitclaims executed by the employees on December 2, 3, and 17, 1993 without the assistance of the proper office of the DOLE unconscionable for having been entered into under circumstances showing vitiation of consent; and ruled that the execution of the quitclaims should not prevent the employees from recovering their monetary claims under the final and executory decisions dated December 26, 1990 and December 5, 1991, less the amounts received under the quitclaims.

Aggrieved by the reinstatement of the May 24, 1995 writ of execution, IPI moved for a reconsideration.[23]

On September 3, 1996, and pending resolution of IPI's motion for reconsideration, Regional Director Macaraya issued a writ of execution in favor of the 15 employees represented by

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[18] *Id.* at 120-121

[19] *Id.* at 93-114.

[20] *Id.* at 114.

[21] *Id.* at 115-133.

[22] *Id.* at 133.

[23] *Id.* at 134.

Atty. Arnado to recover ₱3,416,402.10 pursuant to the order dated August 27, 1996 of Secretary Quisumbing.[24] Thereafter, the sheriff garnished the amount of ₱3,416,402.10 out of the funds of IPI with China Banking Corporation, which released the amount.[25] Hence, on September 11, 1996, the 15 employees represented by Atty. Arnado executed a Satisfaction of Judgment and Quitclaim/Release upon receipt of their respective portions of the award, subject to the reservation of their right to claim "unsatisfied amounts of separation pay as well as backwages reckoned from the date after 15 March 1995 and up to the present, or until separation pay is fully paid."[26]

Notwithstanding the execution of the satisfaction of judgment and quitclaim/release, Atty. Arnado still filed an omnibus motion not only in behalf of the 15 employees but also in behalf of other employees named in the notice of computation/execution, with the exception of the second group, seeking another writ of execution to recover the further sum of ₱58,546,767.83.[27]

Atty. Arnado filed a supplemental omnibus motion for the denial of IPI's Motion for Reconsideration on the ground of mootness.[28]

In the meanwhile, the employees belonging to the second group reiterated their Motion Declaring the Writ of Execution dated June 5, 1995 null and void, and filed on May 15, 1996 a Motion for Issuance of Writ, praying for another writ of execution based on the computation by Regional Director Macaraya.

On December 24, 1997,[29] Secretary Quisumbing, affirming his August 27, 1996 order, denied IPI's Motion for

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[24] *Id.* at 137.

[25] *Id.*

[26] *Id.*

[27] *Id.* at 137-138.

[28] *Id.* at 138.

[29] *Id.* at 134-141.

Reconsideration for being rendered moot and academic by the full satisfaction of the May 24, 1995 writ of execution. He also denied Atty. Arnado's omnibus motion for lack of merit; and dealt with the issue involving the June 5, 1995 writ of execution issued in favor of the second group of employees, which the Court eventually resolved in the decision promulgated in G.R. No. 164633.[30]

The employees represented by Atty. Arnado moved for the partial reconsideration of the December 24, 1997 order of Secretary Quisumbing. Resolving this motion on March 27, 1998, Acting DOLE Secretary Jose M. Español, Jr. held as follow:[31]

> WHEREFORE, Our Order dated December 24, 1997, is hereby AFFIRMED.
>
> The Motion for Reconsideration/Amend/Clarificatory and Reiteration of Motion for Issuance of Writ of Execution dated January 12, 1998, filed by six (6) salesmen, namely, Geronimo S. Banquirigo, Reynaldo C. Menor, Rogelio Enricoso, Danilo Palioto, Herbert Veloso and Colito Virtudazo as well as the Motion for Reconsideration and/or Clarification filed by Salesman Noli G. Silo, are hereby DISMISSED, for lack of merit. The June 5, 1995 Writ of Execution is now considered fully executed and satisfied.
>
> The Motion for Partial Reconsideration filed by Roberto Bordomeo and 231 others, is likewise DENIED, for lack of merit
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> SO ORDERED.[32]

Records reveal, however, that Virgilio Saragena, *et al.* brought to this Court a petition for *certiorari* to assail the December 24, 1997 and March 27, 1998 Orders of the Secretary of Labor (G.R. No. 134118). As stated at the start, the Court dismissed the petition of Saragena, *et al.* on September 9, 1998 for having

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[30] *Banquerigo v. Court of Appeals,* G.R. No. 164633, August 7, 2006, 498 SCRA169.

[31] *Rollo,* pp. 142-152.

[32] *Id.* at 151-152.

been filed out of time and for the petitioners' failure to comply with the requirements under Rule 13 and Rule 45 of the *Rules of Court*.[33] The entry of judgment was issued on December 7, 1998.

In the meanwhile, on July 27, 1998, Atty. Arnado filed a Motion for Execution with the DOLE Regional Office,[34] demanding the following amounts from IPI, to wit:

For Roberto Bordomeo and 14 others	₱4,990,401.00
The rest of complainants	33,824,820.41
Total	₱ 38,815,221.41

Again, on September 22, 1998, Atty. Arnado filed a Motion for Execution with the Regional Office.[35] This time, no monetary claims were demanded but the rest of the complainants sought to collect from IPI the reduced amount of ₱6,268,818.47.

Another Motion for Execution was filed by Atty. Arnado on July 6, 1999,[36] seeking the execution of the December 26, 1990 order issued by Secretary Torres and of the April 12, 1995 notice of computation/execution issued by Regional Director Macaraya.

Ultimately, on July 4, 2001, DOLE Secretary Patricia Sto. Tomas issued her Order[37] affirming the order issued on March 27, 1998, and declaring that the full execution of the order of March 27, 1998 "completely CLOSED and TERMINATED this case."

Only herein petitioners Roberto Bordomeo, Anecito Cupta, Jaime Sarmiento and Virgilio Saragena assailed the July 4, 2001

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[33] *Id.* at 315-316.

[34] *Id.* at 168.

[35] *Id.* at 169.

[36] *Id.*

[37] *Id.* at 167-170.

order of Secretary Sto. Tomas by petition for *certiorari* in the CA (C.A.-G.R. SP No. 65970).[38]

On May 30, 2003, the CA rendered its decision in C.A.-G.R. SP No. 65970,[39] to wit:

> It is worthy to note that all the decisions and incidents concerning the case between petitioners and private respondent IPI have long attained finality. The records show that petitioners have already been granted a writ of execution. In fact, the decision has been executed. Thus, there is nothing for this Court to modify. The granting of the instant petition calls for the amendment of the Court of a decision which has been executed. In this light, it is worthy to note the rule that final and executory decisions, more so with those already executed, may no longer be amended except only to correct errors which are clerical in nature. Amendments or alterations which substantially affect such judgments as well as the entire proceedings held for that purpose are null and void for lack of jurisdiction. (*Pio Barreto Realty Development Corporation v. Court of Appeals, 360 SCRA 127).*
>
> This Court in the case of *CA GR No. 54041 dated February 28, 2001,* has ruled that the Orders of the Secretary of Labor and Employment dated December 24, 1997 and March 27, 1998 have become final and executory. It may be noted that the said orders affirmed the earlier orders of the Secretary of Labor and Employment dated December 22, 1995 and August 27, 1996 granting the execution of the decision in the case between petitioners and IPI.
>
> x x x x x x x x x
>
> WHEREFORE, based on the foregoing, the instant petition is hereby **DENIED DUE COURSE** and is **DISMISSED** for lack of merit.
>
> SO ORDERED.[40]

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[38] *Id.* at 240.

[39] *Id.* at 240-247.

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

The petitioners filed a Motion for Reconsideration,[41] but the CA denied the motion on October 30, 2003.[42]

Hence, they commenced this special civil action for *certiorari*.

Issues

The petitioners hereby contend that:

THE COURT OF APPEALS RULED CONTRARY TO SUPREME COURT DECISIONS AND GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT:

A. HELD THAT GRANTING THE PETITION FOR MANDAMUS (WHICH MERELY SEEKS FULL EXECUTION OF DOLE FINAL JUDGMENTS 26 DECEMBER 1990 AND 5 DECEMBER 1991 WOULD AMEND SAID FINAL AND EXECUTORY JUDGMENTS.

B. FAILED TO IMPLEMENT THE SUPREME COURT DOCTRINE SET IN PDCP VS. GENILO, G.R. NO. 106705, THAT SIMILARLY SITUATED EMPLOYEES HAS THE RIGHT TO PROVE THEIR ENTITLEMENT TO THE BENEFITS AWARDED UNDER FINAL JUDGMENTS.

C. HELD THAT THE QUESTIONED JUDGMENTS HAD BEEN EXECUTED WHEN THE RESPONDENTS THEMSELVES ADMIT THE CONTRARY.

D. HELD THAT DOLE SECRETARY DID NOT COMMIT GRAVE ABUSE OF DISCRETION WHEN SHE REFUSED TO FULLY EXECUTE THE 1990 AND 1991 DOLE FINAL JUDGMENTS AND ISSUE CORRESPONDING WRITS OF EXECUTION.

The petitioners submit that of the six groups of employees classified under the April 12, 1995 notice of computation/

[41] *Id.* at 248-255.

[42] *Id.* at 258-260.

execution issued by Regional Director Macaraya, only the first two groups, *that is*, the 15 employees initially represented by Atty. Arnado; and the nine salesmen led by Geronimo S. Banquirigo, had been granted a writ of execution. They further submit that the May 24, 1995 writ of execution issued in favor of the first group of employees, including themselves, had only been partially satisfied because no backwages or separation pay from March 16, 1995 onwards had yet been paid to them; that the reduced award granted to the second group of employees was in violation of the April 12, 1995 notice of computation/ execution; that no writ of execution had been issued in favor of the other groups of employees; and that DOLE Secretary Sto. Tomas thus committed grave abuse of discretion in refusing to fully execute the December 26, 1990 and December 5, 1991 orders.

In its comment, IPI counters that the petition for *certiorari* should be dismissed for being an improper remedy, the more appropriate remedy being a petition for review on *certiorari*; that a petition for review on *certiorari* should have been filed within 15 days from receipt of the denial of the motion for reconsideration, as provided in Section 1 and Section 2 of Rule 45; and that the petition must also be outrightly dismissed for being filed out of time.

IPI contends that the finality of the December 24, 1997 and March 27, 1998 orders of the DOLE Secretary rendered them unalterable; that Atty. Arnado had already brought the December 24, 1997 and March 27, 1998 orders to this Court for review (G.R. No. 134118); and that the Court had dismissed the petition for having been filed out of time and for the petitioners' failure to comply with Rule 13 and Rule 45 of the *Rules of Court*.

Ruling

We dismiss the petition for *certiorari*.

Firstly, an appeal by petition for review on *certiorari* under Rule 45 of the *Rules of Court*, to be taken to this Court within 15 days from notice of the judgment or final order raising only

questions of law, was the proper remedy available to the petitioners. Hence, their filing of the petition for *certiorari* on January 9, 2004 to assail the CA's May 30, 2003 decision and October 30, 2003 resolution in C.A.-G.R. SP No. 65970 upon their allegation of grave abuse of discretion committed by the CA was improper. The averment therein that the CA gravely abused its discretion did not warrant the filing of the petition for *certiorari*, unless the petition further showed how an appeal in due course under Rule 45 was not an adequate remedy for them. By virtue of its being an extraordinary remedy, *certiorari* cannot replace or substitute an adequate remedy in the ordinary course of law, like an appeal in due course.[43]

We remind them that an appeal may also avail to review and correct any grave abuse of discretion committed by an inferior court, provided it will be adequate for that purpose.

It is the adequacy of a remedy in the ordinary course of law that determines whether a special civil action for *certiorari* can be a proper alternative remedy. We reiterate what the Court has discoursed thereon in *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*,[44] *viz*:

> Specifically, the Court has held that the availability of appeal as a remedy does not constitute sufficient ground to prevent or preclude a party from making use of *certiorari* if appeal is not an adequate remedy, or an equally beneficial, or speedy remedy. **It is inadequacy, not the mere absence of all other legal remedies and the danger of failure of justice without the writ, that must usually determine the propriety of *certiorari*. A remedy is plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment, order, or resolution of the lower court or agency. It is understood, then, that a litigant need not mark time by resorting to the less speedy remedy of appeal in order to have an order annulled and set aside for being patently void for failure of the trial court to comply with the *Rules of Court*.**

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[43] Section 1, Rule 65, *Rules of Court*.

[44] G.R. No. 159941, August 17, 2011, 655 SCRA 580.

Nor should the petitioner be denied the recourse despite *certiorari* not being available as a proper remedy against an assailed order, because it is better on balance to look beyond procedural requirements and to overcome the ordinary disinclination to exercise supervisory powers in order that a void order of a lower court may be controlled to make it conformable to law and justice. Verily, the instances in which *certiorari* will issue cannot be defined, because to do so is to destroy the comprehensiveness and usefulness of the extraordinary writ. The wide breadth and range of the discretion of the court are such that authority is not wanting to show that *certiorari* is more discretionary than either prohibition or *mandamus*, and that in the exercise of superintending control over inferior courts, a superior court is to be guided by all the circumstances of each particular case "as the ends of justice may require." Thus, the writ will be granted *whenever necessary to prevent a substantial wrong or to do substantial justice*.[45] (Emphasis supplied)

Even so, Rule 65 of the *Rules of Court* still requires the petition for *certiorari* to comply with the following requisites, namely: (1) the writ of *certiorari* is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[46]

Jurisprudence recognizes certain situations when the extraordinary remedy of *certiorari* may be deemed proper, such as: (*a*) when it is necessary to prevent irreparable damages and injury to a party; (*b*) where the trial judge capriciously and whimsically exercised his judgment; (*c*) where there may be danger of a failure of justice; (*d*) where an appeal would be slow, inadequate, and insufficient; (*e*) where the issue raised is one purely of law; (*f*) where public interest is involved; and (*g*) in case of urgency.[47] Yet, a reading of the petition for *certiorari*

[45] *Id.* at 594-595.

[46] *Philippine National Bank v. Perez,* G.R. No. 187640 and 187687, June 15, 2011, 652 SCRA 317, 332.

[47] *Francisco Motors Corporation v. Court of Appeals,* G.R. Nos. 117622-23, October 23, 2006, 505 SCRA 8, 20.

and its annexes reveals that the petition does not come under any of the situations. Specifically, the petitioners have not shown that the grant of the writ of *certiorari* will be necessary to prevent a substantial wrong or to do substantial justice to them.

In dismissing the petitioners' petition for *certiorari*, the CA in effect upheld the Secretary of Labor's declaration in her assailed July 4, 2001 decision that the full satisfaction of the writs of execution had completely closed and terminated the labor dispute.

Yet, the petitioners have ascribed grave abuse of discretion to the CA for doing so.

We do not agree. We find no just cause to now issue the writ of *certiorari* in order to set aside the CA's assailed May 30, 2003 decision. Indeed, the following well stated justifications for the dismissal of the petition show that the CA was correct, *viz*:

x x x x x x x x x

It is worthy to note that all the decisions and incidents concerning the case between petitioners and private respondent IPI have long attained finality. The records show that petitioners have already been granted a writ of execution. In fact, the decision has been executed. Thus, there is nothing for this Court to modify. The granting of the instant petition calls for the amendment of the Court of a decision which has been executed. In this light, it is worthy to note the rule that final and executory decisions, more so with those already executed, may no longer be amended except only to correct errors which are clerical in nature. Amendments or alterations which substantially affect such judgments as well as the entire proceedings held for that purpose are null and void for lack of jurisdiction (*Pio Barretto Realty Development Corporation v. Court of Appeals, 360 SCRA 127).*

This Court in the case of *CA GR No. 54041 dated February 28, 2001,* has ruled that the Orders of the Secretary of Labor and Employment dated December 24, 1997 and March 27, 1998 have become final and executory. It may be noted that the said orders affirmed the earlier orders of the Secretary of Labor and Employment

dated December 22, 1995 and August 27, 1996 granting the execution of the decision in the case between petitioners and IPI.

There is nothing on the records to support the allegation of petitioners that the Secretary of Labor and Employment abused her discretion. The pertinent portion of the assailed order reads:

> "Given that this office had already ruled on all incidents of the case in its March 27, 1998 order and the Writ of Execution dated June 5, 1995 had already attained finality and had in fact been completely satisfied through the deposit with the Regional Office of the amount covered by the Writ, the subsequent Motions filed by Atty. Arnado can no longer be entertained, much less granted by this Office. Thus, at this point, there is nothing more to grant nor to execute."[48]

x x x x x x x x x

In a special civil action for *certiorari* brought against a court with jurisdiction over a case, the petitioner carries the burden to prove that the respondent tribunal committed not a merely reversible error but a grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the impugned order.[49] Showing mere abuse of discretion is not enough, for the abuse must be shown to be grave. Grave abuse of discretion means either that the judicial or *quasi-judicial* power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[50] Under the circumstances, the CA committed no abuse of discretion, least of all grave, because its

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[48] *Rollo,* p. 246.

[49] *Tan v. Antazo,* G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342.

[50] *Delos Santos v. Metropolitan Bank and Trust Company, Inc.*, G.R. No. 153852, October 24, 2012.

justifications were supported by the history of the dispute and borne out by the applicable laws and jurisprudence.

And, secondly, the records contradict the petitioners' insistence that the two writs of execution to enforce the December 26, 1990 and December 5, 1991 orders of the DOLE Secretary were only partially satisfied. To recall, the two writs of execution issued were the one for ₱4,162,361.50, later reduced to ₱3,416,402.10, in favor of the 15 employees represented by Atty. Arnado, and that for ₱1,200,378.92 in favor of the second group of employees led by Banquerigo.

There is no question that the 15 employees represented by Atty. Arnado, inclusive of the petitioners, received their portion of the award covered by the September 3, 1996 writ of execution for the amount of ₱3,416,402.10 through the release of the garnished deposit of IPI at China Banking Corporation. That was why they then executed the satisfaction of judgment and quitclaim/release, the basis for the DOLE Secretary to expressly declare in her July 4, 2001 decision that the full satisfaction of the writ of execution "completely CLOSED and TERMINATED this case."[51]

Still, the 15 employees demand payment of their separation pay and backwages from March 16, 1995 onwards pursuant to their reservation reflected in the satisfaction of judgment and quitclaim/release they executed on September 11, 1996.

The demand lacked legal basis. Although the decision of the DOLE Secretary dated December 5, 1991 had required IPI to reinstate the affected workers to their former positions with full backwages reckoned from December 8, 1989 until actually reinstated without loss of seniority rights and other benefits, the reinstatement thus decreed was no longer possible. Hence, separation pay was instead paid to them. This alternative was sustained in law and jurisprudence, for "separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties. Separation pay in lieu of

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[51] *Rollo*, p. 170.

reinstatement may likewise be awarded if the employee decides not tobe reinstated."[52]

Under the circumstances, the employment of the 15 employees or the possibility of their reinstatement terminated by March 15, 1995. Thereafter, their claim for separation pay and backwages beyond March 15, 1995 would be unwarranted. The computation of separation pay and backwages due to illegally dismissed employees should not go beyond the date when they were deemed to have been actually separated from their employment, or beyond the date when their reinstatement was rendered impossible. Anent this, the Court has observed in *Golden Ace Builders v. Talde*:[53]

> The basis for the payment of backwages is different from that for the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing backwages is usually the length of the employee's service while that for separation pay is the actual period when the employee was unlawfully prevented from working.

As to how both awards should be computed, *Macasero v. Southern Industrial Gases Philippines* instructs:

> [T]he award of separation pay is inconsistent with a finding that there was no illegal dismissal, for under Article 279 of the Labor Code and as held in a catena of cases, an employee who is dismissed without just cause and without due process is entitled to backwages ***and*** reinstatement or payment of separation pay in lieu thereof:
>
> Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect,

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[52] *Velasco v. National Labor Relations Commission,* G.R. No. 161694, June 26, 2006, 492 SCRA 686, 699.

[53] G.R. No. 187200, May 5, 2010, 620 SCRA 283.

an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages. (emphasis, italics and underscoring supplied)

x x x x x x x x x

Clearly then, respondent is entitled to backwages *and* separation pay as his reinstatement has been rendered impossible due to strained relations. As correctly held by the appellate court, the backwages due respondent must be computed from the time he was unjustly dismissed until his actual reinstatement, or from February 1999 until June 30, 2005 when his reinstatement was rendered impossible without fault on his part.

The Court, however, does not find the appellate court's computation of separation pay in order. The appellate court considered respondent to have served petitioner company for only eight years. Petitioner was hired in 1990, however, and he must be considered to have been in the service not only until 1999, when he was unjustly dismissed, but until June 30, 2005, the day he is deemed to have been actually separated (his reinstatement having been rendered impossible) from petitioner company or for a total of 15 years.[54]

As for the portions of the award pertaining to the rest of the employees listed in the April 12, 1995 notice of execution/ computation (*i.e.*, those allegedly similarly situated as the employees listed in the December 5, 1991 order of the DOLE Secretary) still remaining unsatisfied, the petitioners are definitely not the proper parties to ventilate such concern in this or any

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[54] *Id.* at 288-291.

other forum. At any rate, the concern has already been addressed and resolved by the Court in G.R. No. 164633.[55]

WHEREFORE, the Court *DISMISSES* the petition for *certiorari* for its lack of merit; *AFFIRMS* the decision promulgated on May 30, 2003; and *ORDERS* the petitioners to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 169253. February 20, 2013]

PACIFICO C. VELASCO, *petitioner, vs.* **THE HON. SANDIGANBAYAN (Fifth Division) and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN; PETITIONER WAS NOT DENIED THE RIGHT TO FILE A MOTION FOR RECONSIDERATION; UNDER SECTION 7 OF THE RULES, ONLY ONE MOTION FOR RECONSIDERATION OR REINVESTIGATION OF AN APPROVED ORDER OR RESOLUTION SHALL BE ALLOWED.— It is incorrect for petitioner to insist that he was denied the right to file a motion for reconsideration of the Order of the Special Prosecutor. Records prove that it was Special Prosecutor Dennis Villa-

[55] *Supra* note 30.

Ignacio who deputized the Deputy Ombudsman for MOLEO to act on the case with finality. Pursuant to this authority, the Deputy Ombudsman for MOLEO approved the Memorandum-Resolution dated 8 July 2004 indicting petitioner. Thus, this Memorandum-Resolution proceeds from the authority of the Special Prosecutor and is virtually his own memorandum. So when petitioner filed an Omnibus Motion for Reconsideration, he was effectively appealing a Memorandum issued by the Office of the Special Prosecutor. The filing of another motion for reconsideration constitutes a prohibited pleading. Under Section 7 of the Rules of Procedure of the Office of the Ombudsman, "Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, x x x."

2. ID.; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; RIGHT DUE PROCESS; SATISFIED WHEN THE PARTIES ARE AFFORDED FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN THEIR SIDE OF THE CONTROVERSY OR AN OPPORTUNITY TO MOVE FOR RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF.— We likewise find no merit in petitioner's contention that he was deprived of due process because while the accusation in the information was for technical malversation, the crime charged in the complaint was for malversation and violation of the A nti-Graft and Corrupt Practices Act. The Court had the occasion to rule on this issue in Pilapil v. Sandiganbayan. Petitioner therein was accused of malversation under Article 217 of the Revised Penal Code before the Ombudsman for failing to deliver the ambulance that he had received on behalf of the municipality. The complaint for malversation was initially dismissed for lack of probable cause, but petitioner was later on charged for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act. Petitioner decried lack of due process because there was no preliminary investigation conducted on the offense of which he was being charged in the Information. x x x What matters is compliance with due process during the preliminary investigation. That was accorded to petitioner. Due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or

ruling complained of. As aptly pointed out by the Court of Appeals, "Mr. Velasco was properly informed of the acts for which he was being investigated and later charged. He participated actively in the preliminary investigation and in fact, was given ample opportunity to buttress the allegations against him when he filed his counter-affidavit and submitted evidence on his behalf." Upon issuance of the Memorandum indicting petitioner, petitioner even filed the corresponding motion for reconsideration. Thus, petitioner was given all avenues to present his side and refute all allegations against him. He was accorded, and he availed of, due process. After the preliminary investigation compliant with due process, the Ombudsman, guided by the evidence presented during the preliminary investigation formulates and designates the offense. The Ombudsman did so in this case. The formulation of the offense depends on the evidence presented, not on the conclusionary designation in the complaint. In all, we see no grave abuse of discretion on the part of the Sandiganbayan in denying the motion for reinvestigation.

3. POLITICAL LAW; LOCAL GOVERNMENT CODE; SINCE THE VICE-MAYOR AUTOMATICALLY ASSUMES THE POWERS AND DUTIES OF THE MAYOR IN CASE OF THE LATTER'S TEMPORARY ABSENCE, THE VICE-MAYOR OF BACCARA, ILOCOS NORTE, ACTING AS CITY MAYOR, HAS THE LEGAL CAPACITY TO FILE THE MOTION FOR RECONSIDERATION ON BEHALF OF THE MUNICIPALITY.— In an apparent attempt to mislead, petitioner brings up the alleged incapacity of Acting Mayor Dela Cruz to file a motion for reconsideration pertaining to the earlier 13 February 2004 Resolution which dismissed the complaint against him. This argument cannot prosper. The issue has already been resolved. In fact, the Office of the Ombudsman for Luzon dismissed the complaint against petitioner. The purported legal incapacity of Acting Mayor Dela Cruz, therefore, bears no relevance to the indictment on hand. At any rate, Acting Mayor Dela Cruz, in fact, did possess the legal capacity to file the motion on behalf of the local government unit he represented. Under Section 46 of the Local Government Code, the vice-mayor automatically assumes the powers and duties of the mayor in case of the latter's temporary absence. x x x In fact, Acting Mayor Dela Cruz explained that at that time he

filed the motion, Mayor Philip Velasco was "on official vacation leave and out of the country." It is likewise incontrovertible that Mayor Philip Velasco instituted the complaint in his capacity as then Mayor of Bacarra, Ilocos Norte. Petitioner premises his challenge on legal standing on the mere failure of the complainant to state in his complaint that he was suing on behalf of the municipality. His argument is specious. As correctly asserted by Mayor Philip Velasco in his Comment/Opposition to the Motion to Strike, the property sought to be recovered in the complaint will revert to the municipality and not to him.

APPEARANCES OF COUNSEL

Argue Law Firm for petitioner.

D E C I S I O N

PEREZ, *J.*:

In this petition for *certiorari* under Rule 65 of the Rules of Court, petitioner alleges grave abuse of discretion on the part of the Fifth Division of the Sandiganbayan for issuing the Resolution[1] dated 9 June 2005 denying his motion for reinvestigation and the subsequent Resolution[2] dated 15 August 2005, denying his motion for reconsideration in Criminal Case No. 28097.

The antecedents follow.

Philip Corpus Velasco, then Mayor of the Municipality of Bacarra in Ilocos Norte, filed an Affidavit-Complaint against his predecessor, petitioner Pacifico C. Velasco, containing the following pertinent allegations:

1. On 21 September 1998, the Sangguniang Bayan of Bacarra passed Resolution No. 98-065 entitled "RESOLUTION

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[1] Penned by Associate Justice Ma. Cristina G. Cortez-Estrada with Associate Justices Roland B. Jurado and Teresita V. Diaz-Baldos, concurring. Sandiganbayan *rollo,* pp. 46-55.

[2] *Id.* at 56-57.

GRANTING AUTHORITY TO THE LOCAL CHIEF EXECUTIVE, HON. PACIFICO C. VELASCO TO PURCHASE ONE (1) UNIT ROAD GRADER-KOMATZU G-D 31 TO BE USED BY THE MUNICIPALITY OF BACARRA FOR THE MAINTENANCE OF MUNICIPAL AND BARANGAY ROADS", the dispositive portion of which reads as follows, to wit:

x x x x x x x x x

"HEREBY RESOLVED to grant authority to the Local Chief Executive, Hon. Pacifico C. Velasco to purchase one (1) unit of Road Grader-KOMATZU GD 31 to be used by the Municipality of Bacarra for the maintenance of municipal and barangay roads."

x x x x x x x x x

x x x x x x x x x

2. Shortly thereafter, on 20 October 1998, a Disbursement Voucher was issued in favor of PACIFICO C. VELASCO for the amount of P670,000.00 "To cash advance the amount of SIX HUNDRED SEVENTY THOUSAND PESOS (P670,000.00) for the purchase of one (1) Road Grader to be used by municipality per L[BP] Check No. 106353 dated 10-13-98. x x x.

3. After the election of May 14, 2001, and after the turn-over, it was found out during the inventory of municipal properties that the Road Grader was nowhere to be found. x x x.

4. In fact, a Joint Certification was issued by the Office of the Treasurer that there was NO ROAD GRADER-KOMATZU GD 30 (*sic*) OWNED BY THE MUNICIPALITY OF BACARRA, x x x.

5. It was discovered later that sometime on 29 December 1998, PACIFICO C. VELASCO allegedly made a refund of the afore-stated amount to the Municipal Treasurer x x x.

x x x x x x x x x

8. Despite the alleged refund made by PACIFICO C. VELASCO, he hired the services of a certain Bernardo J. Bernardo (*sic*) as Heavy Equipment Operator I, SG-4 on 16 August 2000, x x x.

9. Despite the alleged refund made by PACIFICO C. VELASCO, several Requests for Pre-Repair inspections, Job orders and corresponding Disbursement Vouchers were made for "repairs, spare parts, etc. of a Komatzu GD 30, Road Grader, x x x.

x x x x x x x x x

17. From the foregoing statement of facts, as supported by documentary evidences, I am accusing former mayor Pacifico C. Velasco now Provincial Board Member of Ilocos Norte and the Municipal Treasurer of Bacarra, Ilocos Norte, Lorna S. Dumayag, for violation of the Anti-Graft Law and the Revised Penal Code as amended for using public funds in the amount of Six Hundred Seventy Thousand Pesos (P670,000.00) in the purchase of a Road Grader that [was] subsequently appropriated by former mayor Pacifico C. Velasco as his personal property.[3]

In his Counter-Affidavit, petitioner branded the filing of the Complaint as politically motivated. He admitted requesting for a cash advance from the municipality for the purpose of acquiring the road grader, which was subsequently utilized by the municipality to repair and maintain roads. When the expected funds from the national government were not released, petitioner was faced with the problem of liquidating said cash advance. Thus, he was forced to mortgage the road grader just so he could reimburse the municipality in the sum of ₱670,000.00. Petitioner justified the need for replacement of spare parts and/or necessary repairs to be paid out of municipal funds because the municipal government was using the road grader from October 1998 up to the end of his term in June 2001. He also defended the appointment of Bernardo Bernardino (Bernardino), who was initially employed as a casual employee and made permanent six (6) months later. According to petitioner, Bernardino was an all-around heavy equipment operator and was not solely assigned as operator of the subject road grader.[4]

[3] *Id.* at 58-60.

[4] Records, pp. 43-50.

On 11 December 2002, the Office of the Deputy Ombudsman for Luzon issued a Resolution dismissing the Complaint for lack of probable cause. Then Acting Mayor Nicomedes C. Dela Cruz (Acting Mayor Dela Cruz) moved for reconsideration on 15 October 2003. A Motion to Strike Out the Motion for Reconsideration was filed by petitioner for lack of *locus standi*.[5] In an Order dated 13 February 2004, the Office of the Deputy Ombudsman for Luzon denied the motion for reconsideration.

However, Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO), Orlando Casimiro, pursuant to the authority[6] given by Ombudsman Simeon Marcelo, directed the Office of Legal Affairs to review the case. On 8 July 2004, the Office of Legal Affairs recommended that petitioner be indicted for technical malversation. The Office of Legal Affairs found that while the *Sangguniang Bayan* authorized the purchase of a road grader, no sum was appropriated for its purchase. The source of the funding of the ₱670,000.00 cash advance came from the municipality's funds for personal services, which were originally appropriated for salaries of municipal employees.[7]

Upon receipt of the Memorandum-Resolution, petitioner filed an Omnibus Motion (Motion for Reconsideration with Prayer to Hold in Abeyance the Filing of Information) citing the failure of the 13 February 2004 Order to consider his Motion to Strike Out the Motion for Reconsideration filed by Acting Mayor Dela Cruz. Petitioner also argued that not all elements constitutive of technical malversation were present.

On 16 February 2005, the Office of the Special Prosecutor issued a Memorandum denying the Omnibus Motion. A revised/modified Information was filed with the Sandiganbayan charging petitioner of the crime of Illegal Use of Public Funds under Article 220 of the Revised Penal Code, committed, thus:

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[5] *Id.* at 162-165.

[6] Per Memorandum dated 9 September 2003, delegating the authority of the Ombudsman to the undersigned to act on this matter with finality. Sandiganbayan *rollo*, p. 84.

[7] *Id.* at 81-82.

That on or about 20 October 1998 and sometime prior or subsequent thereto, in the Municipality of Bacarra, Ilocos Norte, Philippines, within the jurisdiction of this Honorable Court, the accused PACIFICO C. VELASCO, a high-ranking public official, being then the Mayor of the aforesaid municipality and as such is accountable for public funds received by or entrusted to him by reason of the duties of his office, while in the performance and taking advantage of his official and administrative functions, did then and there wilfully, unlawfully and feloniously apply or misapply the amount of SIX HUNDRED SEVENTY THOUSAND PESOS (₱670,000.00), Philippine Currency, under his administration to a public use other than that for which such fund was originally appropriated by law or ordinance, when the accused cash advanced the said amount of SIX HUNDRED SEVENTY THOSUAND PESOS (₱670,000.00) under Disbursement Voucher No. 101-98-10-037 which amount was appropriated or intended for the payment of personal services for the municipal employees of the local government of Bacarra, particularly for their salaries, 13th month pay and other benefits, and utilized the said amount to purchase one (1) unit road grader but was never recorded as property of the above-named Municipality, and thereafter, accused mortgaged said road grader to private individuals without authority from the Sangguniang Bayan of Bacarra, Ilocos Norte, thereby resulting to the damage and embarrassment to the public service as the public was made to believe that the road grader purchased by the accused was public property for use of the municipal government and its constituent barangays.[8]

On 18 March 2005, petitioner moved for a reinvestigation of the case before the Sandiganbayan. According to petitioner, the Office of the Special Prosecutor, without conducting a preliminary investigation, indicted him not for the offense of which he was charged but for another offense, hence violating his right to due process.

On 9 June 2005, the Sandiganbayan issued a Resolution denying the motion for reinvestigation for lack of merit. The Sandiganbayan found that petitioner had already filed a motion for reconsideration assailing the 8 July 2004 Memorandum. The Sandiganbayan considered the filing of this motion for reconsideration as

[8] *Id.* at 97-98.

compliance with the due process requirement. The Sandiganbayan added that since petitioner had already filed a motion for reconsideration, he is no longer entitled to move for a second reconsideration pursuant to the Rules of Procedure of the Office of the Ombudsman which prohibits the filing of such motion. The Sandiganbayan refuted petitioner's claim that the offenses charged against him in the complaint are different from the offense charged in the information. The Sandiganbayan countered that the complaint and the information are based on substantially the same factual settings except that the respective designations are different.

On 15 August 2005, the Sandiganbayan issued a Resolution denying for lack of merit petitioner's motion for reconsideration.

Petitioner submits in support of his petition that:

THE RESPONDENT COURT ACTED WITHOUT JURISDICTION OR IN EXCESS THEREOF, OR AT THE VERY LEAST, GRAVELY ABUSED ITS DISCRETION, IN NOT ORDERING THE REINVESTIGATION OF THE CASE OR, TO BE MORE PRECISE, A PRELIMINARY INVESTIGATION, AFTER THE OFFICE OF THE SPECIAL PROSECUTOR FILED AN INFORMATION AGAINST THE HEREIN PETITIONER BASED ON A MOTION FOR RECONSIDERATION FILED, NOT BY THE COMPLAINANT THEREIN, BUT BY ANOTHER PERSON WHO IS NOT A PARTY AND THEREFORE, A STRANGER IN THE CASE, AND THEREAFTER, INSTEAD OF MERELY ACTING ONLY ON THE ISSUES AND GROUNDS RAISED IN THE SAID MOTION, THE OFFICE OF THE SPECIAL PROSECUTOR, WITHOUT CONDUCTING A PRELIMINARY INVESTIGATION ON THE PURPORTED OFFENSE OF WHICH THE HEREIN PETITIONER IS NOW INDICTED, ISSUED INSTEAD, THE MEMORANDUM DATED FEBRUARY 16, 2005, WHICH NOW INDICTS THE HEREIN PETITIONER NOT FOR THE OFFENSE OF WHICH HE IS CHARGED BUT FOR ANOTHER OFFENSE, THEREBY BLATANTLY VIOLATING THE PETITIONERS' SUBSTANTIAL RIGHT TO DUE PROCESS, RENDERING THE RESPONDENT COURT'S ASSAILED RESOLUTIONS AS NULL AND VOID.[9]

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[9] *Id.* at 16.

Petitioner, in the main, assails the denial of his motion for reinvestigation on two (2) grounds: 1) he was denied the right to file a motion for reconsideration of the 16 February 2005 Office of the Special Prosecutor's Memorandum, recommending his indictment for Technical Malversation under Article 220 of the Revised Penal Code, and 2) he was indicted for an offense that was not originally charged in the criminal complaint against him.[10]

We briefly review the material facts. A complaint for malversation and violation of the Anti-Graft and Corrupt Practices Act was filed by then Mayor Philip Velasco against former Mayor Pacifico Velasco, now petitioner. The Office of the Deputy Ombudsman for Luzon dismissed the complaint for lack of probable cause. Then Acting Mayor Dela Cruz moved for reconsideration. Petitioner filed a motion to strike out the pleading grounded on the lack of legal personality of Acting Mayor Dela Cruz to file the motion. The Office of the Deputy Ombudsman for Luzon eventually denied the motion for reconsideration. However, upon instructions of the Deputy Ombudsman for MOLEO, the Director of the Office of Chief Legal Counsel, after reviewing the case, recommended the filing of an Information for Technical Malversation. Petitioner, thus, filed an Omnibus Motion for Reconsideration. The Office of the Special Prosecutor denied petitioner's motion and filed the Information for technical malversation before the Sandiganbayan.

Indeed, the recital of facts reveals that petitioner filed a motion for reconsideration, which he labelled as "Omnibus Motion (Motion for Reconsideration with Prayer to Hold in Abeyance Filing of Information)" on 15 October 2003. A perusal of the Omnibus Motion shows that petitioner anchored his motion for reconsideration on two (2) grounds — first, the legal incapacity of the Vice-Mayor to file a motion for reconsideration of an earlier Order by the Office of the Deputy Ombudsman for Luzon, dismissing the complaint against petitioner; and second, some

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[10] See Sandiganbayan Resolution dated 9 June 2005. *Id.* at 48.

elements of the crime of technical malversation were lacking in the complaint.

Thus, it is incorrect for petitioner to insist that he was denied the right to file a motion for reconsideration of the Order of the Special Prosecutor. Records prove that it was Special Prosecutor Dennis Villa-Ignacio who deputized the Deputy Ombudsman for MOLEO to act on the case with finality. Pursuant to this authority, the Deputy Ombudsman for MOLEO approved the Memorandum-Resolution dated 8 July 2004 indicting petitioner. Thus, this Memorandum-Resolution proceeds from the authority of the Special Prosecutor and is virtually his own memorandum. So when petitioner filed an Omnibus Motion for Reconsideration, he was effectively appealing a Memorandum issued by the Office of the Special Prosecutor. The filing of another motion for reconsideration constitutes a prohibited pleading. Under Section 7 of the Rules of Procedure of the Office of the Ombudsman, "Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, x x x."

In an apparent attempt to mislead, petitioner brings up the alleged incapacity of Acting Mayor Dela Cruz to file a motion for reconsideration pertaining to the earlier 13 February 2004 Resolution which dismissed the complaint against him. This argument cannot prosper. The issue has already been resolved. In fact, the Office of the Ombudsman for Luzon dismissed the complaint against petitioner. The purported legal incapacity of Acting Mayor Dela Cruz, therefore, bears no relevance to the indictment on hand. At any rate, Acting Mayor Dela Cruz, in fact, did possess the legal capacity to file the motion on behalf of the local government unit he represented. Under Section 46 of the Local Government Code, the vice-mayor automatically assumes the powers and duties of the mayor in case of the latter's temporary absence, thus:

SEC. 46. Temporary Vacancy in the Office of the Local Chief Executive. — (a) When the governor, city or municipal Mayor, or *punong barangay* is temporarily incapacitated to perform his duties for physical or legal reasons such as, but not limited to, leave of absence, travel abroad, and suspension from office, the vice-governor,

city or municipal vice-mayor, or the highest ranking *sangguniang barangay* member shall automatically exercise the powers and perform the duties and functions of the local chief executive concerned, except the power to appoint, suspend, or dismiss employees which can only be exercised if the period of temporary incapacity exceeds thirty (30) working days.

In fact, Acting Mayor Dela Cruz explained that at that time he filed the motion, Mayor Philip Velasco was "on official vacation leave and out of the country."[11] It is likewise incontrovertible that Mayor Philip Velasco instituted the complaint in his capacity as then Mayor of Bacarra, Ilocos Norte. Petitioner premises his challenge on legal standing on the mere failure of the complainant to state in his complaint that he was suing on behalf of the municipality. His argument is specious. As correctly asserted by Mayor Philip Velasco in his Comment/Opposition to the Motion to Strike, the property sought to be recovered in the complaint will revert to the municipality and not to him.[12]

We likewise find no merit in petitioner's contention that he was deprived of due process because while the accusation in the information was for technical malversation, the crime charged in the complaint was for malversation and violation of the Anti-Graft and Corrupt Practices Act.

The Court had the occasion to rule on this issue in *Pilapil v. Sandiganbayan*.[13] Petitioner therein was accused of malversation under Article 217 of the Revised Penal Code before the Ombudsman for failing to deliver the ambulance that he had received on behalf of the municipality. The complaint for malversation was initially dismissed for lack of probable cause, but petitioner was later on charged for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act. Petitioner decried lack of due process because there was no preliminary investigation conducted on the offense of which he was being charged in the Information. The Court held otherwise, thus:

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[11] *Id.* at 69.

[12] Records, p. 167.

[13] G.R. No. 101978, 7 April 1993, 221 SCRA 349.

Petitioner loses sight of the fact that preliminary investigation is merely inquisitorial, and it is often the only means of discovering whether a person may be reasonably charged with a crime, to enable the prosecutor to prepare his complaint or information. The preliminary designation of the offense in the directive to file a counter-affidavit and affidavits of one's witnesses is not conclusive. Such designation is only a conclusion of law of Deputy Ombudsman Domingo. The Ombudsman is not bound by the said qualification of the crime. Rather, he is guided by the evidence presented in the course of a preliminary investigation and on the basis of which, he may formulate and designate the offense and direct the filing of the corresponding information. In fact, even the designation of the offense by the prosecutor in the information itself has been held inconclusive, to wit:

> [t]he real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information . . . it is not the technical name given by the Fiscal appearing in the title of the information that determines the character of the crime but the facts alleged in the body of the Information.[14]

What matters is compliance with due process during the preliminary investigation. That was accorded to petitioner. Due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of.[15] As aptly pointed out by the Court of Appeals, "Mr. Velasco was properly informed of the acts for which he was being investigated and later charged. He participated actively in the preliminary investigation and in fact, was given ample opportunity to buttress the allegations against him when he filed his counter-affidavit and submitted evidence on his behalf."[16] Upon issuance of the Memorandum indicting petitioner, petitioner

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[14] *Id.* at 356-357 (internal citation omitted).

[15] *Redulla v. Sandiganbayan (First Division)*, 545 Phil. 711, 723 (2007) citing *Roxas v. Hon. Vazquez*, 411 Phil. 276, 287 (2001).

[16] Sandiganbayan *rollo*, p. 55.

even filed the corresponding motion for reconsideration. Thus, petitioner was given all avenues to present his side and refute all allegations against him. He was accorded, and he availed of, due process.

After the preliminary investigation compliant with due process, the Ombudsman, guided by the evidence presented during the preliminary investigation formulates and designates the offense. The Ombudsman did so in this case. The formulation of the offense depends on the evidence presented, not on the conclusionary designation in the complaint.

In all, we see no grave abuse of discretion on the part of the Sandiganbayan in denying the motion for reinvestigation.

WHEREFORE, the instant petition for *certiorari* is *DISMISSED* for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174385. February 20, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **HON. RAMON S. CAGUIOA, Presiding Judge, Branch 74, Regional Trial Court, Third Judicial Region, Olongapo City, METATRANS TRADING INTERNATIONAL CORPORATION, and HUNDRED YOUNG SUBIC INTERNATIONAL, INC.,** *respondents.*

SYLLABUS

1. CONSTITUTIONAL LAW; BILL OF RIGHTS, DUE PROCESS OF LAW; EVEN THE REPUBLIC AS A LITIGANT IN A CASE IS ENTITLED TO DUE PROCESS OF LAW, IN THE SAME MANNER AND TO THE SAME EXTENT THAT THE RIGHT IS GUARANTEED TO PRIVATE LITIGANTS.— Due process of law is a constitutionally guaranteed right reserved to every litigant. Even the Republic as a litigant is entitled to this constitutional right, in the same manner and to the same extent that this right is guaranteed to private litigants. The essence of due process is the opportunity to be heard, logically preconditioned on prior notice, before judgment is rendered.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PRESENT PETITION WAS FILED WITHIN THE REGLEMENTARY PERIOD; IN CASE A MOTION FOR RECONSIDERATION OR NEW TRIAL IS TIMELY FILED, WHETHER SUCH MOTION IS REQUIRED OR NOT, THE SIXTY (60) DAY PERIOD SHALL BE COUNTED FROM NOTICE OF THE DENIAL OF SAID MOTION.— We disagree with the private respondents' procedural objections. We find that the present petition was filed within the reglementary period. Contrary to the private respondents' position, the 60- day period within which to file the petition for *certiorari* is counted from the Republic's receipt of the July 5, 2006 order denying the latter's motion for reconsideration. Section 4, Rule 65 of the Rules of Court is clear on this point — "**In case a motion for reconsideration** or new trial **is timely filed**, whether such motion is required or not, **the sixty (60) day period shall be counted from notice of the denial of said motion**." We find too that the present petition complied with the rules on proof of filing and service of the petition. Attached to the petition — in compliance with Sections 12 and 13, Rule 13 of the Rules of Court — are the registry receipts and the affidavit of the person who filed and served the petition by registered mail.

3. ID.; ID.; ID.; RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION IN THE ISSUANCE OF THE CORRECTIVE WRIT OF *CERTIORARI*.— The respondent judge acted with grave abuse of discretion warranting the

issuance of the corrective writ of *certiorari*. Grave abuse of discretion arises when a lower court or tribunal violates the Constitution or grossly disregards the law or existing jurisprudence.[34] The term refers to such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction, as when the act amounts to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. The respondent judge so acted so that the orders he issued should be declared void and of no effect.

4. ID.; ID.; ID.; THE PETITION FOR PROHIBITION AND PRAYER FOR INHIBITION ARE DENIED FOR HAVING BEEN MOOTED BY SUBSEQUENT EVENTS.— On November 9, 2006, the Republic filed an administrative case against the respondent judge for gross ignorance of the law, manifest partiality and conduct prejudicial ·to the best interest of the service. The case, docketed as A.M. No. RTJ-07-2063, is **likewise related to Civil Case No. 102-0 05 that underlie the present petition**. By a decision dated June 26, 2009, and while this case was still pending, this Court found the respondent judge guilty of gross ignorance of the law and conduct prejudicial to the best interest of the service. **The Court accordingly dismissed the respondent judge from the service.**

5. ID.; ID.; ID.; PRINCIPLE OF HIERARCHY OF COURTS; NOT AN ABSOLUTE RULE AND ADMITS OF EXCEPTIONS; THE DEMONSTRATED EXTENT OF RESPONDENT JUDGE'S ACTIONS AND THEIR EFFECTS CONSTITUTES SPECIAL AND COMPELLING CIRCUMSTANCES CALLING FOR THE COURT'S DIRECT AND IMMEDIATE ACTION.— While the principle of hierarchy of courts does indeed require that recourses should be made to the lower courts before they are made to the higher courts, this principle is not an absolute rule and admits of exceptions under well-defined circumstances. In several cases, we have allowed direct invocation of this Court's original jurisdiction to issue writs of *certiorari* on the ground of special and important reasons clearly stated in the petition; when dictated by public welfare and the advancement of public policy; when demanded by the broader interest of justice; when the challenged orders were patent nullities; or when analogous exceptional and compelling circumstances called for and

justified our immediate and direct handling of the case. The Republic claims that the respondent judge violated and continues to violate its right to due process by allowing the private respondents and several others to intervene in the case sans notice to the Republic; by extending to them the benefit of the original injunction without the requisite injunction bond applicable to them as separate injunction applicants; and by continuing to suspend the Republic's right to collect excise taxes from the private respondents and from the lower court petitioners, thus adversely affecting the government's revenues. To our mind, the demonstrated extent of the respondent judge's actions and their effects constitute special and compelling circumstances calling for our direct and immediate attention.

6. ID.; CIVIL PROCEDURE; SERVICE OF PLEADINGS; THE COURT IS SATISFIED WITH PETITIONER REPUBLIC'S EXPLANATION ON WHY IT FAILED TO INITIALLY COMPLY WITH THE RULE ON SERVICE OF THE PRESENT PETITION; ITS SUBSEQUENT COMPLIANCE WITH THE RULE AFTER BEING INFORMED OF THE PRESENCE OF COUNSELS OF RECORD SUFFICIENTLY WARRANTS RELAXATION OF THE RULES.— Under our rules of procedure, service of the petition on a party, when that party is represented by a counsel of record, is a patent nullity and is not binding upon the party wrongfully served. This rule, however, is a procedural standard that may admit of exceptions when faced with compelling reasons of substantive justice manifest in the petition and in the surrounding circumstances of the case. Procedural rules can bow to substantive considerations through a liberal construction aimed at promoting their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. The Republic has consistently and repeatedly maintained that it never received a copy of the motions and complaints-in-intervention, as evidenced by the certification of the Docket Division of the Office of the Solicitor General (OSG); it learned of the private respondents' presence in this case only after it received copies of the assailed orders, and it even had to inquire from the lower court for the private respondents' addresses. Although their counsels did not formally receive any copy of the petition, the private respondents themselves admitted that they received their copy of the present petition. The records show that the

Republic subsequently complied with the rules on service when, after the private respondents' comment, the Republic served copies of its reply and memorandum to the respondents' counsel of record. Under these circumstances, we are satisfied with the Republic's explanation on why it failed to initially comply with the rule on service of the present petition; its subsequent compliance with the rule after being informed of the presence of counsels of record sufficiently warrants the rule's relaxed application. The lack of a proper service — unlike the situation when the Republic was simply confronted with already-admitted complaints-in-intervention — did not result in any prejudice; the private respondents themselves were actually served with, and duly received, their copies of the present petition, allowing them to comment and to be heard on the petition.

7. ID.; ID.; INTERVENTION; A MOTION FOR INTERVENTION, LIKE ANY OTHER MOTION, HAS TO COMPLY WITH THE MANDATORY REQUIREMENTS OF NOTICE AND HEARING, AS WELL AS PROOF OF ITS SERVICE; A MOTION WHICH FAILS TO COMPLY WITH THE REQUIREMENTS IS A WORTHLESS PIECE OF PAPER THAT CANNOT AND SHOULD NOT BE ACTED UPON.— A motion for intervention, like any other motion, has to comply with the mandatory requirements of notice and hearing, as well as proof of its service, save only for those that the courts can act upon without prejudice to the rights of the other parties. A motion which fails to comply with these requirements is a worthless piece of paper that cannot and should not be acted upon. The reason for this is plain: a movant asks the court to take a specific course of action, often contrary to the interest of the adverse party and which the latter must then be given the right and opportunity to oppose. The notice of hearing to the adverse party thus directly services the required due process as it affords the adverse party the opportunity to properly state his agreement or opposition to the action that the movant asks for. Consequently, our procedural rules provide that a motion that does not afford the adverse party this kind of opportunity should simply be disregarded. The notice requirement is even more mandatory when the movant asks for the issuance of a preliminary injunction and/or a TRO. Under Section 5, Rule 58 of the Rules of Court, no preliminary injunction shall be granted without a hearing and without prior notice to the party sought

to be enjoined. The prior notice under this requirement is as important as the hearing, as no hearing can meaningfully take place, with both parties present or represented, unless a prior notice of the hearing is given. Additionally, in the same way that an original complaint must be served on the defendant, a copy of the complaint-in-intervention must be served on the adverse party with the requisite proof of service duly filed prior to any valid court action. Absent these or any reason duly explained and accepted excusing strict compliance, the court is without authority to act on such complaint; any action taken without the required service contravenes the law and the rules, and violates the adverse party's basic and constitutional right to due process.

8. ID.; ID.; ID.; THE MOTIONS AND COMPLAINT-IN-INTERVENTION CANNOT BUT BE MERE SCRAPS OF PAPER THAT THE RESPONDENT JUDGE HAD NO REASON TO CONSIDER; IN ADMITTING THEM DESPITE THE ABSENCE OF PRIOR NOTICE, RESPONDENT JUDGE DENIED THE REPUBLIC OF ITS RIGHT TO DUE PROCESS.— In the present case, records show that the OSG had never received – contrary to the private respondents' claim — a copy of the motions and complaints-in-intervention. The Republic duly and fully manifested the irregularity before the respondent judge. Thus, the mere statement in the assailed orders that the parties were duly notified is insufficient on the face of the appropriate manifestation made and the supporting proof that the Republic submitted. In these lights, the motions and complaints-in- intervention cannot but be mere scraps of paper that the respondent judge had no reason to consider; in admitting them despite the absence of prior notice, the respondent judge denied the Republic of its right to due process.

9. ID.; ID.; ID.; THE BASIC PRECEPTS OF FAIR PLAY AND THE PROTECTION OF ALL INTERESTS INVOLVED MUST ALWAYS BE CONSIDERED IN THE EXERCISE OF DISCRETION; THE ORIGINAL PARTIES TO THE ACTION, WHICH INCLUDE THE REPUBLIC, MUST HAVE BEEN PROPERLY INFORMED TO GIVE THEM A CHANCE TO PROTECT THEIR INTERESTS, WHICH INCLUDE, AMONG OTHERS, THE PROTECTION OF THE REPUBLIC'S REVENUE GENERATING AUTHORITY THAT SHOULD HAVE BEEN INSULATED AGAINST

DAMAGE THROUGH THE FILING OF A PROPER BOND.— While we may agree with the private respondents' claim that the matter of intervention is addressed to the sound discretion of the court, what should not be forgotten is the requirement that the exercise of discretion must in the first place be "sound." In other words, the basic precepts of fair play and the protection of all interests involved must always be considered in the exercise of discretion. Under the circumstances of the present case, these considerations demand that the original parties to the action, which include the Republic, must have been properly informed to give them a chance to protect their interests. These interests include, among others, the protection of the Republic's revenue-generating authority that should have been insulated against damage through the filing of a proper bond. Thus, even from this narrow view that does not yet consider the element of fair play, the private respondents' case must fail; judicial discretion cannot override a party litigant's right to due process.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
De Leon and Elayda Law Offices for respondents.

D E C I S I O N

BRION, *J.*:

We resolve in this petition for *certiorari* and prohibition[1] (the present petition) the challenge to the August 11, 2005 and July 5, 2006 orders[2] of respondent Judge Ramon S. Caguioa, Regional Trial Court *(RTC)* of Olongapo City, Branch 74, in Civil Case No. 102-0-05. The August 11, 2005 order granted the motion to intervene filed by private respondents Metatrans Trading International Corporation and Hundred Young Subic International, Inc., while the July 5, 2006 order denied the motion

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[1] *Rollo*, pp. 2-28.

[2] *Id.* at 35-36 and 37-38, respectively.

for reconsideration and the motion to suspend the proceedings filed by the petitioner Republic of the Philippines (*Republic*).

The Factual Antecedents

On March 14, 2005,[3] Indigo Distribution Corporation and thirteen other petitioners (collectively referred to as *lower court petitioners*) filed before the respondent judge a petition for declaratory relief with prayer for temporary restraining order *(TRO)* and preliminary mandatory injunction[4] against the Honorable Secretary of Finance, et al. The petition sought to nullify the implementation of Section 6 of Republic Act *(R.A.)* No. 9334, otherwise known as "AN ACT INCREASING THE EXCISE TAX RATES IMPOSED ON ALCOHOL AND TOBACCO PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 131, 141, 142, 143, 144, 145 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED," as unconstitutional. Section 6 of R.A. No. 9334, in part, reads:

SEC. 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:

SEC. 131. *Payment of Excise Taxes on Imported Articles.* —

(A) *Persons Liable.* — x x x.

x x x x x x x x x

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes,

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[3] *Id.* at 7 and 122.

[4] Copy of the petition for declaratory relief with prayer for temporary restraining order and preliminary mandatory injunction is attached as Annex "C" to the Petition; *id.* at 39-64. The other petitioners W STAR TRADING AND WAREHOUSING CORP., FREEDOM BRANDS PHILS., CORP., BRANDED WAREHOUSE, INC., ALTASIA INC., TAINAN TRADE (TAIWAN), INC., SUBIC PARK 'N SHOP, INC., TRADING GATEWAYS INTERNATIONAL PHILS., INC., DUTY FREE SUPERSTORE (DFS) INC., CHJIMES TRADING INC., PREMIER FREEPORT, INC., FUTURE TRADE SUBIC FREEPORT, INC., GRAND COMTRADE INTERNATIONAL, CORP., and FIRST PLATINUM INTERNATIONAL, INC.

distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further,* That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only[.] [emphasis ours; italics supplied]

The lower court petitioners are importers and traders duly licensed to operate inside the Subic Special Economic and Freeport Zone *(SSEFZ)*.

By way of background, Congress enacted, in 1992, R.A. No. 7227, otherwise known as "The BASES CONVERSION AND DEVELOPMENT ACT OF 1992," which provided, among others, for the creation of the SSEFZ, as well as the Subic Bay Metropolitan Authority *(SBMA)*. Pursuant to this law, the SBMA granted the lower court petitioners Certificates of Registration and Tax Exemption. The certificates allowed them to engage in the business of import and export of general merchandise (including alcohol and tobacco products) and uniformly granted them tax exemptions for these importations.

On January 1, 2005, Congress passed R.A. No. 9334. Based on Section 6 of R.A. No. 9334, the SBMA issued a Memorandum on February 7, 2005 directing its various departments to require importers in the SSEFZ to pay the applicable duties and taxes on their importations of tobacco and alcohol products before these importations are cleared and released from the freeport. The memorandum prompted the lower court petitioners to bring before the RTC their petition for declaratory relief (Civil Case No. 102-0-05). The petition included a prayer for the issuance

of a writ of preliminary injunction and/or a TRO to enjoin the Republic (acting through the SBMA) from enforcing the challenged memorandum.

On May 4, 2005,[5] the respondent judge granted the lower court petitioners' application for preliminary injunction despite the Republic's opposition, and on May 11, 2005, he issued the preliminary injunction.

The Republic filed before this Court a petition for *certiorari* and prohibition — **docketed in this Court as G.R. No. 168584** — to annul the respondent judge's order and the writ issued pursuant to this order. The petition asked for the issuance of a TRO and/or a writ of preliminary injunction. By motion dated July 21, 2005 filed before the lower court, the Republic asked the respondent judge to suspend the proceedings pending the resolution of G.R. No. 168584.

On August 5, 2005, the private respondents (in the present petition now before us) filed before the respondent judge motions for leave to intervene and to admit complaints-in-intervention. They also asked in these motions that the respondent judge extend to them the effects and benefits of his May 4, 2005 order, in the lower court petitioners' favor, and the subsequently issued May 11, 2005 writ of preliminary mandatory injunction.

Without acting on the Republic's motion to suspend the proceedings, the respondent judge granted on August 11, 2005 the private respondents' motions and complaints-in-intervention. The respondent judge found the private respondents to be similarly situated as the lower court petitioners; they stood, too, to be adversely affected by the implementation of R.A. No. 9334.

The Republic moved to reconsider[6] the respondent judge's August 11, 2005 order, arguing that it had been denied due process because it never received copies of the private respondents' motions and complaints-in-intervention.

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[5] *Id.* at 7 and 122.

[6] *Id.* at 65-71.

On July 5, 2006, the respondent judge denied the Republic's motion for reconsideration and the previously filed motion to suspend the proceedings. The respondent judge held that all of the parties in the case had been duly notified *per* the records. To justify the denial of the motion to suspend the proceedings, the respondent judge pointed to the absence of any restraining order in G.R. No. 168584. The Republic responded to the respondent judge's actions by filing the present petition.

The Petition

The present petition charges that the respondent judge acted with manifest partiality and with grave abuse of discretion when he issued his August 11, 2005 and July 5, 2006 orders. In particular, the Republic contends that the respondent judge violated its right to due process when he peremptorily allowed the private respondents' motions and complaints-in-intervention and proceeded with their hearing *ex parte* despite the absence of any prior notice to it. The Republic maintains that it never received any notice of hearing, nor any copy of the questioned motions and complaints-in-intervention.[7]

Further, the Republic posits that the respondent judge abused his discretion when he extended to the private respondents the benefits of the preliminary injunction earlier issued to the lower court petitioners under the same ₱1,000,000.00 bond the lower court petitioners posted. The Republic labels this action as a violation of Section 4, Rule 58 of the Rules of Court, claiming at the same time that the bond is manifestly disproportionate to the resulting damage the Republic stood to incur considering the number of the original and the additional lower court petitioners.[8]

Finally, in support of its prayer for the issuance of a TRO and/or a writ of preliminary injunction, the Republic stresses

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[7] *Id.* at 14-19 and 131-134.

[8] *Id.* at 20-24 and 135-139.

that the assailed orders continue to cause it multi-million tax losses. It justifies its prayer for the respondent judge's inhibition by pointing to the latter's act of continuously allowing parties to intervene despite the absence of notice and to the inclusion of non-parties to the original case.

During the pendency of the present petition, the Court *en banc* partially granted the Republic's petition in G.R. No. 168584. By a Decision[9] dated October 15, 2007, this Court set aside and nullified the respondent judge's order of May 4, 2005 and the subsequent May 11, 2005 writ of preliminary injunction. On January 15, 2008, the Court denied with finality the lower court petitioners' motion for reconsideration.[10]

The Respondent's Position

In their defense, the private respondents point to the procedural defects in the petition, specifically: *first,* the petition was filed out of time, arguing that the Republic only had 53 remaining days to file the petition from notice of the denial of its motion for reconsideration, maintaining that the 60-day period within which to file the petition is counted from the notice of the denial of the August 11, 2005 order; s*econd,* the petition did not comply with the rules on proof of filing and service; *third,* the Republic failed to properly serve their counsel of record a copy of the petition; and *fourth,* the Republic did not observe the hierarchy of courts in filing the instant petition.[11]

The private respondents further contend that the respondent judge correctly allowed their complaints-in-intervention as the matter of intervention is addressed to the courts' discretion; as noted in the assailed orders, the records show that the notice of hearing was addressed to all of the parties in the original case.[12]

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[9] *Id.* at 150-174.

[10] *Id.* at 175.

[11] *Id.* at 90-91, 94-96 and 188-190.

[12] *Id.* at 92-93 and 184-187.

Finally, on the Republic's prayer for prohibition, the private respondents maintain that prohibition is improper since this Court, in G.R. No. 168584, denied the Republic's prayer for a writ of prohibition, noting that the respondent judge had been suspended, pending resolution of this petition.[13]

The Court's Ruling

We resolve to PARTLY GRANT the petition.

Relaxation of procedural rules for compelling reasons

We disagree with the private respondents' procedural objections.

First, we find that the present petition was filed within the reglementary period. Contrary to the private respondents' position, the 60-day period within which to file the petition for *certiorari* is counted from the Republic's receipt of the July 5, 2006 order denying the latter's motion for reconsideration. Section 4, Rule 65 of the Rules of Court is clear on this point — "**In case a motion for reconsideration** or new trial **is timely filed**, whether such motion is required or not, **the sixty (60) day period shall be counted from notice of the denial of said motion**."[14]

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

[14] Section 4, Rule 65 of the Rules of Court provides in full:

"SEC. 4. *When and where petition filed.* — The **petition may be filed not later than sixty (60) days** from notice of the judgment, order or resolution. **In case a motion for reconsideration or new trial is timely filed**, whether such motion is required or not, **the sixty (60) day period shall be counted from notice of the denial of said motion**.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law

We find too that the present petition complied with the rules on proof of filing and service of the petition. Attached to the petition — in compliance with Sections 12 and 13, Rule 13 of the Rules of Court — are the registry receipts and the affidavit of the person who filed and served the petition by registered mail.

Second, while the principle of hierarchy of courts does indeed require that recourses should be made to the lower courts before they are made to the higher courts,[15] this principle is not an absolute rule and admits of exceptions under well-defined circumstances. In several cases, we have allowed direct invocation of this Court's original jurisdiction to issue writs of *certiorari* on the ground of special and important reasons clearly stated in the petition;[16] when dictated by public welfare and the advancement of public policy; when demanded by the broader interest of justice; when the challenged orders were patent nullities;[17] or when analogous exceptional and compelling circumstances called for and justified our immediate and direct handling of the case.[18]

The Republic claims that the respondent judge violated and continues to violate its right to due process by allowing the

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or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days." (emphases ours; italics supplied)

[15] *United Claimants Association of NEA (UNICAN) v. National Electrification Administration (NEA),* G.R. No. 187107, January 31, 2012, 664 SCRA 483, 489-490, citing *Mendoza v. Villas*, G.R. No. 187256, February 23, 2011, 644 SCRA 347.

[16] *United Claimants Association of NEA (UNICAN) v. National Electrification Administration (NEA), supra*, at 490. See also *Philippine Amusement and Gaming Corporation (PAGCOR) v. Fontana Development Corporation,* G.R. No. 187972, June 29, 2010, 622 SCRA 461, 476.

[17] *National Association of Electricity Consumers for Reforms, Inc. (NASECORE) v. Energy Regulatory Commission (ERC),* G.R. No. 190795, July 6, 2011, 653 SCRA 642, 656.

[18] *PCGG Chairman Magdangal B. Elma, et al. v. Reiner Jacobi, et al.,* G.R. No. 155996, June 27, 2012.

private respondents and several others to intervene in the case *sans* notice to the Republic; by extending to them the benefit of the original injunction without the requisite injunction bond applicable to them as separate injunction applicants; and by continuing to suspend the Republic's right to collect excise taxes from the private respondents and from the lower court petitioners, thus adversely affecting the government's revenues. To our mind, the demonstrated extent of the respondent judge's actions and their effects constitute special and compelling circumstances calling for our direct and immediate attention.

Lastly, under our rules of procedure,[19] service of the petition on a party, when that party is represented by a counsel of record, is a patent nullity and is not binding upon the party wrongfully served.[20] This rule, however, is a procedural standard that may admit of exceptions when faced with compelling reasons of substantive justice manifest in the petition and in the surrounding circumstances of the case.[21] Procedural rules can bow to substantive considerations through a liberal construction aimed at promoting their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.[22]

The Republic has consistently and repeatedly maintained that it never received a copy of the motions and complaints-in-intervention, as evidenced by the certification of the Docket Division of the Office of the Solicitor General (*OSG*); it learned of the private respondents' presence in this case only after it received copies of the assailed orders, and it even had to inquire

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[19] RULES OF COURT, Rule 13, Section 2.

[20] *Garrucho v. Court of Appeals,* 489 Phil. 150, 156 (2005), citing *Tam Wing Tak v. Makasiar*, 350 SCRA 475 (2001); and *De Leon v. Court of Appeals*, 432 Phil. 775 (2002). See also *Republic v. Luriz,* G.R. No. 158992, January 26, 2007, 513 SCRA 140, 150; and *De Leon v. Court of Appeals, supra,* at 788.

[21] *Osmeña v. Commission on Audit,* G.R. No. 188818, May 31, 2011, 649 SCRA 654, 660; and *Asia United Bank v. Goodland Company, Inc.,* G.R. No. 188051, November 22, 2010, 635 SCRA 637, 643.

[22] RULES OF COURT, Rule 1, Section 6.

from the lower court for the private respondents' addresses. Although their counsels did not formally receive any copy of the petition, the private respondents themselves admitted that they received their copy of the present petition. The records show that the Republic subsequently complied with the rules on service when, after the private respondents' comment, the Republic served copies of its reply and memorandum to the respondents' counsel of record.

Under these circumstances, we are satisfied with the Republic's explanation on why it failed to initially comply with the rule on service of the present petition; its subsequent compliance with the rule after being informed of the presence of counsels of record sufficiently warrants the rule's relaxed application.[23] The lack of a proper service — unlike the situation when the Republic was simply confronted with already-admitted complaints-in-intervention — did not result in any prejudice; the private respondents themselves were actually served with, and duly received, their copies of the present petition, allowing them to comment and to be heard on the petition.

The Republic was denied due process; the respondent judge issued the assailed orders with grave abuse of discretion

Due process of law is a constitutionally guaranteed right reserved to every litigant. Even the Republic as a litigant is entitled to this constitutional right, in the same manner and to the same extent that this right is guaranteed to private litigants. The essence of due process is the opportunity to be heard, logically preconditioned on prior notice, before judgment is rendered.[24]

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[23] See *Santos v. Litton Mills Incorporated,* G.R. No. 170646, June 22, 2011, 652 SCRA 510, 522; and *Osmeña v. Commission on Audit, supra* note 21, at 660.

[24] *Crispino Pangilinan v. Jocelyn N. Balatbat, etc.,* G.R. No. 170787, September 12, 2012. See also *Anama v. Court of Appeals*, G.R. No. 187021, January 25, 2012, 664 SCRA 293, 306.

A motion for intervention, like any other motion, has to comply with the mandatory requirements of notice and hearing, as well as proof of its service,[25] save only for those that the courts can act upon without prejudice to the rights of the other parties.[26] A motion which fails to comply with these requirements is a worthless piece of paper that cannot and should not be acted upon.[27] The reason for this is plain: a movant asks the court to take a specific course of action, often contrary to the interest of the adverse party and which the latter must then be given the right and opportunity to oppose.[28] The notice of hearing to the adverse party thus directly services the required due process as it affords the adverse party the opportunity to properly state his agreement or opposition to the action that the movant asks for.[29] Consequently, our procedural rules provide that a motion

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[25] *Anama v. Court of Appeals*, *supra*, at 306. See also *Preysler, Jr. v. Manila Southcoast Development Corporation*, G.R. No. 171872, June 28, 2010, 621 SCRA 636, 643.

[26] Rule 15 of the Rules of Court, which governs motions, provides:

RULE 15. MOTIONS.

x x x x

SEC. 4. *Hearing of motion*. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, **every written motion shall be set for hearing by the applicant**.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SEC. 5. *Notice of hearing.* — The **notice of hearing shall be addressed to all parties concerned**, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

SEC. 6. *Proof of service necessary.* — **No written motion** set for hearing **shall be acted upon by the court without proof of service** thereof. [emphases ours; italics supplied]

[27] *Anama v. Court of Appeals*, *supra* note 24, at 306; and *De la Peña v. De la Peña,* 327 Phil. 936, 940 (1996). See also *Bautista v. Causapin, Jr.,* A.M. No. RTJ-07-2044, June 22, 2011, 652 SCRA 442, 459; and *State Prosecutor Formaran III v. Judge Trabajo-Daray,* 485 Phil. 99, 111.

[28] *Bautista v. Causapin, Jr., supra*, at 459-460.

[29] *Ibid.*

that does not afford the adverse party this kind of opportunity should simply be disregarded.[30]

The notice requirement is even more mandatory when the movant asks for the issuance of a preliminary injunction and/or a TRO. Under Section 5, Rule 58 of the Rules of Court, no preliminary injunction shall be granted without a hearing and without prior notice to the party sought to be enjoined. The prior notice under this requirement is as important as the hearing, as no hearing can meaningfully take place, with both parties present or represented, unless a prior notice of the hearing is given.

Additionally, in the same way that an original complaint must be served on the defendant, a copy of the complaint-in-intervention must be served on the adverse party with the requisite proof of service duly filed prior to any valid court action. Absent these or any reason duly explained and accepted excusing strict compliance, the court is without authority to act on such complaint; any action taken without the required service contravenes the law and the rules, and violates the adverse party's basic and constitutional right to due process.

In the present case, records show that the OSG had never received — contrary to the private respondents' claim — a copy of the motions and complaints-in-intervention.[31] The Republic duly and fully manifested the irregularity before the respondent judge.[32] Thus, the mere statement in the assailed orders that the parties were duly notified is insufficient on the face of the appropriate manifestation made and the supporting proof that the Republic submitted. In these lights, the motions and complaints-in-intervention cannot but be mere scraps of paper that the respondent judge had no reason to consider; in admitting them despite the absence of prior notice, the respondent judge denied the Republic of its right to due process.

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[30] *Ibid.*

[31] *Rollo,* p. 72.

[32] *Id.* at 65-71.

While we may agree with the private respondents' claim that the matter of intervention is addressed to the sound discretion of the court,[33] what should not be forgotten is the requirement that the exercise of discretion must in the first place be "sound." In other words, the basic precepts of fair play and the protection of all interests involved must always be considered in the exercise of discretion. Under the circumstances of the present case, these considerations demand that the original parties to the action, which include the Republic, must have been properly informed to give them a chance to protect their interests. These interests include, among others, the protection of the Republic's revenue-generating authority that should have been insulated against damage through the filing of a proper bond. Thus, even from this narrow view that does not yet consider the element of fair play, the private respondents' case must fail; judicial discretion cannot override a party litigant's right to due process.

All told, the respondent judge acted with grave abuse of discretion warranting the issuance of the corrective writ of *certiorari.* Grave abuse of discretion arises when a lower court or tribunal violates the Constitution or grossly disregards the law or existing jurisprudence.[34] The term refers to such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction, as when the act amounts to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law.[35] The respondent judge so acted so that the orders he issued should be declared void and of no effect.

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[33] *Office of the Ombudsman v. Sison,* G.R. No. 185954, February 16, 2010, 612 SCRA 702, 712; and *Foster-Gallego v. Spouses Galang,* 479 Phil. 148, 164 (2004). See Rules of Court, Rule 19, Section 1.

[34] *Fernandez v. COMELEC,* 535 Phil. 122, 126 (2006).

[35] *Marquez v. Sandiganbayan 5th Division,* G.R. Nos. 187912-14, January 31, 2011, 641 SCRA 175, 181; *Land Bank of the Philippines v. Pagayatan,* G.R. No. 177190, February 23, 2011, 644 SCRA 133, 148; and *Deutsche Bank AG v. Court of Appeals,* G.R. No. 193065, February 27, 2012, 667 SCRA 82, 100.

Petition for prohibition and prayer for inhibition are denied for having been mooted by subsequent events

On November 9, 2006, the Republic filed an administrative case against the respondent judge for gross ignorance of the law, manifest partiality and conduct prejudicial to the best interest of the service. The case, docketed as A.M. No. RTJ-07-2063, is **likewise related to Civil Case No. 102-0-05 that underlie the present petition**. By a decision dated June 26, 2009, and while this case was still pending, this Court found the respondent judge guilty of gross ignorance of the law and conduct prejudicial to the best interest of the service. **The Court accordingly dismissed the respondent judge from the service.**

In light of these supervening events, the Court sees no reason to resolve the other matters raised in this petition for being moot.

WHEREFORE, under these premises, we *PARTIALLY GRANT* the petition. We *GRANT* the writ of *certiorari* and accordingly *SET ASIDE* the orders dated August 11, 2005 and July 5, 2006 of respondent Judge Ramon S. Caguioa in Civil Case No. 102-0-05 for being *NULL* and *VOID*. We *DISMISS* the prayer for writ of prohibition on the ground of mootness. Costs against Metatrans Trading International Corporation and Hundred Young Subic International, Inc.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 175876. February 20, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TOMAS TEODORO y ANGELES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; STATUTORY RAPE; ELEMENTS; ESSENCE OF THE CRIME.— The crimes charged were two counts of statutory rape. The elements of statutory rape are that: (a) the victim is a female under 12 years or is demented; and (b) the offender has carnal knowledge of the victim. Considering that the essence of statutory rape is carnal knowledge of a female without her consent, neither the use of force, threat or intimidation on the female, nor the female's deprivation of reason or being otherwise unconscious, nor the employment on the female of fraudulent machinations or grave abuse of authority is necessary to commit statutory rape. Full penile penetration of the female's genitalia is not likewise required, because carnal knowledge is simply the act of a man having sexual bodily connections with a woman.

2. ID.; ID.; ID.; TWO COUNTS OF STATUTORY RAPE; ESTABLISHED IN CASE AT BAR.— The Court declares that the findings of the RTC and the CA on the commission of the two counts of statutory rape by Teodoro were well — founded. AAA's recollections given in court when she was only eight years old disclosed an unbroken and consistent narration of her ordeals at his hands. She thereby revealed details that no child of her very tender age could have invented or concocted. The only rational and natural conclusion to be made by any objective arbiter is to accord the fullest credence to her. Yet, Teodoro would have us undo his convictions for statutory rape, arguing that AA A's description of his acts in Cebuano-Visayan, the dialect spoken by AAA, was *guihilabtan*, not *lugos*, the former being the dialect term for *touching* and the latter for *rape*. Teodoro's argument is directly belied by the established facts. AAA remained categorical and steadfast about what Teodoro had done to her all throughout her testimony in court, even during her delivery of the supposed recantation. She

narrated how he had committed the rape in the evening of December 18, 1997 by undressing her and himself, going on top of her, inserting his male organ into her vagina, and making push and pull motions, causing her to suffer severe pain in her vagina,

3. ID.; ID.; ID.; THE MEDICAL FINDINGS ESTABLISHED CONSUMMATED RAPE.— Moreover, to believe Teodoro's argument is to belie that AAA exhibited at the time of her physical examination by Dr. Abrenillo a peripheral erythema, or redness, in her hymen, as well as tenderness and gaping in her *labia majora* and *labia minora*. x x x In objective terms, carnal knowledge, the other essential element in consummated statutory rape, does not require full penile penetration of the female. The Court has clarified in People v. Campuhan that the mere touching of the external genitalia by a penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. All that is necessary to reach the consummated stage of rape is for the penis of the accused capable of consummating the sexual act to come into contact with the lips of the pudendum of the victim. This means that the rape is consummated once the penis of the accused capable of consummating the sexual *act touches either labia* of the pudendum. As the Court has explained in *People v. Bali- Balita*, the touching that constitutes rape does not mean mere epidermal contact, or stroking or grazing of organs, or a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the *mons pubis*, but rather the erect penis touching the labias or sliding into the female genitalia. Accordingly, the conclusion that touching the *labia majora* or the *labia minora* of the pudendum constitutes consummated rape proceeds from the physical fact that the labias are physically situated beneath the *mons pubis* or the vaginal surface, such that for the penis to touch either of them is to attain some degree of penetration beneath the surface of the female genitalia. It is required, however, that this manner of touching of the labias must be sufficiently and convincingly established. Here, the proof of the penis of Teodoro touching the labias of AAA was sufficient and convincing. Dr. A brenillo found the peripheral erythema in the hymen of AAA and the fact that her *labia majora* and *labia minora* were tender and gaping, exposing the hymenal opening. In other words, the touching by Teodoro's penis had

gone beyond the *mons pubis* and had reached the labias of the victim. Such physical findings, coupled with the narrative of AAA that, one, Teodoro went on top of her body; *two*, he inserted his penis into her vagina; *three*, he made push and pull motions thereafter; and, *four*, she felt great pain inside her during his push and pull movements, rendered the findings of rape against him unassailable as to the rape committed on February 8, 1998. W ith respect to the rape committed on December 18, 1997, we concur with the RTC and CA 's conclusion that AAA 's testimonial account thereon likewise sufficiently and convincingly established the commission of rape. She suffered severe pain inside her genitalia while his penis was penetrating her, which could only be understood in the light of the foregoing explanation made herein about his penis attaining some degree of penetration beneath the surface of her genitalia.

4. ID.; ID.; ID.; APPELLANT'S OWN CHARACTERIZATION OF HIS DEEDS IS IRRELEVANT, SELF-SERVING AND WILL NOT PREVAIL OVER THE PHYSICAL EVIDENCE ESTABLISHING CARNAL KNOWLEDGE.— Apart from being incompatible with the established facts, Teodoro's argument remained a matter of pure semantics. For sure, *rape* as defined and used by the *Revised Penal Code* is a legal term whose exact nuances and juridical consequences no victim of AAA's tender age and naivete could already fully know or realize. As such, her usage of the term *guihilabtan* to describe in the dialect what he had done to her should not be confined to what he would have us accept as the entire characterization of his deeds. Indeed, his argument on the distinction between the dialect terms *guihilabtan* and *lugos* reflected nothing better than his self-serving opinion on their meanings. Such opinion, already by its nature argumentative, should not prevail over the physical evidence. Worse, it was not even relevant, for what he ought to have done, instead, was to flesh out his opinion through a credible demonstration during the trial that by her usage of the dialect term *guihilabtan* she really meant mere touching of her genitalia that did not amount to his having carnal knowledge of her.

5. ID.; ID.; ID.; THE VICTIM'S RECANTATION IN CASE AT BAR IS UNACCEPTABLE.— BBB was then rearing four young children by Teodoro (the youngest being born when he was already detained), as well as AAA and her five siblings

that BBB had from an earlier relationship. She unabashedly needed the material support of Teodoro; hence, she prevailed on AAA to withdraw her charges against him. But a recantation under such insincere circumstances was unacceptable. As a rule, recantation is viewed with disfavor firstly because the recantation of her testimony by a vital witness of the State like AAA is exceedingly unreliable, and secondly because there is always the possibility that such recantation may later be repudiated. Indeed, to disregard testimony solemnly given in court simply because the witness recants it

6. ID.; CIVIL LIABILITY; AMOUNTS AWARDED MODIFIED BY THE COURT.— We rectify the amounts of the civil liability of Teodoro. The RTC had granted to AAA only the amount of ₱50,000.00 for each case, or a total of ₱100,000.00 for both cases, without stating the character of the award, but the CA modified the award by granting in each case moral damages of ₱50,000.00 and exemplary damages of ₱25,000.00. Both lower courts thereby erred. There is no longer any debate that the victim in statutory rape is entitled to a civil indemnity of ₱50,000.00, moral damages of ₱50,000.00, and exemplary damages of ₱30,000.00. The award of civil indemnity of ₱50,000.00 is mandatory upon the finding of the fact of rape. Similarly, the award of moral damages of ₱50,000.00 is mandatory, and made without need of allegation and proof other than that of the fact of rape, for it is logically assumed that the victim suffered moral injuries from her ordeal. In addition, exemplary damages of ₱30,000.00 are justified under Article 2229 of the Civil Code to set an example for the public good and to serve as deterrent to those who abuse the young.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

The recantation of her testimony by the victim of rape is to be disregarded if the records show that it was impelled either

by intimidation or by the need for the financial support of the accused.

This rule comes to the forefront once again in our review of the affirmance by the Court of Appeals (CA) of the conviction for two counts of rape of Tomas Teodoro *y* Angeles,[1] in which the victim, AAA,[2] was the 8-year old daughter of BBB, his common-law wife. The Regional Trial Court had pronounced Teodoro guilty of two counts of statutory rape on December 10, 2001, and condignly meted him the penalty of *reclusion perpetua* for each count.[3]

Antecedents

Two informations, both dated March 25, 1998, charged Teodoro with statutory rape committed as follows:

Criminal Case No. 98-02

That on or about the 18th day of December, 1997, at, 10:00 o'clock in the evening, more or less, in Sitio Seringan, Poblacion, Kitcharao, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, an eight (8) year old minor.

CONTRARY TO LAW: (Article 335, *Revised Penal Code*, as amended by R.A. 7659)[4]

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[1] CA *rollo,* pp. 119-136; penned by Associate Justice Myrna Dimaranan-Vidal (retired), with Associate Justice Romulo V. Borja and Associate Justice Ricardo R. Rosario concurring.

[2] The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*) and Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*). See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] CA *rollo*, pp. 71-85.

[4] Records, Vol. I, p. 1.

Criminal Case No. 98-03

That on or about the 8th day of February, 1998, at 10:00 o'clock in the evening, more or less, in Sitio Seringan, Poblacion, Kitcharao, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, said accused by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, an eight (8) year old minor.

CONTRARY TO LAW: (Article 335, *Revised Penal Code,* as amended by R.A. 7659)[5]

With respect to the statutory rape charged in Criminal Case No. 98-02, the records show that on December 18, 1997 BBB left home in Kitcharao, Agusan del Norte on an errand in Surigao; that her children, including AAA, were left under the care of Teodoro, her common-law husband; that late that night, he returned home drunk, and his arrival roused the children from their sleep, because they had not yet eaten; that they eagerly ate the food he set down for them; that soon after the dinner, he told the children to go to bed; that the children went to sleep in their respective places on the floor; that AAA became puzzled when he turned off the lights that were supposed to be left on; that AAA eventually fell asleep beside her siblings; that at some point later in the night, he roused AAA, and ordered her to strip naked; that she initially defied him, but he himself then undressed her; that he took off his pants and drawers down to his knees, exposing his penis; that he went on top of her, inserted his penis in her vagina, and made push and pull movements; that she felt a sharp pain inside her vagina; that he stopped his movements when she protested due to her pain becoming unbearable, because he did not want the other children to be roused from sleep; that he returned to his own place, but she got up to relieve herself; that she felt searing pain in her vagina as she was relieving herself; and that she did not tell her mother upon the latter's return from Surigao about what Teodoro had done to her.

Anent the rape committed on February 8, 1998 (Criminal Case No. 98-03), BBB was again away from the house, having

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[5] Records, Vol. II, p. 1.

gone to Manila. Teodoro committed the rape in a fashion similar to that in the first rape. However, AAA could no longer bear her ordeal, and told of the rapes to CCC, the older brother of BBB: *Tay, guihilabtan ko ni Tomas Teodoro* (*Tay*, *I was touched by Tomas Teodoro*).[6] CCC immediately reported the crimes to the Kitcharao Police Station. The police quickly arrested Teodoro. Upon BBB's return in the afternoon, CCC informed her about what Teodoro had done to her daughter. BBB and CCC took AAA to the Kitcharao District Hospital for physical and medical examination.

Dr. Mary Ann D. Abrenillo of the Kitcharao District Hospital examined AAA, and issued a medical certificate on her findings, as follows:

1. Intact Hymen that admits Right Small Finger of examiner and with slight peripheral erythema.

2. *Labia Majora* and *Minora* slightly Gaped Exposing Hymenal Opening, with tenderness.[7]

Based on the medical certificate, the Office of the Provincial Prosecutor of Agusan del Norte charged Teodoro with two counts of statutory rape through the aforequoted informations.[8]

At his arraignment on August 17, 1998, Teodoro pleaded *not guilty* to the informations. Although he subsequently manifested a willingness to change the pleas to *guilty*, he balked when he was re-arraigned on December 23, 1998 by qualifying that he had only "fingered" AAA. Accordingly, the RTC reinstated his pleas of *not guilty*.

During the trial, AAA[9] and BBB[10] testified for the Prosecution, but two years later recanted and turned hostile towards the

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[6] TSN, May 31, 1999, p. 10.

[7] Records, Vol. II, Index of Exhibits, Exh. A-2.

[8] Records, Vol. II, p. 1.

[9] TSN, November 17, 1998.

[10] TSN, September 7, 1999.

Prosecution, now telling the RTC that Teodoro had only touched AAA's vagina on the nights of December 18, 1997 and February 8, 1998.[11]

On his part, Teodoro claimed[12] that he had only caressed or touched AAA's body on the night of February 8, 1998; that before going home from work on that day, he had joined his friends in drinking *Kulafu*; that he had arrived home late that night, and had gone to bed after serving the children food to eat; that he had later awakened to find somebody sleeping beside him; that he had embraced and caressed the different parts of the body of that person, whom he thought was BBB whom he had earlier sent off to Surigao on an errand; that he had realized that he was caressing AAA only after she shouted: *Cle, Cle, ayaw!* (*Uncle, stop that*!); that he had then gotten up to go to a different part of the room;[13] and that he did not rape AAA on the night of December 18, 1997,[14] although he admitted being at home then.[15]

Ruling of the RTC

After the trial, on December 10, 2001, the RTC rendered its judgment convicting Teodoro on both counts of statutory rape notwithstanding the recantations by AAA and BBB. The RTC disposed:

WHEREFORE, in the light of all the foregoing, the Court finds the accused TOMAS TEODORO Y ANGELES in Criminal Cases Nos. 98-02 and 98-03 GUILTY beyond reasonable doubt of the crimes of rape committed against AAA, an eight (8)-year old minor. Accordingly, he is hereby sentenced to suffer the penalty of

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[11] For AAA, see TSN, November 20, 2000; for BBB, see TSN, January 8, 2001.

[12] TSN, October 19, 1999.

[13] *Id.* at 11-13.

[14] *Id.* at 7.

[15] *Id.* at 8.

RECLUSION PERPETUA in each of the cases, with the accessories provided for by law, to pay the offended party the sum of ₱100,000.00, ₱50,000.00 for each case, and to pay the costs.

In the service of his sentence, accused is credited with the full time during which he has undergone preventive imprisonment conformably to Article 29 of the *Revised Penal Code*, as amended.

IT IS SO ORDERED.[16]

The RTC rejected AAA's recantation of her accusation for being inconsistent with the testimony of Dr. Abrenillo showing that the redness on the edges of the protective structure of her vaginal opening had been caused by friction from the forceful introduction of an erect penis; and that such forceful introduction of an erect penis had led to the gaping of the *labia minora* and *labia majora* of AAA.

Ruling of the CA

On appeal, Teodoro focused on the RTC's rejection of AAA's recantation. He argued in his appellant's brief[17] that no rape was committed considering that the Cebuano-Visayan word *guihilabtan* used by AAA in describing what he did to her signified only touching, as contrasted with *lugos*, the proper Cebuano-Visayan term for rape that AAA did not use.

Unimpressed, the CA sustained the RTC, and ignored AAA's recantation for being dictated by her family's financial difficulties. It agreed with the observation of the Office of the Solicitor General to the effect that AAA's recantation should not be considered because it came about after she had returned home from the custody of the Department of Social Welfare and Development (DSWD). In contrast, it found AAA's court testimony given on November 17, 1998 consistent with the physical findings of Dr. Abrenillo.

The CA decreed:

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[16] Records, Vol. I, pp. 222-223.

[17] CA *rollo,* pp. 57-69.

WHEREFORE, premises considered, herein appeal is hereby **DISMISSED** for evident lack of merit and the assailed Judgment is hereby **AFFIRMED** with **MODIFICATION** granting in each case moral damages in the amount of P50,000.00 and exemplary damages in the sum of P25,000.00.

SO ORDERED.[18]

Issues

1. Were the rapes charged against Teodoro established beyond reasonable doubt?
2. Should the recantation by AAA be accepted?

Ruling of the Court

The appeal lacks merit.

Articles 266-A and 266-B of the *Revised Penal Code,* as amended by Republic Act No. 8353,[19] define and punish rape as follows:

Article 266-A. *Rape; When and How Committed. – Rape is committed –*

1) By a man who shall have carnal knowledge of a woman under any of the circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machinations or grave abuse of authority; and

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.

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[18] *Supra* note 1, at 135-136.

[19] Effective on October 22, 1997.

Article 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The crimes charged were two counts of statutory rape. The elements of statutory rape are that: (*a*) the victim is a female under 12 years or is demented; and (*b*) the offender has carnal knowledge of the victim. Considering that the essence of statutory rape is carnal knowledge of a female *without her consent*, neither the use of force, threat or intimidation on the female, nor the female's deprivation of reason or being otherwise unconscious, nor the employment on the female of fraudulent machinations or grave abuse of authority is necessary to commit statutory rape.[20] Full penile penetration of the female's genitalia is not likewise required, because carnal knowledge is simply the act of a man having sexual bodily connections with a woman.[21]

Describing the rape committed against her on December 18, 1997, AAA declared thus:

Q: How about your uncle, Tomas Teodoro, do you know what did he do after you have already eaten and drank water?

A: Yes. My uncle commanded us and he told my elder brother, EEE, to go to sleep and on that night, I was surprised because he put off the light.

Q: Now, AAA, could you describe how your uncle look like when he arrived in your house?

A: Yes, Ma'am.

Q: How did he look like? Did he look normal?

A: Yes, Ma'am, but he was drunk.

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[20] Article 266-A, (*d*), *Revised Penal Code*.

[21] *Black's Law Dictionary* 193 (5th ed., 1979); see also *People v. Taguilid*, G.R. No. G.R. No. 181544, April 11, 2012, 669 SCRA 341, 350-351; *People v. Butiong*, G.R. No. 168932, October 19, 2011, 659 SCRA 557, 566; *People v. Masalihit*, G.R. No. 124329, December 14, 1998, 300 SCRA 147, 155; *People v. Flores, Jr.,* G.R. No.128823-24, December 27, 2002, 394 SCRA 325, 333.

x x x x x x x x x

Q: What do you mean by he drinks something?

A: It was Kulafu, Ma'am, because it smelt bad.

x x x x x x x x x

Q: x x x. After your uncle put off the light, did you immediately fall asleep?

A: Not yet. I first looked at the light because I was surprised why it was put off and I noticed that it was my uncle who put off the light.

x x x x x x x x x

Q: So you are telling the Court that you were the last one to sleep that night including your uncle, of course, among you and your siblings? You were the last one who went to sleep that night

A: Yes ma'am

Q: Now, when you already fell asleep, was it then the time you were awakened again because your uncle came near you?

A: Yes ma'am

x x x x x x x x x

Q: How did he force you to undress?

A: He was the one who undressed me ma'am.

Q: After he undressed you, your uncle also undressed his trousers and drawers, correct?

A: He just lowered his pants up to his knee

Q: After lowering his pants up to his knee, he laid on top of you correct?

A: He laid on top of me

Q; After that, x x x what was the next thing that he did?

A: He inserted his penis into my vagina.

x x x x x x x x x

Q: Now, AAA, before this incident happened on December 18, 1997, do you have a good relationship with your step-father?

A: Yes, ma'am we have a good relationship.[22] (Emphasis supplied)

Concerning the rape committed on February 8, 1998, AAA's testimony ran as follows:

Q: Now, what happened to you while you were sleeping or about to sleep on February 8, 1998 at your house?

A: He touched "*hilabtan*" me, Sir.

Q: When you said "he touched you", you are referring to your step-father, the accused in these cases?

A: Yes, Sir.

Q: Now, would you kindly tell this Honorable Court how did the accused Tomas Teodoro touch you?

A: He laid on top of me, Sir.

Q: Before he laid on top of you, what did he do to you?

A: He undressed me.

Q: What kind of clothes did you wear?

A: I was wearing a whole dress, Sir.

Q: When you said "whole dress," it is the same kind of clothes you are wearing now?

A: Yes, Sir.

Q: Before he laid on top of you, you said that he undressed you. Now, was he able to undress you?

A: I undressed myself.

Q: You undressed yourself because your father told you?

A: Yes, sir.

Q: Now, were you wearing a panty at that time?

A: Yes, Sir, I was wearing a panty.

[22] TSN, December 3, 1998, pp. 9-12.

Q: Now, what happened to your panty before your step-father laid on top of you?

A: He lowered my panty up to my thigh.

Q: When your father lowered your panty up to your thigh and you were completely naked, were you lying down on the floor of the room where you were sleeping?

A: Yes, Sir, I was lying down.

Q: How about your step-father before he laid on top of you, what kind of clothes did he wear?

A: He was wearing a jacket and a t-shirt, Sir.

Q: Did he remove his jacket and t-shirt?

A: Yes, Sir.

Q: How about his pants, did he remove his pants before he laid on top of you?

A: When he laid on top of me, he just lowered his pants up to his knee.

Q: Did he also lower his drawers?

A: He also lowered his drawers up to his knee, Sir.

Q: Now, when he laid on top of you, what else did he do to you aside from lying on top of you?

A: He touched me, Sir; he inserted his penis into my vagina.

Q: After he inserted his penis into your vagina, what else did he do?

A: He made some push and pull movement, Sir.

Q: When he made that push and pull movement, what did you feel?

A: I felt pain, Sir.

Q: Where did you feel that pain?

A: In my vagina, Sir.

Q: Now, while your father made that push and pull movement, what did you do or say?

A: I begged him to stop because it was really painful and after that I urinated and it was really very painful.

Q: Where did you feel that pain while you were urinating?

A: In my vagina, Sir.[23] (Emphasis supplied)

The Court declares that the findings of the RTC and the CA on the commission of the two counts of statutory rape by Teodoro were well-founded. AAA's recollections given in court when she was only eight years old disclosed an unbroken and consistent narration of her ordeals at his hands. She thereby revealed details that no child of her very tender age could have invented or concocted. The only rational and natural conclusion to be made by any objective arbiter is to accord the fullest credence to her.

Yet, Teodoro would have us undo his convictions for statutory rape, arguing that AAA's description of his acts in Cebuano-Visayan, the dialect spoken by AAA, was *guihilabtan*, not *lugos*, the former being the dialect term for *touching* and the latter for *rape*.

Teodoro's argument is directly belied by the established facts. AAA remained categorical and steadfast about what Teodoro had done to her all throughout her testimony in court, even during her delivery of the supposed recantation. She narrated how he had committed the rape in the evening of December 18, 1997 by undressing her and himself, going on top of her, inserting his male organ into her vagina, and making push and pull motions, causing her to suffer severe pain in her vagina, to wit:

Q: Now, do you remember what happened to you while you were inside that room about to sleep on that evening of December 18, 1997?

A: Yes, Sir.

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[23] TSN, November 17, 1998, pp. 14-A to 16.

Q: Now, what happened to you?

A: At that time, he laid beside me and he told me to take off my clothes. After that, he also took off his clothes then he laid on top of me.[24]

x x x x x x x x x

Q: When your father laid on top of you, what did he do aside from lying on top of you?

A: **He inserted his penis into my vagina and he made some push and pull movement.**

Q: **You said that your father inserted his penis into your vagina and made a push and pull movement. Now, when this was happening, what did you feel?**

A: **I asked him to stop because I felt pain, but he told me to keep quite because others might hear us.**

Q: **When you told your father or begged your father to stop because you were feeling pain, which part of your body did you feel that pain?**

A: **In my vagina, Sir.**

Q: When you begged your father to stop because there was pain on your vagina, did your father heed your request to stop?

A: He stopped, Sir.

Q: You mean your father stopped his push and pull movement?

A: Yes, because after that, I told him.

Q: Now, after your father stopped his push and pull movement, what did your father do next?

A: He stopped and after that I urinated and I felt pain.

Q: Now, where did you feel that pain?

A: In my vagina.

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[24] *Id.* at 8.

Q: When you urinated, did your father go to sleep?

A: He did not go to sleep right away but he just lay down on bed.

Q: You mean to tell this Court that he returned to his place where he was lying down before he raped you?

A: Yes, Sir.

Q: Now, before you urinated, did your father tell you about what to do?

A: He told me never to tell the incident that happened because the moment I will tell the truth, he will reprimand me.[25] (Emphasis supplied)

x x x x x x x x x

Moreover, to believe Teodoro's argument is to belie that AAA exhibited at the time of her physical examination by Dr. Abrenillo a peripheral erythema, or redness, in her hymen, as well as tenderness and gaping in her *labia majora* and *labia minora.* Dr. Abrenillo explained the significance of her physical findings, to wit:

Q. So, you are telling this Honorable Court that when an erect male penis may contact in this particular area, that might have caused the discoloration of the reddish in color of that particular area, is that correct?

A. Yes, because the force of the friction might be that adequate to cause the reddish or inflammation that resulted in the discoloration of the normal tissue or structure.

x x x x

Q. Now, in your second findings, you said that there is a slightly Gaped Exposing Hymenal Opening of the *Labia Majora* and *Minora*, in your expert opinion as medico legal expert, what might have caused this Gape Opening?

A. Again related to number 1, a friction also mean something can cause the gaping or exposure of the opening and it can

[25] *Id.* at 11-13.

be substantiated also that there was pain that was experienced by the patient.

Q. Now, you are telling this Honorable Court that when you touched this particular area, the patient experienced pain?

A. Yes, Sir.

Q. As a medico legal expert, could this particular injury be caused by a contact of an erect male organ?

A. Well, it is sustain and with a force.

Q. In this particular case because there is a gape opening of the lips which you said this medico legal term, *Labia Majora* and *Minora*, could this opening be caused by a contact of an erect male organ?

A. Yes, Sir, because normally, gape should not be exposing the Hymenal Opening and the smaller lip should be covered by the bigger one.[26]

In objective terms, carnal knowledge, the other essential element in consummated statutory rape, does not require full penile penetration of the female. The Court has clarified in *People v. Campuhan*[27] that the mere touching of the external genitalia by a penis *capable of consummating the sexual act* is sufficient to constitute carnal knowledge. All that is necessary to reach the consummated stage of rape is for the penis of the accused capable of consummating the sexual act to come into contact with the lips of the pudendum of the victim. This means that the rape is consummated once the penis of the accused capable of consummating the sexual act *touches* either *labia* of the pudendum. As the Court has explained in *People v. Bali-Balita*,[28] the *touching* that constitutes rape does not mean mere epidermal contact, or stroking or grazing of organs, or a slight brush or a scrape of the penis on the external layer of the victim's vagina,

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[26] TSN, October 26, 1998, pp. 7-8.

[27] G.R. No. 129433, March 30, 2000, 329 SCRA 270, 280.

[28] G.R. No. 134266, September 15, 2000, 340 SCRA 450, 465.

or the *mons pubis*, but rather the erect penis touching the *labias* or sliding into the female genitalia. Accordingly, the conclusion that touching the *labia majora* or the *labia minora* of the pudendum constitutes consummated rape proceeds from the physical fact that the *labias* are physically situated beneath the *mons pubis* or the vaginal surface, such that for the penis to touch either of them is to attain some degree of penetration beneath the surface of the female genitalia. It is required, however, that this manner of touching of the *labias* must be sufficiently and convincingly established.

Here, the proof of the penis of Teodoro touching the *labias* of AAA was sufficient and convincing. Dr. Abrenillo found the peripheral erythema in the hymen of AAA and the fact that her *labia majora* and *labia minora* were tender and gaping, exposing the hymenal opening. In other words, the touching by Teodoro's penis had gone beyond the *mons pubis* and had reached the *labias* of the victim. Such physical findings, coupled with the narrative of AAA that, *one*, Teodoro went on top of her body; *two*, he inserted his penis into her vagina; *three*, he made push and pull motions thereafter; and, *four*, she felt great pain inside her during his push and pull movements, rendered the findings of rape against him unassailable as to the rape committed on February 8, 1998. With respect to the rape committed on December 18, 1997, we concur with the RTC and CA's conclusion that AAA's testimonial account thereon likewise sufficiently and convincingly established the commission of rape. She suffered severe pain inside her genitalia while his penis was penetrating her, which could only be understood in the light of the foregoing explanation made herein about his penis attaining some degree of penetration beneath the surface of her genitalia.

Apart from being incompatible with the established facts, Teodoro's argument remained a matter of pure semantics. For sure, *rape* as defined and used by the *Revised Penal Code* is a legal term whose exact nuances and juridical consequences no victim of AAA's tender age and naivete could already fully know or realize. As such, her usage of the term *guihilabtan* to describe in the dialect what he had done to her should not be

confined to what he would have us accept as the entire characterization of his deeds. Indeed, his argument on the distinction between the dialect terms *guihilabtan* and *lugos* reflected nothing better than his self-serving opinion on their meanings. Such opinion, already by its nature argumentative, should not prevail over the physical evidence. Worse, it was not even relevant, for what he ought to have done, instead, was to flesh out his opinion through a credible demonstration during the trial that by her usage of the dialect term *guihilabtan* she really meant mere touching of her genitalia that did not amount to his having carnal knowledge of her.

Teodoro's further submission that AAA recanted the accusations against him is bereft of substance.

The relevant portions of AAA's recantation on November 20, 2000 went as follows:

Q: Now, it appears that during the time that you were made to testify, you testified before this honorable court that your stepfather had carnal knowledge with you, the question is — why did you make that testimony before?

A: **Because I saw him doing that to me, Sir**.

Q: Which one?

A: **Because he undressed me and he touched my private parts. He touched my vagina and I told him to stop because I felt the need to urinate. When I urinated, it was very painful since the act has just been done.**

x x x x x x x x x

Q: **AAA, why are you crying?**

A: **Because of my problem, sir.**

Q: **What is your problem, AAA?**

A: **When my step-father touched me.**

Q. **AAA, you pity your step-father or your uncle because he has been in jail for a long time and nobody can help your mother now?**

A. Yes, Sir.

Q. You want your step-father to come home, is that correct, to help you and your mother?

A. Yes, Sir.

x x x x x x x x x

COURT

Q: Why are you crying?

A**: Because it is against my will, your honor.**

Q: Which one is against your will?

A: When my uncle touched me your honor. That is why I cried.

Q: You are no longer with the DSWD in Butuan city?

A: Not any more Your Honor.

x x x x x x x x x

Q: **You informed the Court before when you testified for the prosecution that your uncle removed your panty, touched your vagina and inserted his penis into your vagina is it not?**

A: **That is not true, Your Honor.**

Q: **What do you mean that is not true? What is your understanding about that?**

A: **He was only touching me, Your Honor.**

Q: **Okay he touched your vagina?**

A: **Yes, Your Honor.**

Q: **He did not insert his fingers into your vagina?**

A: **He did not, Your Honor.**[29] (Emphasis supplied)

Even during her intended recantation, AAA cried most of the time. Such demeanor reflected how much she despised what he had done to her twice. As such, her supposed recantation

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[29] TSN, November 20, 2000, pp. 4-6, and 8.

did not conceal the impelling motive for it being that her mother and her family still needed the material support of Teodoro. This was confirmed even by BBB, whose own testimony on AAA's supposed recantation was as follows:

Court:

> But despite the fact that your common law husband according to you he is a troublesome person everytime he gets drank, this case will be dismissed. You want to maintain your relationship again?

A: **Not anymore, Your Honor.**

Q. **Why?**

A. **I want him to get out from Jail so that I could have somebody to help me and to assist me in rearing my children specially so, Your Honor, my children are now growing up.**

Q. **Okay, now if you want him to rear or help in rearing your children, naturally he used to go home to your house and sleep together with you, do you want him to sleep in another house?**

A. **He promised to me, Your Honor, that he will live in the residence of his employer**.[30] (Emphasis supplied)

BBB was then rearing four young children by Teodoro (the youngest being born when he was already detained),[31] as well as AAA and her five siblings that BBB had from an earlier relationship.[32] She unabashedly needed the material support of Teodoro; hence, she prevailed on AAA to withdraw her charges against him. But a recantation under such insincere circumstances was unacceptable.

As a rule, recantation is viewed with disfavor firstly because the recantation of her testimony by a vital witness of the State

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[30] TSN dated January 8, 2001, p. 14.

[31] TSN, October 19, 1999, p. 7.

[32] TSN, September 7, 1999, p. 15.

like AAA is exceedingly unreliable, and secondly because there is always the possibility that such recantation may later be repudiated.[33] Indeed, to disregard testimony solemnly given in court simply because the witness recants it ignores the possibility that intimidation or monetary considerations may have caused the recantation. Court proceedings, in which testimony upon oath or affirmation is required to be truthful under all circumstances, are trivialized by the recantation. The trial in which the recanted testimony was given is made a mockery, and the investigation is placed at the mercy of an unscrupulous witness. Before allowing the recantation, therefore, the court must not be too willing to accept it, but must test its value in a public trial with sufficient opportunity given to the party adversely affected to cross-examine the recanting witness both upon the substance of the recantation and the motivations for it.[34] The recantation, like any other testimony, is subject to the test of credibility based on the relevant circumstances, including the demeanor of the recanting witness on the stand. In that respect, the finding of the trial court on the credibility of witnesses is entitled to great weight on appeal unless cogent reasons necessitate its re-examination, the reason being that the trial court is in a better position to hear first-hand and observe the deportment, conduct and attitude of the witnesses.[35]

Finally, we rectify the amounts of the civil liability of Teodoro. The RTC had granted to AAA only the amount of ₱50,000.00 for each case, or a total of ₱100,000.00 for both cases, without stating the character of the award, but the CA modified the

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[33] *People v. Sumingwa*, G.R. No. 183619, October 13, 2009, 603 SCRA 638, 650; *People v. Navasca*, No. L-28107, March 15, 1977, 76 SCRA 70, 78; *People v. Genilla*, No. L-23681, September 3, 1966, 18 SCRA 12, 16; *People v. Pasilan*, No. L-18770, July 30, 1965, 14 SCRA 694, 701; *People v. Domenden*, No. L-17822, October 30, 1962, 6 SCRA 343, 351.

[34] *People v. Ballabare,* G.R. No. 108871, November 19, 1996, 264 SCRA 350, 361.

[35] *People v. Terrible*, G.R. No. 140635, November 18, 2002, 392 SCRA 113, 118.

award by granting in each case moral damages of ₱50,000.00 and exemplary damages of ₱25,000.00.

Both lower courts thereby erred. There is no longer any debate that the victim in statutory rape is entitled to a civil indemnity of ₱50,000.00, moral damages of ₱50,000.00, and exemplary damages of ₱30,000.00. The award of civil indemnity of ₱50,000.00 is mandatory upon the finding of the fact of rape.[36] Similarly, the award of moral damages of ₱50,000.00 is mandatory, and made without need of allegation and proof other than that of the fact of rape,[37] for it is logically assumed that the victim suffered moral injuries from her ordeal. In addition, exemplary damages of ₱30,000.00 are justified under Article 2229 of the *Civil Code*[38] to set an example for the public good and to serve as deterrent to those who abuse the young.[39]

WHEREFORE, we *AFFIRM* the decision promulgated on April 24, 2006, with the *MODIFICATION* that **TOMAS TEODORO *y* ANGELES** is ordered to pay to AAA for each count of rape the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, plus interest of 6% *per annum* from the finality of this decision.

The accused is further liable for the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

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[36] *People v. Begino*, G.R. No. 181246, March 20, 2009 582 SCRA 189, 198-199.

[37] *People v. Pabol*, G.R. No. 187084, October 12, 2009, 603 SCRA 522, 532.

[38] *People v. Matunhay*, G.R. No. . 178274, March 5, 2010, 614 SCRA 307, 321.

[39] *People v. Tormis*, G.R. No. 183456, December 18, 2008, 574 SCRA 903, 920.

FIRST DIVISION

[G.R. No. 178065. February 20, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARNOLD TAPERE y POLPOL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF *SHABU*; ELEMENTS OF THE CRIME; THE PROSECUTION MUST SHOW THAT THE TRANSACTION OR SALE ACTUALLY TOOK PLACE AND PRESENT IN COURT THE THING SOLD AS EVIDENCE OF THE *CORPUS DELICTI*.— To establish the crime of illegal sale of *shabu* as defined and punished under Section 5, Article II of Republic Act No. 9165, 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, the Prosecution must show that the transaction or sale actually took place, and present in court the thing sold as evidence of the *corpus delicti*.

2. ID.; ID.; ID.; ID.; THE STATE CONCLUSIVELY ESTABLISHED THE CONCURRENCE OF THE ELEMENTS OF ILLEGAL SALE OF DANGEROUS DRUGS.— The State conclusively established the concurrence of the foregoing elements of illegal sale of dangerous drugs. Firstly, the members of the buy- bust team identified Tapere as the person with whom Salgado had contracted on the purchase of the *shabu*. Secondly, the subject of the sale was one plastic sachet of *shabu* that the PNP Crime Laboratory later on confirmed in due course to contain methamphetamine hydrochloride, a dangerous drug. It is of no consequence that three other sachets of *shabu* recovered from Tapere's possession at the time of his arrest were also presented as evidence during the trial, or that the Prosecution failed to specify which of the

four sachets was the sachet involved in the transaction between him and Salgado, because what is decisive is that one of the four sachets was definitely the subject of the transaction between Tapere and the poseur buyer. Thirdly, the consideration of the sale was ₱100.00, and the actual payment of that amount through the ₱100.00 bill bearing serial number Y U859011 covered by the public prosecutor's certification ensured the identification of it as the consideration. And, fourthly, the Prosecution's witnesses fully described the details of the consummated sale of *shabu* between Tapere as seller and Salgado as buyer.

3. ID.; ID.; CHAIN OF CUSTODY RULE; SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.— Section 21(1) of Republic A ct No. 9165 provides the procedure to be followed in the seizure and custody of dangerous drugs. x x x This procedure underscores the value of preserving the integrity of the confiscated, seized, or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments, paraphernalia and laboratory equipment. It puts into focus the essentiality of the confiscated articles as the *corpus delicti* that the State must establish during the trial, as a means of avoiding the commission of abuses by the lawmen in their enforcement of the laws against illegal drug trade. The members of the buy-bust team substantially complied with the requirements. To shield the operation from suspicion, they first saw to the certification of the buy-bust bill by the Office of the City Prosecutor of Iligan City, pursuant to their then standard operating procedure. After arresting Tapere, they lost no time in bringing him and the confiscated sachets (marked and identified as "A T-1" to "A T-4", inclusive) to the PDEA office, where Team Leader SPO2 Englatiera immediately prepared and signed the request for laboratory examination. Due to the lateness of the hour, PO1 Margaja, another member of the team, brought the request and the sachets to the PNP Crime Laboratory on the next day, and the request and the sachets were received in due course. Sr. Police Insp. Jabonillo of the PNP Crime Laboratory subjected the sachets to examination, and confirmed the presence in all of them of methamphetamine hydrochloride, a dangerous drug. She also gave the weights of the contents of the four sachets in her Chemistry Report No. D-083-02 dated

September 4, 2002. Her report was approved by her superior, Police Supt. Sabong of the PNP Regional Crime Laboratory. Based on all the foregoing, there was a conscious effort exerted by the buy-bust team to ensure the proper incrimination of Tapere.

4. ID.; ID.; INSTIGATION DISTINGUISHED FROM ENTRAPMENT.— Instigation takes place when a peace officer induces a person to commit a crime. Without the inducement, the crime would not be committed. Hence, it is exempting by reason of public policy; otherwise, the peace officer would be a co-principal. It follows that the person instigating must not be a private person, because he will be liable as a principal by inducement. On the other hand, entrapment signifies the ways and means devised by a peace officer to entrap or apprehend a person who has committed a crime. With or without the entrapment, the crime has been committed already. Hence, entrapment is not mitigating. Although entrapment is sanctioned by law, instigation is not. The difference between the two lies in the origin of the criminal intent — in entrapment, the mens originates from the mind of the criminal, but in instigation, the law officer conceives the commission of the crime and suggests it to the accused, who adopts the idea and carries it into execution.

5. ID.; ID.; ID.; APPELLANT WAS CAUGHT IN *FLAGRANTE DELICTO* AND WAS NOT INCITED, INDUCED, INSTIGATED OR LURED INTO COMMITTING AN OFFENSE THAT HE DID NOT HAVE THE INTENTION OF COMMITING.— In light of the differentiation between instigation and entrapment, the Court rejects the contention of Tapere for its being contrary to the established facts. Tapere was caught in *flagrante delicto* committing the illegal sale of *shabu* during the buy-bust operation. In that operation, Salgado offered to buy from him a definite quantity of *shabu* for ₱100.00. Even if, as he claims he was unaware that Salgado was then working as an undercover agent for the PDEA, he had no justification for accepting the offer of Salgado to buy the *shabu*. His explanation that he could not have refused Salgado's offer to buy for fear of displeasing the latter was implausible. He did not show how Salgado could have influenced him at all into doing something so blatantly illegal. What is clear to us, therefore, is that the decision to peddle the *shabu* emanated

from his own mind, such that he did not need much prodding from Salgado or anyone else to engage in the sale of the *shabu*; hence, he was not incited, induced, instigated or lured into committing an offense that he did not have the intention of committing.

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.*:

An accused arrested during a valid entrapment operation is not entitled to an acquittal on the ground that his arrest resulted from instigation.

Arnold P. Tapere was charged with, tried for and found guilty of illegally selling *shabu* in violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) by the Regional Trial Court (RTC), Branch 6, in Iligan City, which sentenced him to suffer life imprisonment and to pay a fine of ₱500,000.00.

On appeal, the Court of Appeals (CA) affirmed the conviction and the prescribed penalty through the decision promulgated on February 27, 2007.[1]

Hence, this appeal.

Antecedents

The information dated September 3, 2002 charged Tapere with illegally selling *shabu* in violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*), as follows:

[1] *Rollo*, pp. 4-13; penned by Associate Justice Jane Aurora C. Lantion, and concurred in by Associate Justice Teresita Dy-Liacco Flores (retired) and Associate Justice Rodrigo F. Lim, Jr. (retired).

That on or about September 2, 2002, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver one (1) plastic sachet containing Methamphetamine Hydrochloride, a dangerous drug commonly known as *Shabu*.

Contrary to and in violation of R.A. 9165, x x x.[2]

The evidence for the State showed the following.

At around 7:30 p.m. on September 2, 2002, elements of the Philippine Drug Enforcement Agency (PDEA) arrested Tapere for selling *shabu* to a poseur buyer during a buy-bust operation conducted against him in Purok San Antonio, Iligan City. Prior to the buy-bust operation, Tapere was already included in the PDEA's drug watch list as a drug pusher based on the frequent complaints made against him by residents of Purok San Antonio, Iligan City. It appears that SPO2 Diosdado Cabahug of the PDEA, a neighbor, had warned Tapere to stop his illegal activities, but he apparently ignored the warning and continued to sell *shabu* in that locality. Such continuing activity on the part of Tapere was the subject of the report of PDEA informant Gabriel Salgado.

In order to determine the veracity of the report of Salgado, PDEA agents conducted an investigation and surveillance of the activities of Tapere on August 30, August 31, and September 1, 2002, during which a test buy confirmed the veracity of the report. With the positive result of the test buy, the agents decided to conduct a buy-bust operation against Tapere on September 2, 2002. Consonant with their standard procedure, the agents first secured a certification from the Office of the City Prosecutor regarding the buy-bust money to be used during the buy-bust operation. They presented to City Prosecutor II Roberto Z. Albulario, Jr. of Iligan City the ₱100.00 bill bearing serial number YU859011 (Exhibit E-1) for that purpose,[3] and said public

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[2] Records, p. 1.

[3] *Id.* at 28.

prosecutor then issued the certification (Exhibit E) to the effect that the bill (Exhibit E-1) was identical to the xerox copy previously made of the bill (Exhibit A). Armed with the certification, the agents went back to their office and held a pre-operation briefing. In attendance at that briefing were Team Leader SPO2 Edgardo Englatiera, SPO3 Jaime Bastatas, SPO2 George Salo, SPO2 Cabahug, PO1 Amado Margaja and Salgado. The team instructed Salgado to act as the poseur buyer, and gave to him the ₱100.00 bill (Exhibit E-1) earlier certified by the public prosecutor.

At 7:10 p.m. of September 2, 2002, the team proceeded on board the jeep of SPO2 Cabahug to Alcuizar Avenue in San Antonio, Iligan City where Tapere engaged in drug pushing. They stopped at some distance from the target area, and walked the rest of the way. They posted themselves within view of the target place, which was on the left side of the road going towards Tipanoy, Iligan City and a few meters from the Tubod Bridge. The first structure nearest the bridge on the left side of the road going towards Tipanoy was a blacksmith shop, and next to the shop was a row of stalls where fish, meat and other commodities were sold. The agents spotted Tapere vending *lanzones* along that side of the road to Tipanoy, outside the row of stalls.[4]

With each agent being strategically posted, Salgado was signalled to approach Tapere according to the plan. Salgado went towards Tapere. The agents saw the two conversing for a brief while before Salgado handed money to Tapere. In turn, Tapere took a small heat-sealed plastic sachet from his pocket and gave it to Salgado. After accepting the sachet, Salgado made the pre-arranged signal of scratching his head to signify the consummation of the transaction. The agents rushed towards Tapere, introduced themselves as PDEA agents, and placed him in custody. They searched him and recovered the ₱100.00 bill (Exhibit E-1) from his right pocket.[5] At that point, he voluntarily produced three

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[4] TSN, October 8, 2002, pp. 11 and 30-31.

[5] *Id.* at 47.

more sachets of *shabu* from his pocket and handed them to SPO2 Bastatas.[6] The agents brought Tapere to the PDEA headquarters in Camp Cabili, Tipanoy, Iligan City.

In Camp Cabili, SPO2 Englatiera immediately prepared and signed a request for laboratory examination (Exhibit B),[7] addressed to the PNP Crime Laboratory in Iligan City to determine whether the confiscated substances contained in the four sachets marked "AT-1" to "AT-4" contained dangerous drugs.[8] On the following day, PO1 Margaja delivered to the PNP Crime Laboratory the request and the confiscated articles in four sachets marked "AT-1" to "AT-4".

The request for laboratory examination and the confiscated articles were received in due course at the PNP Crime Laboratory, and turned over by the receiving personnel to Sr. Police Insp. Mary Leoncy M. Jabonillo, the Chief of the Crime Laboratory, who conducted the laboratory examination. She issued Chemistry Report No. D-083-02 on September 4, 2002 (Exhibit C),[9] whereby she confirmed the presence of methamphetamine hydrochloride or *shabu* in the four heat-sealed transparent plastic sachets, giving the weight and marking as follows: "AT-1" – 0.09 gram; "AT-2" — 0.51 gram; "AT-3" – 0.03 gram; and "AT-4" — 0.10 gram.[10] The chemistry report was duly approved by Police Supt. Liza Madeja Sabong, Chief of the PNP Regional Crime Laboratory Service.

On the other hand, Tapere denied the accusation. He and his wife rendered their own version of the incident that led to his arrest.

On September 2, 2002, at around 6:30 p.m. to 7:00 p.m., Tapere went to his usual place in Tubod to vend *lanzones* near the fish stalls. His wife followed him there to ask what she

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[6] *Id.* at 15-16.

[7] Records, p. 26.

[8] *Id.*

[9] *Id.* at 27.

[10] *Id.*

would prepare for their lunch. While he was there, Salgado, his neighbor of four years[11] whom he knew to be a drug user currently under probation,[12] and with whom in the past he had sniffed *shabu* in Salgado's house, approached and requested him to buy *shabu* for Salgado's use.[13] They talked beyond the hearing distance of his wife. At first, he refused Salgado's request, but he ultimately agreed to do the errand, explaining: *I don't want him to be angry at me, I don't want trouble and besides he is my neighbor so whenever he requested me to buy shabu I do it*.[14] With Salgado giving him the money, he asked his wife's permission to go downtown to do something. He rode on a jeepney to go to Saray, also in Iligan City, where he bought a sachet of *shabu*.[15] In the meantime, the wife was left to tend to the sale of the *lanzones*. Salgado, whose name the wife did not then know, went to a nearby small store.

When he returned after an hour, Tapere did not find Salgado in the stall but in a nearby small store. He handed the *shabu* there. Salgado then immediately left. Tapere went back to his stall after buying a bottle of Coca Cola at the store. Upon returning to his stall, a multi-cab vehicle came to stop there and five men alighted, two of whom he immediately recognized as "Sir Englatierra and Cabahug." The men, all armed, surrounded him, pointing their .45 caliber pistols at him. They frisked him, put handcuffs on him, and took him to the PDEA office. There, they produced a bill, noted its serial number and confirmed that it was the bill used in the transaction. They next brought him to the PNP Central Office in Iligan City where he was detained.[16] At about 10:00 p.m. that same night, his wife visited him in the jail and gave him fresh clothes to replace his clothes

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[11] TSN, November 14, 2002, p. 12.

[12] *Id.* at 6.

[13] *Id.* at 14.

[14] *Id.*

[15] *Id.* at 6-8.

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

wet from the rain. On the next day, he was taken to the Office of the City Prosecutor and from there to the City Jail.

Decision of the RTC

After trial, on April 15, 2003, the RTC rendered judgment convicting Tapere as charged,[17] to wit:

> WHEREFORE, the court finds the accused Arnold Tapere y Polpol GUILTY beyond reasonable doubt for violation of Section 5, Article II of Rep. Act No. 9165 and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS without subsidiary imprisonment in case of solvency.
>
> Having been under preventive detention since September 3, 2002 until the present, the period of such imprisonment shall be credited in full in favor of the accused in the service of his sentence.
>
> The four (4) sachets of *shabu* are ordered confiscated in favor of the government to be disposed of pursuant to the provisions of Section 21, Article II, R.A. No. 9165.
>
> SO ORDERED.

The RTC pointed out that the PDEA agents had arrested Tapere following a legitimate buy-bust operation conducted in a methodical manner; that on the other hand, Tapere did not plausibly explain why he had agreed to run the errand to buy *shabu* for Salgado, because he did not show that he had owed Salgado any great personal debt of gratitude that led him to ignore his personal risk and that put him in no position to refuse Salgado's request; and because he did not also show that Salgado exercised an overpowering influence by intimidation or otherwise that rendered him incapable of refusing Salgado's bidding.

Ruling of the CA

On intermediate review, Tapere assailed his conviction, stating that the RTC gravely erred in not ruling that instigation, not entrapment, had led to his apprehension.[18]

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[17] Records, pp. 45-49.

[18] *Rollo*, p. 7.

On February 27, 2007, however, the CA affirmed the conviction of Tapere,[19] declaring that the Prosecution competently established the details of the illegal sale of *shabu* between Tapere, as the seller, and Salgado, as the poseur buyer; that the PDEA agents were not shown to have harbored any malicious motives for arresting Tapere; and that the non-presentation of Salgado as the poseur buyer did not weaken the case against Tapere considering that the members of the buy-bust team who testified against Tapere had witnessed the consummation of the illegal sale of *shabu*.

Hence, Tapere appeals to the Court.

Issue

Tapere reiterates to us that his apprehension was the product of an instigation, not entrapment; and that he should consequently be acquitted because instigation was an absolutory cause.

Ruling of the Court

The appeal has no merit.

To establish the crime of illegal sale of *shabu* as defined and punished under Section 5,[20] Article II of Republic Act No. 9165, 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

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[19] *Id.* at 4-13.

[20] 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 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, the Prosecution must show that the transaction or sale actually took place, and present in court the thing sold as evidence of the *corpus delicti*.[21]

The State conclusively established the concurrence of the foregoing elements of illegal sale of dangerous drugs. Firstly, the members of the buy-bust team identified Tapere as the person with whom Salgado had contracted on the purchase of the *shabu*. Secondly, the subject of the sale was one plastic sachet of *shabu* that the PNP Crime Laboratory later on confirmed in due course to contain methamphetamine hydrochloride, a dangerous drug. It is of no consequence that three other sachets of *shabu* recovered from Tapere's possession at the time of his arrest were also presented as evidence during the trial, or that the Prosecution failed to specify which of the four sachets was the sachet involved in the transaction between him and Salgado, because what is decisive is that one of the four sachets was definitely the subject of the transaction between Tapere and the poseur buyer. Thirdly, the consideration of the sale was ₱100.00, and the actual payment of that amount through the ₱100.00 bill bearing serial number YU859011 covered by the public prosecutor's certification ensured the identification of it as the consideration. And, fourthly, the Prosecution's witnesses fully described the details of the consummated sale of *shabu* between Tapere as seller and Salgado as buyer.

Section 21(1) of Republic Act No. 9165 provides the procedure to be followed in the seizure and custody of dangerous drugs, to wit:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The

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[21] *People v. Macabalang*,G.R. No. 168694, November 27, 2006, 508 SCRA 282, 293-294.

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

This procedure underscores the value of preserving the integrity of the confiscated, seized, or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments, paraphernalia and laboratory equipment. It puts into focus the essentiality of the confiscated articles as the *corpus delicti* that the State must establish during the trial, as a means of avoiding the commission of abuses by the lawmen in their enforcement of the laws against illegal drug trade.

The members of the buy-bust team substantially complied with the requirements. To shield the operation from suspicion, they first saw to the certification of the buy-bust bill by the Office of the City Prosecutor of Iligan City, pursuant to their then standard operating procedure.[22] After arresting Tapere, they lost no time in bringing him and the confiscated sachets (marked and identified as "AT-1" to "AT-4", inclusive) to the PDEA office, where Team Leader SPO2 Englatiera immediately

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[22] It is noted that as of September 2, 2002, the date of commission of the crime, the *Implementing Rules and Regulations of Republic Act No. 9165*, although newly adopted by the Dangerous Drugs Board on August 30, 2002, had yet to take effect upon its publication in three newspapers of general circulation and upon registration with the Office of the National Administrative Register of the University of the Philippines Law Center, Diliman, Quezon City.

prepared and signed the request for laboratory examination. Due to the lateness of the hour, PO1 Margaja, another member of the team, brought the request and the sachets to the PNP Crime Laboratory on the next day, and the request and the sachets were received in due course. Sr. Police Insp. Jabonillo of the PNP Crime Laboratory subjected the sachets to examination, and confirmed the presence in all of them of methamphetamine hydrochloride, a dangerous drug. She also gave the weights of the contents of the four sachets in her Chemistry Report No. D-083-02 dated September 4, 2002. Her report was approved by her superior, Police Supt. Sabong of the PNP Regional Crime Laboratory. Based on all the foregoing, there was a conscious effort exerted by the buy-bust team to ensure the proper incrimination of Tapere.

Still, Tapere contends that his arrest resulted from an instigation, not from a legitimate entrapment. He insists that poseur buyer Salgado, then acting as a covert PDEA civilian agent or informant, a fact unknown to him, made him purchase the *shabu* for Salgado. Hence, being instigated to sell the *shabu*, he was entitled to be acquitted because the instigation was an absolutory cause.

Instigation takes place when a peace officer induces a person to commit a crime. Without the inducement, the crime would not be committed. Hence, it is exempting by reason of public policy; otherwise, the peace officer would be a co-principal. It follows that the person instigating must not be a private person, because he will be liable as a principal by inducement.[23] On the other hand, entrapment signifies the ways and means devised by a peace officer to entrap or apprehend a person who has committed a crime. With or without the entrapment, the crime has been committed already. Hence, entrapment is not mitigating. Although entrapment is sanctioned by law, instigation is not.[24] The difference between the two lies in the origin of the criminal intent — in entrapment, the *mens rea* originates from the mind

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[23] Gregorio, *Fundamentals of Criminal Law Review*, 1997 Ninth Edition, Rex Book Store, Inc., Quezon City, pp. 80-81.

[24] *Id.*

of the criminal, but in instigation, the law officer conceives the commission of the crime and suggests it to the accused, who adopts the idea and carries it into execution.[25]

In light of the foregoing differentiation between instigation and entrapment, the Court rejects the contention of Tapere for its being contrary to the established facts.

Tapere was caught *in flagrante delicto* committing the illegal sale of *shabu* during the buy-bust operation. In that operation, Salgado offered to buy from him a definite quantity of *shabu* for ₱100.00. Even if, as he claims, he was unaware that Salgado was then working as an undercover agent for the PDEA, he had no justification for accepting the offer of Salgado to buy the *shabu*. His explanation that he could not have refused Salgado's offer to buy for fear of displeasing the latter was implausible. He did not show how Salgado could have influenced him at all into doing something so blatantly illegal. What is clear to us, therefore, is that the decision to peddle the *shabu* emanated from his own mind, such that he did not need much prodding from Salgado or anyone else to engage in the sale of the *shabu*; hence, he was not incited, induced, instigated or lured into committing an offense that he did not have the intention of committing.[26]

WHEREFORE, the Court *AFFIRMS* the decision promulgated by the Court of Appeals on February 27, 2007, finding **ARNOLD TAPERE *y* POLPOL** guilty as charged for violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).

The accused shall pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

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[25] *Id.* at 82, citing *Araneta v. Court of Appeals*, L-46638, July 9, 1986, 142 SCRA 534, 539; and *Cabrera v. Pajares*, Adm. Matters Nos. R-278-RTJ and R-309-RTJ, May 30, 1986, 142 SCRA 127, 134.

[26] *People v. Bayani*, G.R. No. 179150, June 17, 2008, 554 SCRA 741.

SECOND DIVISION

[G.R. No. 179965. February 20, 2013]

NICOLAS P. DIEGO, *petitioner, vs.* **RODOLFO P. DIEGO and EDUARDO P. DIEGO,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; SALE; THE CONTRACT ENTERED INTO BY PETITIONER AND RESPONDENT WAS A CONTRACT TO SELL; THE STIPULATION TO EXECUTE A DEED OF SALE UPON FULL PAYMENT OF THE PURCHASE PRICE IS A UNIQUE AND DISTINGUISHING CHARACTERISTIC OF A CONTACT TO SELL.— There is no dispute that in 1993, Rodolfo agreed to buy Nicolas's share in the Diego Building for the price of ₱500,000.00. There is also no dispute that of the total purchase price, Rodolfo paid, and Nicolas received, ₱250,000.00. Significantly, it is also not disputed that the parties agreed that the remaining amount of ₱250,000.00 would be paid after Nicolas shall have executed a deed of sale. This stipulation, i.e., to execute a deed of absolute sale upon full payment of the purchase price, is a unique and distinguishing characteristic of a **contract to sell**. In ***Reyes v. Tuparan***, this Court ruled that a stipulation in the contract, **"[w]here the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price,"** indicates that the parties entered into a **contract to sell**. According to this Court, this particular provision is tantamount to a reservation of ownership on the part of the vendor. Explicitly stated, the Court ruled that the agreement to execute a deed of sale upon full payment of the purchase price **"shows that the vendors reserved title to the subject property until full payment of the purchase price."** In *Tan v. Benolirao*, this Court, speaking through **Justice Brion**, ruled that the parties entered into a **contract to sell** as revealed by the following stipulation: d) That in case, BUY ER has complied with the terms and conditions of this contract, then the SELLERS shall execute and deliver to the BUY ER the appropriate Deed of Absolute Sale; The Court further held that **"[j]urisprudence has established that where the seller**

promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the price, the contract is only a contract to sell."

2. ID.; ID.; ID.; THE ACKNOWLEDGEMENT RECEIPT SIGNED BY PETITIONER AS WELL AS THE CONTEMPORANEOUS ACTS OF THE PARTIES SHOW THAT THEY AGREED ON A CONTRACT TO SELL, NOT OF SALE; THE ABSENCE OF A FORMAL DEED OF CONVEYANCE IS INDICATIVE OF A CONTRACT TO SELL.— In the instant case, records show that Nicolas signed a mere receipt acknowledging partial payment of ₱250,000.00 from Rodolfo. x x x As we ruled in *San Lorenzo Development Corporation v. Court of Appeals*, the parties could have executed a document of sale upon receipt of the partial payment but they did not. This is thus an indication that Nicolas did not intend to immediately transfer title over his share but only upon full payment of the purchase price. Having thus reserved title over the property, the contract entered into by Nicolas is a contract to sell. In addition, Eduardo admitted that he and Rodolfo repeatedly asked Nicolas to sign the deed of sale but the latter refused because he was not yet paid the full amount. As we have ruled in *San Lorenzo Development Corporation v. Court of Appeals*, the fact that Eduardo and Rodolfo asked Nicolas to execute a deed of sale is a clear recognition on their part that the ownership over the property still remains with Nicolas. In fine, the totality of the parties' acts convinces us that Nicolas never intended to transfer the ownership over his share in the Diego Building until the full payment of the purchase price. Without doubt, the transaction agreed upon by the parties was a contract to sell, not of sale.

3. ID.; ID.; ID.; PETITIONER DID NOT SURRENDER OR DELIVER TITLE OR POSSESSION TO RESPONDENT; IT IS ANATHEMA IN A CONTRACT TO SELL THAT THE PROSPECTIVE SELLER SHOULD DELIVER TITLE TO THE PROPERTY TO THE PROSPECTIVE BUYER PENDING THE LATTER'S PAYMENT IN FULL.— It must be stressed that it is anathema in a contract to sell that the prospective seller should deliver title to the property to the prospective buyer pending the latter's payment of the price in full. It certainly is absurd to assume that in the absence of stipulation, a buyer under a contract to sell is granted ownership

of the property even when he has not paid the seller in full. If this were the case, then prospective sellers in a contract to sell would in all likelihood not be paid the balance of the price. This ponente has had occasion to rule that "[a] contract to sell is one where the prospective seller reserves the transfer of title to the prospective buyer until the happening of an event, such as full payment of the purchase price. What the seller obliges himself to do is to sell the subject property only when the entire amount of the purchase price has already been delivered to him. 'In other words, the full payment of the purchase price partakes of a suspensive condition, the non- fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.' It does not, by itself, transfer ownership to the buyer."

4. ID.; ID.; ID.; THE CONTRACT TO SELL IS DEEMED TERMINATED OR CANCELED WHEN RESPONDENT FAILED TO FULLY PAY THE PURCHASE PRICE.— Similarly, we held in *Chua v. Court of Appeals* that "Article 1592 of the Civil Code permits the buyer to pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by notarial act. However, Article 1592 does not apply to a contract to sell where the seller reserves the ownership until full payment of the price," as in this case. Applying the above jurisprudence, we hold that when Rodolfo failed to fully pay the purchase price, the contract to sell was deemed terminated or cancelled. As we have held in *Chua v. Court of Appeals*, "[s]ince the agreement x x x is a mere contract to sell, the full payment of the purchase price partakes of a suspensive condition. **The non-fulfillment of the condition prevents the obligation to sell from arising and ownership is retained by the seller without further remedies by the buyer.**" Similarly, we held in *Reyes v. Tupara* that "petitioner's obligation to sell the subject properties becomes demandable only upon the happening of the positive suspensive condition, which is the respondent's full payment of the purchase price. **Without respondent's full payment, there can be no breach of contract to speak of because petitioner has no obligation yet to turn over the title.** Respondent's failure to pay the purchase price in full is not the breach of contract contemplated under Article 1191 of the New Civil Code but rather just an event that prevents the petitioner from being bound

to convey title to respondent." Otherwise stated, Rodolfo has no right to compel Nicolas to transfer ownership to him because he failed to pay in full the purchase price. Correlatively, Nicolas has no obligation to transfer his ownership over his share in the Diego Building to Rodolfo.

5. ID.; HUMAN RELATIONS; THE BUILDING ADMINISTRATOR IS SOLIDARILY LIABLE WITH RESPONDENT AS REGARDS THE SHARE OF PETITIONER IN THE RENTS FOR HIS COMPLICITY, BAD FAITH AND ABUSE OF AUTHORITY.— For his complicity, bad faith and abuse of authority as the Diego Building administrator, Eduardo must be held solidarily liable with Rodolfo for all that Nicolas should be entitled to from 1993 up to the present, or in respect of actual damages suffered in relation to his interest in the Diego Building. Eduardo was the primary cause of Nicolas's loss, being directly responsible for making and causing the wrongful payments to Rodolfo, who received them under obligation to return them to Nicolas, the true recipient. As such, Eduardo should be principally responsible to Nicolas as well. Suffice it to state that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith; and every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

6. ID.; DAMAGES; ATTORNEY'S FEES; JUSTIFIED IN CASE AT BAR.— "Although attorney's fees are not allowed in the absence of stipulation, the court can award the same when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest or where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim." In the instant case, it is beyond cavil that petitioner was constrained to file the instant case to protect his interest because of respondents' unreasonable and unjustified refusal to render an accounting and to remit to the petitioner his rightful share in rents and fruits in the Diego Building. Thus, we deem it proper to award to petitioner attorney's fees in the amount of ₱50,000.00, as well as litigation expenses in the amount of ₱20,000.00 and the sum of ₱1,000.00 for each court appearance by his lawyer or lawyers, as prayed for.

APPEARANCES OF COUNSEL

Cesar M. Cariño for petitioner.
Balbino V. Diego for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

It is settled jurisprudence, to the point of being elementary, that an agreement which stipulates that the seller shall execute a deed of sale only upon or after full payment of the purchase price is a ***contract to sell***, not a contract of sale. In *Reyes v. Tuparan*,[1] this Court declared in categorical terms that **"[w]here the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price, the contract is only a contract to sell. The aforecited stipulation shows that the vendors reserved title to the subject property until full payment of the purchase price."**

In this case, it is not disputed as in fact both parties agreed that the deed of sale shall only be executed upon payment of the remaining balance of the purchase price. Thus, pursuant to the abovestated jurisprudence, we similarly declare that the transaction entered into by the parties is a contract to sell.

Before us is a Petition for Review on *Certiorari*[2] questioning the June 29, 2007 Decision[3] and the October 3, 2007 Resolution[4] of the Court of Appeals (CA) in CA-G.R. CV No. 86512, which

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[1] G.R. No. 188064, June 1, 2011, 650 SCRA 283, 299. Citation omitted. Emphasis supplied.

[2] *Rollo*, pp. 8-5.

[3] *Id.* at 46-62; penned by Presiding Justice Ruben T. Reyes and concurred in by Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo.

[4] *Id.* at 63-64; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Regalado E. Maambong and Estela M. Perlas-Bernabe (now a member of this Court).

affirmed the April 19, 2005 Decision[5] of the Regional Trial Court (RTC), Branch 40, of Dagupan City in Civil Case No. 99-02971-D.

Factual Antecedents

In 1993, petitioner Nicolas P. Diego (Nicolas) and his brother Rodolfo, respondent herein, entered into an oral contract to sell covering Nicolas's share, fixed at ₱500,000.00, as co-owner of the family's Diego Building situated in Dagupan City. Rodolfo made a downpayment of ₱250,000.00. It was agreed that the deed of sale shall be executed upon payment of the remaining balance of ₱250,000.00. However, Rodolfo failed to pay the remaining balance.

Meanwhile, the building was leased out to third parties, but Nicolas's share in the rents were not remitted to him by herein respondent Eduardo, another brother of Nicolas and designated administrator of the Diego Building. Instead, Eduardo gave Nicolas's monthly share in the rents to Rodolfo. Despite demands and protestations by Nicolas, Rodolfo and Eduardo failed to render an accounting and remit his share in the rents and fruits of the building, and Eduardo continued to hand them over to Rodolfo.

Thus, on May 17, 1999, Nicolas filed a Complaint[6] against Rodolfo and Eduardo before the RTC of Dagupan City and docketed as Civil Case No. 99-02971-D. Nicolas prayed that Eduardo be ordered to render an accounting of all the transactions over the Diego Building; that Eduardo and Rodolfo be ordered to deliver to Nicolas his share in the rents; and that Eduardo and Rodolfo be held solidarily liable for attorney's fees and litigation expenses.

Rodolfo and Eduardo filed their Answer with Counterclaim[7] for damages and attorney's fees. They argued that Nicolas had

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[5] *Id.* at 73-78; penned by Acting Presiding Judge Emma M. Torio.

[6] Records, pp. 1-4.

[7] *Id.* at 22-25.

no more claim in the rents in the Diego Building since he had already sold his share to Rodolfo. Rodolfo admitted having remitted only ₱250,000.00 to Nicolas. He asserted that he would pay the balance of the purchase price to Nicolas only after the latter shall have executed a deed of absolute sale.

Ruling of the Regional Trial Court

After trial on the merits, or on April 19, 2005, the trial court rendered its Decision[8] dismissing Civil Case No. 99-02971-D for lack of merit and ordering Nicolas to execute a deed of absolute sale in favor of Rodolfo upon payment by the latter of the ₱250,000.00 balance of the agreed purchase price. It made the following interesting pronouncement:

> It is undisputed that plaintiff (Nicolas) is one of the co-owners of the Diego Building, x x x. As a co-owner, he is entitled to [his] share in the rentals of the said building. However, plaintiff [had] already sold his share to defendant Rodolfo Diego in the amount of ₱500,000.00 and in fact, [had] already received a partial payment in the purchase price in the amount of ₱250,000.00. **Defendant Eduardo Diego testified that as per agreement, verbal, of the plaintiff and defendant Rodolfo Diego, the remaining balance of ₱250,000.00 will be paid upon the execution of the Deed of Absolute Sale.** It was in the year 1997 when plaintiff was being required by defendant Eduardo Diego to sign the Deed of Absolute Sale. Clearly, defendant Rodolfo Diego was not yet in default as the plaintiff claims which cause [sic] him to refuse to sign [sic] document. The contract of sale was already perfected as early as the year 1993 when plaintiff received the partial payment, hence, he cannot unilaterally revoke or rescind the same. From then on, plaintiff has, therefore, ceased to be a co-owner of the building and is no longer entitled to the fruits of the Diego Building.
>
> Equity and fairness dictate that defendant [sic] has to execute the necessary document regarding the sale of his share to defendant Rodolfo Diego. Correspondingly, defendant Rodolfo Diego has to perform his obligation as per their verbal agreement by paying the remaining balance of ₱250,000.00.[9]

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[8] *Rollo*, pp. 73-78.

[9] *Id.* at 77. Emphasis supplied.

To summarize, the trial court ruled that as early as 1993, Nicolas was no longer entitled to the fruits of his aliquot share in the Diego Building because he had "ceased to be a co-owner" thereof. The trial court held that when Nicolas received the ₱250,000.00 downpayment, a "contract of sale" was perfected. Consequently, Nicolas is obligated to convey such share to Rodolfo, without right of rescission. Finally, the trial court held that the ₱250,000.00 balance from Rodolfo will only be due and demandable when Nicolas executes an absolute deed of sale.

Ruling of the Court of Appeals

Nicolas appealed to the CA which sustained the trial court's Decision *in toto*. The CA held that since there was a perfected contract of sale between Nicolas and Rodolfo, the latter may compel the former to execute the proper sale document. Besides, Nicolas's insistence that he has since rescinded their agreement in 1997 proved the existence of a perfected sale. It added that Nicolas could not validly rescind the contract because: "1) Rodolfo ha[d] already made a partial payment; 2) Nicolas ha[d] already partially performed his part regarding the contract; and 3) Rodolfo opposes the rescission."[10]

The CA then proceeded to rule that since no period was stipulated within which Rodolfo shall deliver the balance of the purchase price, it was incumbent upon Nicolas to have filed a civil case to fix the same. But because he failed to do so, Rodolfo cannot be considered to be in delay or default.

Finally, the CA made another interesting pronouncement, that by virtue of the agreement Nicolas entered into with Rodolfo, he had already transferred his ownership over the subject property and as a consequence, Rodolfo is legally entitled to collect the fruits thereof in the form of rentals. Nicolas' remaining right is to demand payment of the balance of the purchase price, provided that he first executes a deed of absolute sale in favor of Rodolfo.

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[10] *Id.* at 56.

Nicolas moved for reconsideration but the same was denied by the CA in its Resolution dated October 3, 2007.

Hence, this Petition.

Issues

The Petition raises the following errors that must be rectified:

I

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THERE WAS NO PERFECTED CONTRACT OF SALE BETWEEN PETITIONER NICOLAS DIEGO AND RESPONDENT RODOLFO DIEGO OVER NICOLAS'S SHARE OF THE BUILDING BECAUSE THE SUSPENSIVE CONDITION HAS NOT YET BEEN FULFILLED.

II

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE CONTRACT OF SALE BETWEEN PETITIONER AND RESPONDENT RODOLFO DIEGO REMAINS LEGALLY BINDING AND IS NOT RESCINDED GIVING MISPLACED RELIANCE ON PETITIONER NICOLAS' STATEMENT THAT THE SALE HAS NOT YET BEEN REVOKED.

III

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT PETITIONER NICOLAS DIEGO ACTED LEGALLY AND CORRECTLY WHEN HE UNILATERALLY RESCINDED AND REVOKED HIS AGREEMENT OF SALE WITH RESPONDENT RODOLFO DIEGO CONSIDERING RODOLFO'S MATERIAL, SUBSTANTIAL BREACH OF THE CONTRACT.

IV

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER HAS NO MORE RIGHTS OVER HIS SHARE IN THE BUILDING, DESPITE THE FACT THAT THERE WAS AS YET NO PERFECTED CONTRACT OF SALE BETWEEN PETITIONER NICOLAS DIEGO AND RODOLFO DIEGO AND THERE WAS YET NO TRANSFER OF OWNERSHIP OF PETITIONER'S SHARE TO RODOLFO DUE TO THE NON-

FULFILLMENT BY RODOLFO OF THE SUSPENSIVE CONDITION UNDER THE CONTRACT.

V

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT RODOLFO HAS UNJUSTLY ENRICHED HIMSELF AT THE EXPENSE OF PETITIONER BECAUSE DESPITE NOT HAVING PAID THE BALANCE OF THE PURCHASE PRICE OF THE SALE, THAT RODOLFO HAS NOT YET ACQUIRED OWNERSHIP OVER THE SHARE OF PETITIONER NICOLAS, HE HAS ALREADY BEEN APPROPRIATING FOR HIMSELF AND FOR HIS PERSONAL BENEFIT THE SHARE OF THE INCOME OF THE BUILDING AND THE PORTION OF THE BUILDING ITSELF WHICH WAS DUE TO AND OWNED BY PETITIONER NICOLAS.

VI

THE HONORABLE COURT OF APPEALS ERRED IN NOT AWARDING ACTUAL DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES TO THE PETITIONER DESPITE THE FACT THAT PETITIONER'S RIGHTS HAD BEEN WANTONLY VIOLATED BY THE RESPONDENTS.[11]

Petitioner's Arguments

In his Petition, the Supplement[12] thereon, and Reply,[13] Nicolas argues that, contrary to what the CA found, there was no perfected contract of sale even though Rodolfo had partially paid the price; that in the absence of the third element in a sale contract — the price — there could be no perfected sale; that failing to pay the required price in full, Nicolas had the right to rescind the agreement as an unpaid seller.

Nicolas likewise takes exception to the CA finding that Rodolfo was not in default or delay in the payment of the agreed balance

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

[12] *Id.* at 204-224.

[13] *Id.* at 237-262.

for his (Nicolas's) failure to file a case to fix the period within which payment of the balance should be made. He believes that Rodolfo's failure to pay within a reasonable time was a substantial and material breach of the agreement which gave him the right to unilaterally and extrajudicially rescind the agreement and be discharged of his obligations as seller; and that his repeated written demands upon Rodolfo to pay the balance granted him such rights.

Nicolas further claims that based on his agreement with Rodolfo, there was to be no transfer of title over his share in the building until Rodolfo has effected full payment of the purchase price, thus, giving no right to the latter to collect his share in the rentals.

Finally, Nicolas bewails the CA's failure to award damages, attorney's fees and litigation expenses for what he believes is a case of unjust enrichment at his expense.

Respondents' Arguments

Apart from echoing the RTC and CA pronouncements, respondents accuse the petitioner of "cheating" them, claiming that after the latter received the ₱250,000.00 downpayment, he "vanished like thin air and hibernated in the USA, he being an American citizen,"[14] only to come back claiming that the said amount was a mere loan.

They add that the Petition is a mere rehash and reiteration of the petitioner's arguments below, which are deemed to have been sufficiently passed upon and debunked by the appellate court.

Our Ruling

The Court finds merit in the Petition.

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[14] *Id.* at 226.

The contract entered into by Nicolas and Rodolfo was a contract to sell.

a) The stipulation to execute a deed of sale upon full payment of the purchase price is a unique and distinguishing characteristic of a contract to sell. It also shows that the vendor reserved title to the property until full payment.

There is no dispute that in 1993, Rodolfo agreed to buy Nicolas's share in the Diego Building for the price of ₱500,000.00. There is also no dispute that of the total purchase price, Rodolfo paid, and Nicolas received, ₱250,000.00. Significantly, it is also not disputed that the parties agreed that the remaining amount of ₱250,000.00 would be paid after Nicolas shall have executed a deed of sale.

This stipulation, *i.e.*, to execute a deed of absolute sale upon full payment of the purchase price, is a unique and distinguishing characteristic of a **contract to sell**. In ***Reyes v. Tuparan***,[15] this Court ruled that a stipulation in the contract, **"[w]here the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price,"** indicates that the parties entered into a **contract to sell**. According to this Court, this particular provision is tantamount to a reservation of ownership on the part of the vendor. Explicitly stated, the Court ruled that the agreement to execute a deed of sale upon full payment of the purchase price **"shows that the vendors reserved title to the subject property until full payment of the purchase price."**[16]

In *Tan v. Benolirao*,[17] this Court, speaking through **Justice Brion**, ruled that the parties entered into a **contract to sell** as revealed by the following stipulation:

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[15] *Supra* note 1.

[16] *Id.* Emphasis supplied.

[17] G.R. No. 153820, October 16, 2009, 604 SCRA 36.

d) That in case, BUYER has complied with the terms and conditions of this contract, then the SELLERS shall execute and deliver to the BUYER the appropriate Deed of Absolute Sale;[18]

The Court further held that **"[j]urisprudence has established that where the seller promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the price, the contract is only a contract to sell."**[19]

b) The acknowledgement receipt signed by Nicolas as well as the contemporaneous acts of the parties show that they agreed on a contract to sell, not of sale. The absence of a formal deed of conveyance is indicative of a contract to sell.

In *San Lorenzo Development Corporation v. Court of Appeals*,[20] the facts show that spouses Miguel and Pacita Lu (Lu) sold a certain parcel of land to Pablo Babasanta (Pablo). After several payments, Pablo wrote Lu demanding "the execution of a final deed of sale in his favor so that he could effect full payment of the purchase price."[21] To prove his allegation that there was a perfected contract of sale between him and Lu, Pablo presented a receipt signed by Lu acknowledging receipt of ₱50,000.00 as partial payment.[22]

However, when the case reached this Court, it was ruled that the transaction entered into by Pablo and Lu was only a **contract to sell**, not a contract of sale. The Court held thus:

The receipt signed by Pacita Lu merely states that she accepted the sum of fifty thousand pesos (₱50,000.00) from Babasanta as partial payment of 3.6 hectares of farm lot situated in Sta. Rosa, Laguna. While there is no stipulation that the seller reserves the

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[18] *Id.* at 49.

[19] *Id.* Emphasis supplied.

[20] 490 Phil. 7 (2005).

[21] *Id.* at 11.

[22] *Id.* at 18.

ownership of the property until full payment of the price which is a distinguishing feature of a contract to sell, the subsequent acts of the parties convince us that **the Spouses Lu never intended to transfer ownership to Babasanta except upon full payment of the purchase price**.

Babasanta's letter dated 22 May 1989 was quite telling. He stated therein that despite his repeated requests for the execution of the final deed of sale in his favor so that he could effect full payment of the price, Pacita Lu allegedly refused to do so. **In effect, Babasanta himself recognized that ownership of the property would not be transferred to him until such time as he shall have effected full payment of the price. Moreover, had the sellers intended to transfer title, they could have easily executed the document of sale in its required form simultaneously with their acceptance of the partial payment, but they did not. Doubtlessly, the receipt signed by Pacita Lu should legally be considered as a perfected contract to sell**.[23]

In the instant case, records show that Nicolas signed a mere receipt[24] acknowledging partial payment of ₱250,000.00 from Rodolfo. It states:

July 8, 1993

Received the amount of [₱250,000.00] for 1 share of Diego Building as partial payment for Nicolas Diego.

(signed)
Nicolas Diego[25]

As we ruled in *San Lorenzo Development Corporation v. Court of Appeals*,[26] the parties could have executed a document of sale upon receipt of the partial payment but they did not. This is thus an indication that Nicolas did not intend to immediately transfer title over his share but only upon full payment of the

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[23] *Id.* at 19. Emphases supplied.

[24] Records, p. 90.

[25] *Id.*

[26] *Supra* note 20.

purchase price. Having thus reserved title over the property, the contract entered into by Nicolas is a contract to sell. In addition, Eduardo admitted that he and Rodolfo repeatedly asked Nicolas to sign the deed of sale[27] but the latter refused because he was not yet paid the full amount. As we have ruled in *San Lorenzo Development Corporation v. Court of Appeals,*[28] the fact that Eduardo and Rodolfo asked Nicolas to execute a deed of sale is a clear recognition on their part that the ownership over the property still remains with Nicolas. In fine, the totality of the parties' acts convinces us that Nicolas never intended to transfer the ownership over his share in the Diego Building until the full payment of the purchase price. Without doubt, the transaction agreed upon by the parties was a contract to sell, not of sale.

In *Chua v. Court of Appeals*,[29] the parties reached an impasse when the seller wanted to be first paid the consideration before a new transfer certificate of title (TCT) is issued in the name of the buyer. Contrarily, the buyer wanted to secure a new TCT in his name before paying the full amount. Their agreement was embodied in a receipt containing the following terms: "(1) the balance of ₱10,215,000.00 is payable on or before 15 July 1989; (2) the capital gains tax is for the account of x x x; and (3) if [the buyer] fails to pay the balance x x x the [seller] has the right to forfeit the earnest money x x x."[30] The case eventually reached this Court. In resolving the impasse, the Court, speaking through **Justice Carpio**, held that "[a] perusal of the Receipt shows that the true agreement between the parties was a contract to sell."[31] The Court noted that "the agreement x x x was embodied in a receipt rather than in a deed of sale, ownership not having passed between them."[32] The Court thus concluded

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[27] See TSN, March 21, 2001, p. 22.

[28] *Supra* note 20.

[29] 449 Phil. 25 (2003).

[30] *Id.* at 40.

[31] *Id.* at 42.

[32] *Id.*

that **"[t]he absence of a formal deed of conveyance is a strong indication that the parties did not intend immediate transfer of ownership, but only a transfer after full payment of the purchase price."**[33] Thus, the "true agreement between the parties was **a contract to sell**."[34]

In the instant case, the parties were similarly embroiled in an impasse. The parties' agreement was likewise embodied only in a receipt. Also, Nicolas did not want to sign the deed of sale unless he is fully paid. On the other hand, Rodolfo did not want to pay unless a deed of sale is duly executed in his favor. We thus say, pursuant to our ruling in *Chua v. Court of Appeals*[35] that the agreement between Nicolas and Rodolfo is a contract to sell.

This Court cannot subscribe to the appellate court's view that Nicolas should *first* execute a deed of absolute sale in favor of Rodolfo, before the latter can be compelled to pay the balance of the price. This is patently ridiculous, and goes against every rule in the book. This pronouncement virtually places the prospective seller in a contract to sell at the mercy of the prospective buyer, and sustaining this point of view would place all contracts to sell in jeopardy of being rendered ineffective by the act of the prospective buyers, who naturally would demand that the deeds of absolute sale be first executed before they pay the balance of the price. Surely, no prospective seller would accommodate.

In fine, **"the need to execute a deed of absolute sale upon completion of payment of the price generally indicates that it is a contract to sell, as it implies the reservation of title in the vendor until the vendee has completed the payment of the price."**[36] In addition, "[a] stipulation reserving ownership

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[33] *Id.* Emphasis supplied.

[34] *Id.* Emphasis supplied.

[35] *Supra* note 29.

[36] *Heirs of Cayetano Pangan and Consuelo Pangan v. Perreras*, G.R. No. 157374, August 27, 2009, 597 SCRA 253, 262. Emphasis supplied.

in the vendor until full payment of the price is x x x typical in a contract to sell."[37] Thus, contrary to the pronouncements of the trial and appellate courts, the parties to this case only entered into a contract to sell; as such title cannot legally pass to Rodolfo until he makes full payment of the agreed purchase price.

c) Nicolas did not surrender or deliver title or possession to Rodolfo.

Moreover, there could not even be a surrender or delivery of title or possession to the prospective buyer Rodolfo. This was made clear by the nature of the agreement, by Nicolas's repeated demands for the return of all rents unlawfully and unjustly remitted to Rodolfo by Eduardo, and by Rodolfo and Eduardo's repeated demands for Nicolas to execute a deed of sale which, as we said before, is a recognition on their part that ownership over the subject property still remains with Nicolas.

Significantly, when Eduardo testified, he claimed to be knowledgeable about the terms and conditions of the transaction between Nicolas and Rodolfo. However, aside from stating that out of the total consideration of ₱500,000.00, the amount of ₱250,000.00 had already been paid while the remaining ₱250,000.00 would be paid after the execution of the Deed of Sale, he never testified that there was a stipulation as regards delivery of title or possession.[38]

It is also quite understandable why Nicolas belatedly demanded the payment of the rentals. Records show that the structural integrity of the Diego Building was severely compromised when an earthquake struck Dagupan City in 1990.[39] In order to rehabilitate the building, the co-owners obtained a loan from a bank.[40] Starting May 1994, the property was leased to third

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[37] *Id.*

[38] See TSN, March 21, 2001, pp. 12-21.

[39] See Memorandum for Defendants, p. 3, records, p. 40.

[40] *Id.* at 5; *id.* at 149.

parties and the rentals received were used to pay off the loan.[41] It was only in 1996, or after payment of the loan that the co-owners started receiving their share in the rentals.[42] During this time, Nicolas was in the USA but immediately upon his return, he demanded for the payment of his share in the rentals which Eduardo remitted to Rodolfo. Failing which, he filed the instant Complaint. To us, this bolsters our findings that Nicolas did not intend to immediately transfer title over the property.

It must be stressed that it is anathema in a contract to sell that the prospective seller should deliver title to the property to the prospective buyer pending the latter's payment of the price in full. It certainly is absurd to assume that in the absence of stipulation, a buyer under a contract to sell is granted ownership of the property even when he has not paid the seller in full. If this were the case, then prospective sellers in a contract to sell would in all likelihood not be paid the balance of the price.

This *ponente* has had occasion to rule that "[a] contract to sell is one where the prospective seller reserves the transfer of title to the prospective buyer until the happening of an event, such as full payment of the purchase price. What the seller obliges himself to do is to sell the subject property only when the entire amount of the purchase price has already been delivered to him. 'In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.' It does not, by itself, transfer ownership to the buyer."[43]

The contract to sell is terminated or cancelled.

Having established that the transaction was a contract to sell, what happens now to the parties' agreement?

[41] See Report of Daroya Accounting Office, pp. 1-2; *id.* at 76-77.

[42] *Id.* at 2; *id.* at 77.

[43] *Luzon Development Bank v. Enriquez,* G.R. Nos. 168646 & 168666, January 12, 2011, 639 SCRA 332, 351.

The remedy of rescission is not available in contracts to sell.[44] As explained in *Spouses Santos v. Court of Appeals*:[45]

> In view of our finding in the present case that the agreement between the parties is a contract to sell, it follows that the appellate court erred when it decreed that a judicial rescission of said agreement was necessary. This is because there was no rescission to speak of in the first place. As we earlier pointed out, in a contract to sell, title remains with the vendor and does not pass on to the vendee until the purchase price is paid in full. Thus, in a contract to sell, the payment of the purchase price is a positive suspensive condition. Failure to pay the price agreed upon is not a mere breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring an obligatory force. This is entirely different from the situation in a contract of sale, where non-payment of the price is a negative resolutory condition. The effects in law are not identical. In a contract of sale, the vendor has lost ownership of the thing sold and cannot recover it, unless the contract of sale is rescinded and set aside. In a contract to sell, however, the vendor remains the owner for as long as the vendee has not complied fully with the condition of paying the purchase price. If the vendor should eject the vendee for failure to meet the condition precedent, he is *enforcing the contract and not rescinding it*. When the petitioners in the instant case repossessed the disputed house and lot for failure of private respondents to pay the purchase price in full, they were merely enforcing the contract and not rescinding it. As petitioners correctly point out, the Court of Appeals erred when it ruled that petitioners should have judicially rescinded the contract pursuant to Articles 1592 and 1191 of the Civil Code. Article 1592 speaks of non-payment of the purchase price as a resolutory condition. It does not apply to a contract to sell. As to Article 1191, it is subordinated to the provisions of Article 1592 when applied to sales of immovable property. Neither provision is applicable in the present case.[46]

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[44] See *Tan v. Benolirao*, *supra* note 17 at 53; *Chua v. Court of Appeals*, *supra* note 29 at 43-44.

[45] 391 Phil. 739 (2000).

[46] *Id.* at 751-752. Italics in the original.

Similarly, we held in *Chua v. Court of Appeals*[47] that "Article 1592 of the Civil Code permits the buyer to pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by notarial act. However, Article 1592 does not apply to a contract to sell where the seller reserves the ownership until full payment of the price,"[48] as in this case.

Applying the above jurisprudence, we hold that when Rodolfo failed to fully pay the purchase price, the contract to sell was deemed terminated or cancelled.[49] As we have held in *Chua v. Court of Appeals*,[50] "[s]ince the agreement x x x is a mere contract to sell, the full payment of the purchase price partakes of a suspensive condition. **The non-fulfillment of the condition prevents the obligation to sell from arising and ownership is retained by the seller without further remedies by the buyer.**" Similarly, we held in *Reyes v. Tuparan*[51] that "petitioner's obligation to sell the subject properties becomes demandable only upon the happening of the positive suspensive condition, which is the respondent's full payment of the purchase price. **Without respondent's full payment, there can be no breach of contract to speak of because petitioner has no obligation yet to turn over the title.** Respondent's failure to pay the purchase price in full is not the breach of contract contemplated under Article 1191 of the New Civil Code but rather just an event that prevents the petitioner from being bound to convey title to respondent." Otherwise stated, Rodolfo has no right to compel Nicolas to transfer ownership to him because he failed to pay in full the purchase price. Correlatively, Nicolas has no obligation to transfer his ownership over his share in the Diego Building to Rodolfo.[52]

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[47] *Supra* note 29.

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

[49] See *Tan v. Benolirao*, *supra* note 17 at 54.

[50] *Supra* note 29 at 43. Emphasis supplied.

[51] *Supra* note 1 at 296.

[52] See *Chua v. Court of Appeals*, *supra* note 29 at 51-52.

Thus, it was erroneous for the CA to rule that Nicolas should have filed a case to fix the period for Rodolfo's payment of the balance of the purchase price. It was not Nicolas's obligation to compel Rodolfo to pay the balance; it was Rodolfo's duty to remit it.

It would appear that after Nicolas refused to sign the deed as there was yet no full payment, Rodolfo and Eduardo hired the services of the Daroya Accounting Office "for the purpose of estimating the amount to which [Nicolas] still owes [Rodolfo] as a consequence of the unconsummated verbal agreement regarding the former's share in the co-ownership of [Diego Building] in favor of the latter."[53] According to the accountant's report, after Nicolas revoked his agreement with Rodolfo due to non-payment, the downpayment of ₱250,000.00 was considered a loan of Nicolas from Rodolfo.[54] The accountant opined that the ₱250,000.00 should earn interest at 18%.[55] Nicolas however objected as regards the imposition of interest as it was not previously agreed upon. Notably, the contents of the accountant's report were not disputed or rebutted by the respondents. In fact, it was stated therein that "[a]ll the bases and assumptions made particularly in the fixing of the applicable rate of interest have been discussed with [Eduardo]."[56]

We find it irrelevant and immaterial that Nicolas described the termination or cancellation of his agreement with Rodolfo as one of rescission. Being a layman, he is understandably not adept in legal terms and their implications. Besides, this Court should not be held captive or bound by the conclusion reached by the parties. The proper characterization of an action should be based on what the law says it to be, not by what a party believed it to be. "A contract is what the law defines it to be x x x and not what the contracting parties call it."[57]

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[53] See Report of the Daroya Accounting Office, p. 1, records, p. 76.

[54] *Id.* at 2; *id.* at 77,

[55] *Id.*; *id.*

[56] *Id.*; *id.*

[57] *Tan v. Benolirao*, *supra* note 17 at 48.

On the other hand, the respondents' additional submission — that Nicolas cheated them by "vanishing and hibernating" in the USA after receiving Rodolfo's ₱250,000.00 downpayment, only to come back later and claim that the amount he received was a mere loan — cannot be believed. How the respondents could have been cheated or disadvantaged by Nicolas's leaving is beyond comprehension. If there was anybody who benefited from Nicolas's perceived "hibernation", it was the respondents, for they certainly had free rein over Nicolas's interest in the Diego Building. Rodolfo put off payment of the balance of the price, yet, with the aid of Eduardo, collected and appropriated for himself the rents which belonged to Nicolas.

Eduardo is solidarily liable with Rodolfo as regards the share of Nicolas in the rents.

For his complicity, bad faith and abuse of authority as the Diego Building administrator, Eduardo must be held solidarily liable with Rodolfo for all that Nicolas should be entitled to from 1993 up to the present, or in respect of actual damages suffered in relation to his interest in the Diego Building. Eduardo was the primary cause of Nicolas's loss, being directly responsible for making and causing the wrongful payments to Rodolfo, who received them under obligation to return them to Nicolas, the true recipient. As such, Eduardo should be principally responsible to Nicolas as well. Suffice it to state that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith; and every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.[58]

Attorney's fees and other costs.

"Although attorney's fees are not allowed in the absence of stipulation, the court can award the same when the defendant's

[58] CIVIL CODE, Articles 19 and 20.

act or omission has compelled the plaintiff to incur expenses to protect his interest or where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim."[59] In the instant case, it is beyond cavil that petitioner was constrained to file the instant case to protect his interest because of respondents' unreasonable and unjustified refusal to render an accounting and to remit to the petitioner his rightful share in rents and fruits in the Diego Building. Thus, we deem it proper to award to petitioner attorney's fees in the amount of ₱50,000.00,[60] as well as litigation expenses in the amount of ₱20,000.00 and the sum of ₱1,000.00 for each court appearance by his lawyer or lawyers, as prayed for.

WHEREFORE, premises considered, the Petition is *GRANTED*. The June 29, 2007 Decisionh and October 3, 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 86512, and the April 19, 2005 Decision of the Dagupan City Regional Trial Court, Branch 40 in Civil Case No. 99-02971-D, are hereby *ANNULLED* and *SET ASIDE*.

The Court further decrees the following:

1. The oral contract to sell between petitioner Nicolas P. Diego and respondent Rodolfo P. Diego is *DECLARED* terminated/cancelled;

2. Respondents Rodolfo P. Diego and Eduardo P. Diego are *ORDERED* to surrender possession and control, as the case may be, of Nicolas P. Diego's share in the Diego Building. Respondents are further commanded to return or surrender to the petitioner the documents of title, receipts, papers, contracts, and all other documents in any form or manner pertaining to the latter's share in the building, which are deemed to be in their unauthorized and illegal possession;

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[59] *Alcatel Philippines, Inc. v. I. M. Bongar & Co., Inc.*, G.R. No. 182946, October 5, 2011, 658 SCRA 741, 743-744.

[60] *Estores v. Supangan*, G.R. No. 175139, April 18, 2012, 670 SCRA 95, 108-109.

3. Respondents Rodolfo P. Diego and Eduardo P. Diego are *ORDERED* to immediately render an accounting of all the transactions, from the period beginning 1993 up to the present, pertaining to Nicolas P. Diego's share in the Diego Building, and thereafter commanded to jointly and severally remit to the petitioner all rents, monies, payments and benefits of whatever kind or nature pertaining thereto, which are hereby deemed received by them during the said period, and made to them or are due, demandable and forthcoming during the said period and from the date of this Decision, with legal interest from the filing of the Complaint;

4. Respondents Rodolfo P. Diego and Eduardo P. Diego are *ORDERED*, immediately and without further delay upon receipt of this Decision, to solidarily pay the petitioner attorney's fees in the amount of ₱50,000.00; litigation expenses in the amount of ₱20,000.00 and the sum of ₱1,000.00 per counsel for each court appearance by his lawyer or lawyers;

5. The payment of ₱250,000.00 made by respondent Rodolfo P. Diego, with legal interest from the filing of the Complaint, shall be *APPLIED*, by way of compensation, to his liabilities to the petitioner and to answer for all damages and other awards and interests which are owing to the latter under this Decision; and

6. Respondents' counterclaim is *DISMISSED*.

SO ORDERED.

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

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[*] Per raffle dated October 17, 2012.

FIRST DIVISION

[G.R. No. 180269. February 20, 2013]

JOSE Z. CASILANG, SR., substituted by his heirs, namely: FELICIDAD CUDIAMAT VDA. DE CASILANG, JOSE C. CASILANG, JR., RICARDO C. CASILANG, MARIA LOURDES C. CASILANG, CHRISTOPHER C. CASILANG, BEN C. CASILANG, DANTE C. CASILANG, GREGORIO C. CASILANG, HERALD C. CASILANG; and FELICIDAD Z. CASILANG, MARCELINA Z. CASILANG, JACINTA Z. CASILANG, BONIFACIO Z. CASILANG, LEONORA Z. CASILANG, and FLORA Z. CASILANG, *petitioners, vs.* **ROSARIO Z. CASILANG-DIZON, MARIO A. CASILANG, ANGELO A. CASILANG, RODOLFO A. CASILANG, and ATTY. ALICIA B. FABIA, in her capacity as Clerk of Court and Ex-Officio Sheriff of Pangasinan and/or her duly authorized representative,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; PROPERTY; OWNERSHIP; DISTINCTION BETWEEN A SUMMARY ACTION OF EJECTMENT AND A PLENARY ACTION FOR RECOVERY OF POSSESSION AND/OR OWNERSHIP OF LAND; THREE KINDS OF ACTIONS TO JUDICIALLY RECOVER POSSESSION.— It is well to be reminded of the settled distinction between a summary action of ejectment and a plenary action for recovery of possession and/or ownership of the land. What really distinguishes an action for unlawful detainer from a possessory action (*accion publiciana*) and from a reinvindicatory action (*accion reinvindicatoria*) is that the first is limited to the question of possession de facto. Unlawful detainer suits (accion interdictal) together with forcible entry are the two forms of ejectment suit that may be filed to recover possession of real property. Aside from the summary action of ejectment, *accion publiciana* or the plenary action to recover the right of possession and *accion*

reinvindicatoria or the action to recover ownership which also includes recovery of possession, make up the three kinds of actions to judicially recover possession.

2. ID.; ID.; ID.; ID.; CO-OWNERSHIP; PARTITION; THE CONCLUSION OF THE TRIAL COURT IS WELL-SUPPORTED THAT THERE WAS INDEED A VERBAL PARTITION AMONG THE HEIRS OF LIBORIO CASILANG, PURSUANT TO WHICH EACH OF HIS EIGHT CHILDREN RECEIVED HIS OR HER SHARE OF HIS ESTATE, AND THAT JOSE'S SHARE WAS LOT NO. 4618.— Rosario's only proof of Ireneo's ownership is TD No. 555, issued in his name, but she did not bother to explain why it was dated 1994, although Ireneo died on June 11, 1992. Liborio's ownership of Lot No. 4618 is admitted by all the parties, but it must be asked whether in his lifetime Liborio did in fact transmit it to Ireneo, and if not, whether it was conveyed to him by Liborio's heirs. It is imperative for Rosario to have presented proof of this transfer to Ireneo, in such a form as would have vested ownership in him. We find, instead, a preponderance of contrary evidence. x x x From the testimonies of the parties, we are convinced that the conclusion of the RTC is well-supported that there was indeed a verbal partition among the heirs of Liborio, pursuant to which each of his eight children received his or her share of his estate, and that Jose's share was Lot No. 4618.

3. ID.; ID.; ID.; ID.; ID.; ID.; THE PARTIES' VERBAL PARTITION IS VALID, AND HAS BEEN RATIFIED BY THEIR TAKING POSSESSION OF THEIR RESPECTIVE SHARES.— The validity of an oral partition is well-settled in our jurisdiction. In *Vda. de Espina v. Abaya*, this Court declared that an oral partition is valid: Anent the issue of oral partition, We sustain the validity of said partition. "An agreement of partition may be made orally or in writing. An oral agreement for the partition of the property owned in common is valid and enforceable upon the parties. The Statute of Frauds has no operation in this kind of agreements, for partition is not a conveyance of property but simply a segregation and designation of the part of the property which belong to the co-owners." In *Maestrado v. CA*, the Supreme Court upheld the partition after it found that it conformed to the alleged oral partition of the heirs, and

that the oral partition was confirmed by the notarized quitclaims executed by the heirs subsequently.

4. ID.; ID.; ID.; ID.; TAX DECLARATIONS AND TAX RECEIPTS ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP.— It is settled that tax declarations and tax receipts alone are not conclusive evidence of ownership. They are merely indicia of a claim of ownership, but when coupled with proof of actual possession of the property, they can be the basis of claim of ownership through prescription. In the absence of actual, public and adverse possession, the declaration of the land for tax purposes does not prove ownership. We have seen that there is no proof that Liborio, or the Casilang siblings conveyed Lot No. 4618 to Ireneo. There is also no proof that Ireneo himself declared Lot No. 4618 for tax purposes, and even if he or his heirs did, this is not enough basis to claim ownership over the subject property. The Court notes that TD No. 555 was issued only in 1994, two years after Ireneo's death. Rosario even admitted that she began paying taxes only in 1997. More importantly, Ireneo never claimed Lot No. 4618 nor took possession of it in the concept of owner.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; RESOLVING DEFENSE OF OWNERSHIP; INFERIOR COURTS ARE EMPOWERED TO RULE ON THE QUESTION OF OWNERSHIP RAISED BY THE DEFENDANT IN AN EJECTMENT SUIT, BUT ONLY TO RESOLVE THE ISSUE OF POSSESSION; ITS POSSESSION IS NOT CONCLUSIVE OF THE ISSUE OF OWNERSHIP.— Under Section 3 of Rule 70 of the Rules of Court, the Summary Procedure governs the two forms of ejectment suit, the purpose being to provide an expeditious means of protecting actual possession or right to possession of the property. They are not processes to determine the actual title to an estate. If at all, inferior courts are empowered to rule on the question of ownership raised by the defendant in such suits, only to resolve the issue of possession and its determination on the ownership issue is not conclusive. x x x It is apropos, then, to note that in contrast to Civil Case No. 847, which is an ejectment case, Civil Case No. 98-02371-D is for "Annulment of Documents, Ownership and Peaceful Possession;" it is an *accion reinvindicatoria*, or

action to recover ownership, which necessary includes recovery of possession as an incident thereof. Jose assert his ownership over Lot No. 4618 under a partition agreement with his co-heirs, and seeks to invalidate Ireneo's "claim" over Lot No. 4618 and to declare TD No. 555 void, and consequently, to annual the Deed of Extrajudicial Partition and Quitclaim executed by Ireneo's heirs.

6. ID.; CIVIL PROCEDURE; APPEALS; IT IS IMPERATIVE FOR THE SUPREME COURT TO REVIEW THE COURT OF APPEAL'S FACTUAL CONCLUSIONS SINCE THEY ARE ENTIRELY CONTRARY TO THOSE OF THE TRIAL COURT, THEY HAVE NO CITATION OF SPECIFIC SUPPORTING EVIDENCE, AND ARE PREMISE ON THE SUPPOSED ABSENCE OF EVIDENCE; CASE AT BAR.— The Supreme Court is not a trier of facts, and unless the case falls under any of the well-defined exceptions, the Supreme Court will not delve once more into the findings of facts. x x x In the instant case, the factual findings of the CA and the RTC are starkly contrasting. Moreover, we find that the CA decision falls under exceptions (7), (8) and (10) above, which warrants another review of its factual findings. The evidence supporting Rosario's claim of sole ownership of Lot No. 4618 is the Deed of *Extrajudicial Partition with Quitclaim*, which she executed with her brothers Mario, Angelo and Rodolfo. There is no question that by itself, the said document would have fully conveyed to Rosario whatever rights her brothers might have in Lot No. 4618. But what needs to be established first is whether or not Ireneo did in fact own Lot No. 4618 through succession, as Rosario claims. And here now lies the very crux of the controversy.

APPEARANCES OF COUNSEL

Surdilla & Surdilla Law Office for petitioners.
Public Attorney's Office for private respondents.

D E C I S I O N

REYES, *J.*:

Before us is a petition for review of the Decision[1] dated July 19, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 79619, which reversed and set aside the Decision[2] dated April 21, 2003 of the Regional Trial Court (RTC) of Dagupan City, Branch 41, in Civil Case No. 98-02371-D.

Antecedent Facts

The late spouses Liborio Casilang (Liborio) and Francisca Zacarias (Francisca) had eight (8) children, namely: Felicidad Casilang (Felicidad), Ireneo Casilang (Ireneo), Marcelina Casilang (Marcelina), Jacinta Casilang (Jacinta), Bonifacio Casilang (Bonifacio), Leonora Casilang (Leonora), Jose Casilang (Jose) and Flora Casilang (Flora). Liborio died intestate on October 11, 1982 at the age of 83, followed not long after by his wife Francisca on December 25, 1982. Their son Bonifacio also died in 1986, survived by his child Bernabe Casilang (Bernabe), while son Ireneo died on June 11, 1992, survived by his four (4) children, namely: Mario Casilang (Mario), Angelo Casilang (Angelo), Rosario Casilang-Dizon (Rosario) and Rodolfo Casilang (Rodolfo), herein respondents.

The estate of Liborio, which left no debts, consisted of three (3) parcels of land located in *Barangay* Talibaew, Calasiao, Pangasinan, namely: (1) Lot No. 4676, with an area of 4,164 square meters; (2) Lot No. 4704, containing 1,164 sq m; and (3) Lot No. 4618, with 897 sq m.

On May 26, 1997, respondent Rosario filed with the Municipal Trial Court (MTC) of Calasiao, Pangasinan a complaint for unlawful detainer, docketed as Civil Case No. 847, to evict her

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[1] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring; *rollo,* pp. 42-54.

[2] Rendered by Presiding Judge Emma M. Torio; *id.* at 55-60.

uncle, petitioner Jose from Lot No. 4618. Rosario claimed that Lot No. 4618 was owned by her father Ireneo, as evidenced by Tax Declaration (TD) No. 555 issued in 1994 under her father's name. On April 3, 1997, the respondents executed a *Deed of Extrajudicial Partition with Quitclaim*[3] whereby they adjudicated Lot No. 4618 to themselves. In the same instrument, respondents Mario, Angelo and Rodolfo renounced their respective shares in Lot No. 4618 in favor of Rosario.

In his Answer, Jose raised the defense that he was the "lawful, absolute, exclusive owner and in actual possession" of the said lot, and that he acquired the same "through intestate succession from his late father."[4] For some reason, however, he and his lawyer, who was from the Public Attorney's Office, failed to appear at the scheduled pre-trial conference, and Jose was declared in default; thus, the adverse judgment against him.[5]

On February 18, 1998, the MTC rendered judgment finding Rosario to be the owner of Lot No. 4618, and ordering Jose to remove his house, vacate Lot No. 4618, and pay Rosario ₱500.00 in monthly rentals from the filing of the complaint until she was placed in possession, plus attorney's fees of ₱5,000.00, litigation expenses and costs. On March 23, 1998, the MTC issued a writ of execution; and on August 28, 1998, a Writ of Demolition[6] was issued.

On June 2, 1998, the petitioners, counting 7 of the 8 children of Liborio and Francisca,[7] filed with the RTC of Dagupan City a Complaint,[8] docketed as Civil Case No. 98-02371-D for

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[3] Exhibit "2", folder of exhibits (for the defendants), pp. 2-3.

[4] CA *rollo*, p. 88.

[5] *Id.*

[6] Records, p. 73.

[7] Bonifacio died in 1986 and was represented by his son Bernabe; Jose died in 2006 and was substituted in Civil Case No. 98-02371-D by his wife and children. Ireneo died in 1992 and his interest is being defended by his children, namely: Rosario, Mario, Angelo, and Rodolfo.

[8] Records, pp. 1-7.

"Annulment of Documents, Ownership and Peaceful Possession with Damages" against the respondents. On June 10, 1998, the petitioners moved for the issuance of a writ of preliminary injunction or temporary restraining order, which the RTC however denied on June 23, 1998.

Among the documents sought to be annulled was the 1997 Deed of Extrajudicial Partition executed by Ireneo's children over Lot No. 4618, as well as TD No. 555, and by necessary implication its derivatives, TD No. 15177 (for the lot) and TD No. 15176 (for the house), both of which were issued in 1998 in the name of Rosario Casilang-Dizon.[9]

The petitioners alleged in their complaint that all eight (8) children of Liborio entered into a verbal partition of his estate, pursuant to which Jose was allotted Lot No. 4618 as his share; that Ireneo never claimed ownership of Lot No. 4618, nor took possession of it, because his share was the southwestern 1/5 portion of Lot No. 4676, containing an area of 1,308 sq m,[10] of which he took exclusive possession during his lifetime; that Jose has always resided in Lot No. 4618 since childhood, where he built his family's semi-concrete house just a few steps away from his parents' old bamboo hut; that he took in and cared for his aged parents in his house until their deaths in 1982; that one of his children has also built a house on the lot.[11] Jose, said to be the most educated of the Casilang siblings, worked as an insurance agent.[12] The complete disposition of the intestate estate of Liborio per the parties' verbal partition appears as follows:

1. Lot No. 4676, with 4,164 sq m, declared under TD No. 534 in Liborio's name,[13] was verbally partitioned among

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[9] Exhibits 2, 4 and 4-A, folder of exhibits (for the defendants), pp. 2-3, 7, 8.

[10] Records, pp. 18-19.

[11] *Id.* at 2-3.

[12] TSN, July 28, 1999, p. 13.

[13] Exhibit "E", folder of exhibits (for the plaintiffs), p. 5.

Marcelina (236 sq m), Leonora (1,965 sq m), Flora (655 sq m), and Ireneo, represented by his children, the herein respondents-defendants (1,308 sq m), as shown in a *Deed of Extrajudicial Partition with Quitclaim* dated January 8, 1998, subsequently executed by all the Casilang siblings and their representatives.

2. Lot No. 4704, with 1,164 sq m, declared under TD No. 276 in Liborio's name,[14] was divided among Jacinta and Bonifacio, who died in 1986 and is now represented by his son Bernabe; and

3. Lot No. 4618, containing 897 sq m, declared since 1994 under TD No. 555 in Ireneo's name,[15] is now the subject of the controversy below. Jose insists that he succeeded to it per verbal partition, and that he and his family have always occupied the same peacefully, adversely and exclusively even while their parents were alive.[16]

For her part, Rosario alleged in her answer with counterclaim,[17] which she filed on September 15, 1998, that:

a) She is the actual and lawful owner of Lot No. 4618 with an area of 897 square meters, having acquired the same by way of a Deed of Extra judicial Partition with Quitclaim dated 3 April 1997 which was duly executed among herein Appellant ROSARIO and her brothers, namely, MARIO, ANGELO and RODOLFO, all surnamed CASILANG;

b) Her ownership over subject property could be traced back to her late father IR[E]NEO which the latter inherited by way of intestate succession from his deceased father LIBORIO sometime in 1992; that the residential house described in herein Appellee JOSE's complaint is an illegal structure built by him in 1997 without her (ROSARIO's) knowledge and consent; that in fact, an ejectment suit

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[14] Exhibit "G", *id.* at 9.

[15] Exhibit "1", folder of exhibits (for the defendants), p. 1.

[16] Records, p. 17.

[17] *Id.* at 59-66.

was filed against Appellee JOSE with the Municipal Trial Court in Calasiao, Pangasinan in Civil Case No. 847;

c) The subject lot is never a portion of Appellee JOSE's share from the intestate of his deceased father, LIBORIO; that on the contrary, the lot is his deceased brother IR[E]NEO's share from the late LIBORIO's intestate estate; that in fact, the property has long been declared in the name of the late IR[E]NEO as shown by Tax Declaration No. 555 long before his children ROSARIO DIZON, MARIO[,] ANGELO and RODOLFO, all surnamed CASILANG, executed the Deed of Partition dated 18 February 1998; that Appellee JOSE had actually consumed his shares which he inherited from his late father, and after a series of sales and dispositions of the same made by him, he now wants to take Appellants' property;

d) Appellee JOSE is never the rightful owner of the lot in question and has not shown any convincing proof of his supposed ownership; that the improvements introduced by him, specifically the structures he cited are the subject of a Writ of Demolition dated 28 August 1998 pursuant to the Order [dated] 17 August 1998 of the MTC of Calasiao, Pangasinan;

e) No protestation or objection was ever made by Appellee JOSE in Civil Case No. 847 (*Unlawful Detainer* case) where he was the defendant; that the truth was that his possession of the subject property was upon the tolerance and benevolence of his late brother IR[E]NEO during the latter's lifetime and that Appellant ROSARIO;

f) The RTC Clerk of Court and Ex-officio Provincial Sheriff would just be doing her job if she and her deputies would implement the writ of execution/demolition issued by the MTC of Calasiao, Pangasinan since it is its ministerial duty to do so;

g) The Appellees have no cause of action; not having shown in their complaint the basis, the reason and the very core of their claim as to why the questioned document should be nullified.[18] (Citation omitted)

In their reply[19] to Rosario's aforesaid answer, the petitioners asserted that the MTC committed a grave error in failing to

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[18] *Rollo*, pp. 47-48.

[19] Records, pp. 74-76.

consider a material fact¾that Jose had long been in prior possession under a claim of title which he obtained by partition.

At the pre-trial conference in Civil Case No. 98-02371-D, the parties entered into the following stipulations:

1. That the late LIBORIO is the father of FELICIDAD, MARCELINA, JUANITA, LEONORA, FLORA and IR[E]NEO, all surnamed CASILANG[;]

2. That the late LIBORIO died in 1982; That the late LIBORIO and his family resided on Lot [No.] 4618 up to his death in 1982; That the house of the late LIBORIO is located on Lot [No.] 4618;

3. That Plaintiff JOSE used to reside on the lot in question because there was a case for ejectment filed against him;

4. That the house which was demolished is the family house of the late LIBORIO and FRANCISCA ZACARIAS with the qualification that it was given to the defendants;

5. That the action involves members of the same family; and

6. That no earnest efforts were made prior to the institution of the case in court.[20]

Ruling of the RTC

After a full trial on the merits, the RTC in its Decision[21] dated April 21, 2003 decreed as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants as follows:

1. Declaring the Deed of Extrajudicial Partition with Quitclaim dated April 3, 1997 null and void;

2. Declaring plaintiff Jose Z. Casilang Sr. as the lawful owner and possessor of the subject Lot [No.] 4618 and as such, entitled to the peaceful possession of the same;

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[20] *Rollo,* pp. 48-49.

[21] *Id.* at 55-60.

3. Ordering the defendants to pay to plaintiff Jose Z. Casilang Sr. attorney's fees in the amount of [₱]20,000.00 and litigation expenses in the amount of [₱]5,000.00, and to pay the costs of suit.

SO ORDERED.[22]

The RTC affirmed Jose's ownership and possession of Lot No. 4618 by virtue of the oral partition of the estate of Liborio by all the siblings. In the *Deed of Extrajudicial Partition with Quitclaim*[23] dated January 8, 1998, subsequently executed by all the eight (8) Casilang siblings and their legal representatives — with Ireneo represented by his four (4) children, and Bonifacio by his son Bernabe — petitioners Jose, Felicidad, Jacinta and Bernabe, acknowledged that they had "*already received their respective shares of inheritance in advance*,"[24] and therefore, **renounced** their claims over Lot No. 4676 in favor of co-heirs Marcelina, Leonora, Flora and Ireneo, as follows:

> [W]e hereby RENOUNCED, WAIVED AND QUITCLAIM, all our rights, interests and participations over the WHOLE parcel of land [Lot No. 4676], left by the late, LIBORIO CASILANG, in favor of our co-heirs, namely[:] MARCELINA Z. CASILANG-PARAYNO, LEONORA Z. CASILANG-SARMIENTO, FLORA Z. CASILANG, MARIO A. CASILANG, ANGELO A. CASILANG, ROSARIO A. CASILANG- DIZON AND RODOLFO A. CASILANG[.][25]

Thus, Jose expressly renounced his share in Lot No. 4676, which has an area of 4,164 sq m, because he had already received in advance his share in his father's estate, Lot No. 4618 with 897 sq m:

> To the mind of the court, Jose Casilang could have not [sic] renounced and waived his rights and interests over Lot [No.] 4676 if he believes that Lot [No.] 4618 is not his, while the other lot, Lot [No.] 470[4],

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[22] *Id.* at 60.

[23] Exhibit "F & F-1," folder of exhibits (for the plaintiffs), pp. 6-7.

[24] Exhibit "F-1," *id.* at 7.

[25] *Id.*

was divided between sister Jacinta Casilang and brother Bonifacio Casilang[,] Sr., who was represented by his son. In the same [way] as testified to by plaintiffs Felicidad Casilang and Jacinta Casilang, they signed the Deed of Extrajudicial Partition with Quitclaim wherein they waived and renounced their rights and interests over Lot [No.] 4676 because they have already received their share, which is Lot [No.] 470[4].[26]

The RTC found baseless the claim of Rosario that Lot No. 4618 was an inheritance of her father Ireneo considering that a tax declaration is not conclusive proof of ownership. The RTC even noted that the tax declaration of Ireneo started only in 1994, although he had been dead since 1992. "Such being the case, the heirs of Ir[e]neo Casilang has [sic] no basis in adjudicating unto themselves Lot No. 4618 and partitioning the same by executing the Deed of Extrajudicial Partition with Quitclaim."[27]

Appeal to the CA

Undeterred, Rosario appealed to the CA averring that: (1) the lower court erred in declaring the Deed of Extrajudicial Partition with Quitclaim dated April 3, 1997 as null and void; and (2) the lower court erred in declaring Jose as the lawful owner and possessor of the subject Lot No. 4618.[28]

In the now assailed decision, the CA reversed the RTC by relying mainly on the factual findings and conclusions of the MTC in Civil Case No. 847, *viz*:

Per the records, the above described property was subject of Civil Case No. 847 decided by the MTC of Calasiao, First Judicial Region, Province of Pangasinan which rendered a judgment, *supra*, in favor of Appellant ROSARIO ordering herein Appellee JOSE and all persons claiming rights under him to vacate the land of Appellant ROSARIO. It was found by the MTC that the latter is the **owner** of the subject parcel of land located at Talibaew, Calasiao, Pangasinan; that the

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[26] *Rollo*, p. 59.

[27] *Id.* at 59-60.

[28] CA *rollo*, p. 22.

former owner of the land is the late IRENEO (who died on 11 June 1992), father of Appellant ROSARIO; that Extra Judicial Partition with Quitclaim was executed by and among the heirs of the late IRENEO; that MAURO [sic], ANGELO and RODOLFO, all surnamed CASILANG waived and quitclaimed their respective shares over the subject property in favor of Appellant ROSARIO; that Appellee JOSE was allowed by the late IRENEO during his lifetime to occupy a portion of the land without a contract of lease and no rentals being paid by the former; that Appellant ROSARIO allowed Appellee JOSE to continue occupying the land after the Extra Judicial Partition with Quitclaim was executed.[29]

Moreover, noting that the decision in Civil Case No. 847 in favor of Rosario was issued on February 18, 1998 while the petitioners' complaint in Civil Case No. 98-02371-D was filed on June 2, 1998, the CA concluded that the latter case was a mere afterthought:

If the latter has really a strong and valid reason to question the validity of the Deed of Extra Judicial Partition with Quitclaim, *supra*, he could have done it soon after the said Deed was executed on 3 April 1997. However, curiously enough, it was only when the MTC ordered his eviction from the subject property that he decided to file the instant case against the Appellants.[30]

Petition for Review in the Supreme Court

Now in this petition for review on *certiorari*, petitioners maintain that:

IN UPHOLDING THE LEGALITY [OF] THE DEED OF EXTRAJUDICIAL PARTITION AND QUITCLAIM DATED APRIL 3, 1997, THE HONORABLE COURT OF APPEALS GROSSLY VIOLATED THE SUBSTANTIVE RIGHT OF JOSE Z. CASILANG[,] SR. AS DIRECT COMPULSORY HEIR.[31]

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[29] *Rollo*, p. 51.

[30] *Id.* at 52.

[31] *Id.* at 17.

Our Ruling and Discussions

There is merit in the petition.

Inferior courts are empowered to rule on the question of ownership raised by the defendant in an ejectment suit, but only to resolve the issue of possession; its determination is not conclusive on the issue of ownership.

It is well to be reminded of the settled distinction between a summary action of ejectment and a plenary action for recovery of possession and/or ownership of the land. What really distinguishes an action for unlawful detainer from a possessory action (*accion publiciana*) and from a reinvindicatory action (*accion reinvindicatoria*) is that the first is limited to the question of *possession de facto*. Unlawful detainer suits (*accion interdictal*) together with forcible entry are the two forms of ejectment suit that may be filed to recover possession of real property. Aside from the summary action of ejectment, *accion publiciana* or the plenary action to recover the right of possession and *accion reinvindicatoria* or the action to recover ownership which also includes recovery of possession, make up the three kinds of actions to judicially recover possession.[32]

Under Section 3 of Rule 70 of the Rules of Court, the Summary Procedure governs the two forms of ejectment suit, the purpose being to provide an expeditious means of protecting actual possession or right to possession of the property. They are not processes to determine the actual title to an estate. If at all, inferior courts are empowered to rule on the question of ownership raised by the defendant in such suits, only to resolve the issue of possession and its determination on the ownership issue is not conclusive.[33] As thus provided in Section 16 of Rule 70:

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[32] *Custodio v. Corrado*, 479 Phil. 415, 426 (2004).

[33] *De Leon v. CA,* 315 Phil. 140, 152 (1995).

Sec. 16. *Resolving defense of ownership.* When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

It is apropos, then, to note that in contrast to Civil Case No. 847, which is an ejectment case, Civil Case No. 98-02371-D is for "Annulment of Documents, Ownership and Peaceful Possession;" it is an *accion reinvindicatoria*, or action to recover ownership, which necessarily includes recovery of possession[34] as an incident thereof. Jose asserts his ownership over Lot No. 4618 under a partition agreement with his co-heirs, and seeks to invalidate Ireneo's "claim" over Lot No. 4618 and to declare TD No. 555 void, and consequently, to annul the Deed of Extrajudicial Partition and Quitclaim executed by Ireneo's heirs.

It is imperative to review the CA's factual conclusions since they are entirely contrary to those of the RTC, they have no citation of specific supporting evidence, and are premised on the supposed absence of evidence, particularly on the parties' verbal partition, but are directly contradicted by the evidence on record.

It must be noted that the factual findings of the MTC, which the CA adopted without question, were obtained through Summary Procedure and were based solely on the complaint and affidavits of Rosario, after Jose had been declared in default. But since a full trial was had in Civil Case No. 98-02371-D, the CA should have pointed out the specific errors and weaknesses in the RTC's factual conclusions before it could rule that Jose was unable to present "any evidentiary support" to establish

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[34] *Ganila v. Court of Appeals*, 500 Phil. 212, 221 (2005).

his title, and that his continued possession of Lot No. 4618 was by mere tolerance of Rosario. At most, however, the CA only opined that it was conjectural for the RTC to conclude, that Jose had already received his inheritance when he renounced his share in Lot No. 4676. It then ruled that the RTC erred in not considering the findings of the MTC in Civil Case No. 847¾that Jose's possession over subject property was by mere tolerance. Said the appellate court:

> Given the claim of the Appellee that Lot [No.] 4618 was **orally** given/assigned to him by his deceased father LIBORIO, or that his claim was corroborated by his sisters (his co-plaintiffs-Appellees), or that their claim is indubitably tied up with the Deed of Extrajudicial Partition with Quitclaim over Lot No. 4676, still We cannot fully agree with the pronouncement of the court *a quo* that Appellee JOSE could not have renounced and waived his rights and interest over Lot [No.] 4676 if he believes that Lot [No.] 4618 is not his. Wanting any evidentiary support, We find this stance as conjectural being unsubstantiated by law or convincing evidence. At the most and taking the factual or legal circumstances as shown by the records, We hold that the court *a quo* erred in not considering the findings of the MTC in Civil Case No. 847 ruling that herein Appellee JOSE's possession over subject property was by mere tolerance. Based as it is on mere tolerance, Appellee JOSE's possession therefore could not, in any way, ripen into ownership.[35] (Citations omitted)

By relying solely on the MTC's findings, the CA completely ignored the testimonial, documentary and circumstantial evidence of the petitioners, obtained by the RTC after a full trial on the merits. More importantly, the CA did not point to any evidence of Rosario that Ireneo had inherited Lot No. 4618 from Liborio. All it did was adopt the findings of the MTC.

The Supreme Court is not a trier of facts, and unless the case falls under any of the well-defined exceptions, the Supreme Court will not delve once more into the findings of facts. In *Sps. Sta. Maria v. CA,*[36] this Court stated:

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[35] *Rollo*, pp. 53-54.

[36] 349 Phil. 275 (1998).

Settled is the rule that the jurisdiction of this Court in cases brought before it from the Court of Appeals via Rule 45 of the Rules of Court is limited to reviewing errors of law. Findings of fact of the latter are conclusive, except in the following instances: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[37] (Citation omitted)

In the instant case, the factual findings of the CA and the RTC are starkly contrasting. Moreover, we find that the CA decision falls under exceptions (7), (8) and (10) above, which warrants another review of its factual findings.

The evidence supporting Rosario's claim of sole ownership of Lot No. 4618 is the *Deed of Extrajudicial Partition with Quitclaim*, which she executed with her brothers Mario, Angelo and Rodolfo. There is no question that by itself, the said document would have fully conveyed to Rosario whatever rights her brothers might have in Lot No. 4618. But what needs to be established first is whether or not Ireneo did in fact own Lot No. 4618 through succession, as Rosario claims. And here now lies the very crux of the controversy.

A review of the parties' evidence shows that they entered into an oral partition, giving Lot No. 4618 to Jose as his share, whereas Rosario presented no proof whatsoever that

[37] *Id.* at 282-283.

her father inherited Lot No. 4618 from his father Liborio.

Rosario's only proof of Ireneo's ownership is TD No. 555, issued in his name, but she did not bother to explain why it was dated 1994, although Ireneo died on June 11, 1992. Liborio's ownership of Lot No. 4618 is admitted by all the parties, but it must be asked whether in his lifetime Liborio did in fact transmit it to Ireneo, and if not, whether it was conveyed to him by Liborio's heirs. It is imperative for Rosario to have presented proof of this transfer to Ireneo, in such a form as would have vested ownership in him. We find, instead, a preponderance of contrary evidence.

1. In his testimony, Jose claimed that his parents' bamboo house in Lot No. 4618 disintegrated from wear and tear; so he took them in to his semi-concrete house in the same lot, which was just a few steps away, and he cared for them until they died; shortly before Liborio's death, and in the presence of all his siblings, his father Liborio assigned Lot No. 4618 to him as his inheritance; his house was demolished in 1998 as a result of the ejectment case filed against him; but his family continued to live thereat after reconstructing the house; Ireneo and his family did not live in Lot No. 4618; although Jose's job as an insurance agent took him around Pangasinan, he always came home to his family in his house in Lot No. 4618, which he used as his permanent address; only Lot No. 4676 was included in the Deed of Extrajudicial Partition dated January 8, 1998 because Lot No. 4618 had already been distributed to Jose, and Lot No. 4704 had already been assigned to Jacinta and Bonifacio as their share in their father's estate.[38]

2. Jose's testimony was corroborated by petitioners Felicidad,[39] Jacinta,[40] Leonora,[41] and Flora,[42] who all confirmed that their

[38] TSN, July 28, 1999, pp. 3-15, 18, 24.

[39] TSN, March 30, 2000, pp. 4-5, 7-9.

[40] TSN, September 29, 1999, pp. 5, 9.

[41] TSN, June 9, 2000, pp. 3-7.

[42] TSN, December 20, 1999, pp. 5, 6, 10-12, 17, 18.

brother Jose has always resided in Lot No. 4618 from his childhood up to the present, that he took their aged parents into his house after their bamboo house was destroyed, and he attended to their needs until they died in 1982. The sisters were also one in saying that their father Liborio verbally willed Lot No. 4618 to Jose as his share in his estate, and that their actual partition affirmed their father's dispositions. Jacinta claimed that she and Bonifacio have since taken possession of Lot No. 4704 pursuant to their partition, and have also declared their respective portions for tax purposes.[43] Flora corroborated Jacinta on their taking possession of Lot No. 4704, as well as that Jose built his house on Lot No. 4618 next to his parents and they came to live with him in their old age. Flora affirmed that Exhibit "F" correctly reflects their verbal partition of Lot No. 4676, and that she was fully in accord with it. She added that Felicidad and Marcelina had since constructed their own houses on the portions of Lot No. 4676 assigned to them.[44] Felicidad mentioned that in their partition, Ireneo was given a portion of Lot No. 4676, while Lot No. 4704 was divided between Jacinta and Bonifacio, and Jose alone got Lot No. 4618. Leonora confirmed that they were all present when their father made his above dispositions of his estate.

3. Benjamin Lorenzo, a long-time neighbor of the Casilangs testified that Jose's house stands on Lot No. 4618 and Ireneo did not live with his family on the said lot but was a tenant in another farm some distance away.[45]

4. For her part, Rosario merely asserted that her father Ireneo succeeded to Lot No. 4618 from Liborio, as shown in TD No. 555 (Exhibit "1"); that she and her brothers extra-judicially settled Ireneo's estate, and that they each waived their shares in her favor; and, that she has been paying taxes on Lot No. 4618. Rosario admitted, however, that Jose has lived

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[43] TSN, September 29, 1999, p. 7.

[44] TSN, December 20, 1999, p. 5.

[45] TSN, August 31, 2000, pp. 6-7.

in the lot since he was a child, and he has reconstructed his house thereon after its court-ordered demolition.[46] But Rosario on cross-examination backtracked by claiming that it was her father Ireneo and grandfather Liborio who built the old house in Lot No. 4618, where Ireneo resided until his death; he even planted various fruit trees. Yet, there is no mention whatsoever to this effect by any of the witnesses. Rosario also contradicted herself when she denied that Jose lived there because his job as insurance agent took him away often and yet admitted that Jose's house stands there, which he reconstructed after it was ordered demolished by the MTC. Inexplicably, Rosario disclaimed knowledge of Ireneo's share in Lot No. 4676, although she was a signatory, along with her brothers and all the petitioners, in the deed of partition of the said lot, whereby she got 1,308 sq m. Rosario also admitted that taxes were paid on the lot only beginning in 1997, not before.[47]

5. Benjamin Dizon, husband of Rosario, testified that Rosario was losing appetite and sleep because of the case filed by Jose; that Ireneo died in another farm; that Ireneo had a house in Lot No. 4618 but Jose took over the house after he died in 1992.[48] Respondent Angelo, brother of Rosario, claimed that when he was 13 or 14 years old, he heard his grandfather tell his father Ireneo that he would inherit Lot No. 4618. On cross-examination, Angelo insisted that his father had always lived with his family in his grandfather's house in Lot No. 4618, that Jose did not live there but was given another lot, although he could not say which lot it was; he admitted that his grandmother lived with Jose when she died, and Ireneo's share was in Lot No. 4676.[49]

6. On rebuttal, Jose recounted that after his four children were married, Ireneo lived as a tenant in another farm; that during a period of illness he lived in Manila for some time, and

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[46] TSN, March 21, 2001, p. 3-10, 13-14; *see also* TSN, May 24, 2001, p. 3.

[47] *Id.* at 14-16.

[48] TSN, May 24, 2001, pp. 6-8.

[49] TSN, January 23, 2002, pp. 3-4, 7-8.

later resided in Cagayan with his two married sons; and lastly on his return, worked as a tenant of the Maningding family for about 10 years in Calasiao, staying in a hut one kilometer away. Jose also claimed that Ireneo had asked Liborio for a portion of Lot No. 4676, a lot which is bigger than Lot No. 4618 by several hundreds of square meters.[50]

7. On sur-rebuttal, Rosario claimed that her grandparents, father and mother lived in Lot No. 4618 when she was a child until she married and left in 1976; that her uncle Jose asked permission from Liborio to be allowed to stay there with his family. She admitted that Jose built his house in 1985, three years after Liborio died, but as if to correct herself, she also claimed that Jose built his house in Lot No. 4676, and ***not*** in Lot No. 4618. (Contrarily, her aunt Leonora testified that Jose built his house in Lot No. 4618 while their parents were alive.)[51] Moreover, if such was the case, Rosario did not explain why she filed Civil Case No. 847, if she thought her uncle built his house in Lot No. 4676, and not in Lot No. 4618.[52] Rosario also claimed that Ireneo always came home in the evenings to his father Liborio's house from the Maningding farm, which he tenanted for 10 years, but obviously, by then Liborio's house had long been gone. Again, confusedly, Rosario denied that she knew of her father's share in Lot No. 4676.

From the testimonies of the parties, we are convinced that the conclusion of the RTC is well-supported that there was indeed a verbal partition among the heirs of Liborio, pursuant to which each of his eight children received his or her share of his estate, and that Jose's share was Lot No. 4618.

The parties' verbal partition is valid, and has been ratified by their taking possession of their respective shares.

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[50] TSN, October 3, 2002, pp. 4-7.

[51] TSN, June 9, 2000, p. 6.

[52] TSN, November 25, 2002, pp. 5, 8, 9, 12 , 13-14.

The validity of an oral partition is well-settled in our jurisdiction. In *Vda. de Espina v. Abaya,*[53] this Court declared that an oral partition is valid:

> Anent the issue of oral partition, We sustain the validity of said partition. "An agreement of partition may be made orally or in writing. An oral agreement for the partition of the property owned in common is valid and enforceable upon the parties. The Statute of Frauds has no operation in this kind of agreements, for partition is not a conveyance of property but simply a segregation and designation of the part of the property which belong to the co-owners."[54]

In *Maestrado v. CA,*[55] the Supreme Court upheld the partition after it found that it conformed to the alleged oral partition of the heirs, and that the oral partition was confirmed by the notarized quitclaims executed by the heirs subsequently.[56] In *Maglucot-Aw v. Maglucot*,[57] the Supreme Court elaborated on the validity of parol partition:

> On general principle, independent and in spite of the statute of frauds, courts of equity have enforce [sic] oral partition when it has been completely or partly performed.
>
> Regardless of whether a parol partition or agreement to partition is valid and enforceable at law, equity will [in] proper cases[,] where the parol partition has actually been consummated by the taking of possession in severalty and the exercise of ownership by the parties of the respective portions set off to each, recognize and enforce such parol partition and the rights of the parties thereunder. Thus, it has been held or stated in a number of cases involving an oral partition under which the parties went into possession, exercised acts of ownership, or otherwise partly performed the partition agreement, that equity will confirm such partition and in a proper

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[53] G.R. No. 45142, April 26, 1991, 196 SCRA 312.

[54] *Id.* at 319, citing *Tolentino*, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Vol. II, 1983 Edition, pp. 182-183.

[55] 384 Phil. 418 (2000).

[56] *Id.* at 433.

[57] 385 Phil. 720 (2000).

case decree title in accordance with the possession in severalty. In numerous cases it has been held or stated that parol partition may be sustained on the ground of estoppel of the parties to assert the rights of a tenant in common as to parts of land divided by parol partition as to which possession in severalty was taken and acts of individual ownership were exercised. And a court of equity will recognize the agreement and decree it to be valid and effectual for the purpose of concluding the right of the parties as between each other to hold their respective parts in severalty.

A parol partition may also be sustained on the ground that the parties thereto have acquiesced in and ratified the partition by taking possession in severalty, exercising acts of ownership with respect thereto, or otherwise recognizing the existence of the partition.

A number of cases have specifically applied the doctrine of part performance, or have stated that a part performance is necessary, to take a parol partition out of the operation of the statute of frauds. It has been held that where there was a partition in fact between tenants in common, and a part performance, a court of equity would have regard to and enforce such partition agreed to by the parties.[58]

Jose's possession of Lot No. 4618 under a claim of ownership is well borne out by the records. It is also consistent with the claimed verbal partition with his siblings, and fully corroborated by his sisters Felicidad, Jacinta, Leonora, and Flora, who further testified that they each had taken possession of their own shares and built their houses thereon.

A possessor of real estate property is presumed to have title thereto unless the adverse claimant establishes a better right.[59] Moreover, under Article 541 of the Civil Code, one who possesses in the concept of owner has in his favor the legal presumption that he possesses with a just title, and he cannot be obliged to show or prove it. Similarly, Article 433 of the Civil Code provides that actual possession under a claim of ownership raises a disputable presumption of ownership. Thus, actual possession and exercise of dominion over definite portions of the property

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[58] *Id.* at 738-739.

[59] *Marcelo v. Maniquis and De la Cruz*, 35 Phil. 134, 140 (1916).

in accordance with an alleged partition are considered strong proof of an oral partition[60] which the Court will not hesitate to uphold.

Tax declarations and tax receipts are not conclusive evidence of ownership.

It is settled that tax declarations and tax receipts alone are not conclusive evidence of ownership. They are merely *indicia* of a claim of ownership,[61] but when coupled with proof of actual possession of the property, they can be the basis of claim of ownership through prescription.[62] In the absence of actual, public and adverse possession, the declaration of the land for tax purposes does not prove ownership.[63] We have seen that there is no proof that Liborio, or the Casilang siblings conveyed Lot No. 4618 to Ireneo. There is also no proof that Ireneo himself declared Lot No. 4618 for tax purposes, and even if he or his heirs did, this is not enough basis to claim ownership over the subject property. The Court notes that TD No. 555 was issued only in 1994, two years after Ireneo's death. Rosario even admitted that she began paying taxes only in 1997.[64] More importantly, Ireneo never claimed Lot No. 4618 nor took possession of it in the concept of owner.

WHEREFORE, premises considered, the Petition is *GRANTED*. The Decision dated July 19, 2007 of the Court of Appeals in CA-G.R. CV No. 79619 is hereby *REVERSED* and *SET ASIDE*, and the Decision dated April 21, 2003 of the Regional Trial Court of Dagupan City, Branch 41 in Civil Case No. 98-02371-D is *REINSTATED*.

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[60] *Heirs of Mario Pacres v. Heirs of Cecilia Ygoña*, G.R. No. 174719, May 5, 2010, 620 SCRA 213, 226.

[61] *Heirs of Brusas v. CA*, 372 Phil. 47, 55 (1999).

[62] *Heirs of Placido Miranda v. CA*, 325 Phil. 674, 683 (1996).

[63] *Seriña v. Caballero*, 480 Phil. 277, 289 (2004).

[64] TSN, March 21, 2001, p. 16.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 180325. February 20, 2013]

O. VENTANILLA ENTERPRISES CORPORATION, *petitioner, vs.* **ADELINA S. TAN and SHERIFF REYNANTE G. VELASQUEZ, Presiding Judge,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE FAILURE OF PETITIONER TO NOTIFY THE COURT OF APPEALS OF THE DEATH OF ITS COUNSEL OF RECORD AND HAVE SAID COUNSEL SUBSTITUTED, THEN SERVICE OF THE DECISION AT THE PLACE OR LAW OFFICE DESIGNATED BY ITS COUNSEL OF RECORD AS HIS ADDRESS, IS SUFFICIENT NOTICE.— Although the petition is an appeal from the Resolution of the CA issued on May 24, 2007, refusing to recall its entry of judgment, and its Resolution dated October 19, 2007, denying reconsideration of the earlier resolution, petitioner is actually making a vain attempt to reopen a case that has long been final and executory. The Court frowns upon such conduct of litigants and their lawyers. The Court strikes down the argument that

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[*] The Regional Trial Court and Court of Appeals are deemed dropped as respondents in accordance with Sec. 4, Rule 45 of the Rules of Court, which states that the petition shall not implead the lower courts or judges thereof as petitioners or respondents.

the CA Decision in CA — G.R. CV No. 58817 did not attain finality because petitioner's counsel, who died while the case was pending before the CA, was unable to receive a copy thereof. The CA was correct in ruling that there is no extraordinary circumstance in this case that would merit a recall of the entry of judgment to reopen the case. The reason given by petitioner, that its former counsel had died before the CA Decision was promulgated, hence, it was not properly notified of the judgment, is too tenuous to be given serious consideration. In *Mojar, et al. v. Agro Commercial Security Service Agency, Inc.,* the Court explained that it is the party's duty to inform the court of its counsel's demise, and failure to apprise the court of such fact shall be considered negligence on the part of said party. Expounding further, the Court stated: x x x It is not the duty of the courts to inquire, during the progress of a case, whether the law firm or partnership representing one of the litigants continues to exist lawfully, whether the partners are still alive, or whether its associates are still connected with the firm. x x x They cannot pass the blame to the court, which is not tasked to monitor the changes in the circumstances of the parties and their counsel. x x x Thus, for failure of petitioner to notify the CA of the death of its counsel of record and have said counsel substituted, then service of the CA Decision at the place or law office designated by its counsel of record as his address, is sufficient notice. The case then became final and executory when no motion for reconsideration or appeal was filed within the reglementary period therefor.

2. ID.; ID.; JUDGMENT; EXECUTION PENDING APPEAL; DOES NOT BAR THE CONTINUANCE OF THE APPEAL ON THE MERITS, FOR THE RULES OF COURT PRECISELY PROVIDES FOR RESTITUTION ACCORDING TO EQUITY IN CASE THE EXECUTED JUDGMENT IS REVERSED ON APPEAL.— Petitioner's next allegation, that the trial court erred in ordering the issuance of a writ of execution against petitioner, ordering it to refund the amount of ₱1,968,801.616 to herein private respondent, is also unfounded. Petitioner insists that the fact that private respondent had previously paid petitioner the amount of ₱9,073,694.76 when the trial court granted petitioner's motion for execution pending appeal, means that the parties have arrived at a compromise settlement which should have terminated the

case between them. The argument holds no water. First of all, as held in *Legaspi v. Ong*, "[e]xecution pending appeal does not bar the continuance of the appeal on the merits, for the Rules of Court precisely provides for restitution according to equity in case the executed judgment is reversed on appeal." Secondly, contrary to petitioner's claim, private respondent merely paid the amount of ₱9,073,694.76 in compliance with the writ of execution pending appeal, and not by reason of a compromise agreement. No such agreement or contract appears on record. Furthermore, petitioner's claim is belied by the fact that private respondent actively pursued the appeal of the case, which resulted in the CA Decision decreasing the amounts awarded by the RTC.

3. ID.; ID.; ID.; ID.; THE ACTION OF THE TRIAL COURT IN ORDERING THE ISSUANCE OF THE WRIT OF EXECUTION AGAINST HEREIN PETITIONER FOR IT TO RETURN OR REFUND THE EXCESS AMOUNT PRIVATE RESPONDENT HAS PAID IN COMPLIANCE WITH THE EXECUTION PENDING APPEAL, IS IN ACCORDANCE WITH THE RULES.— Petitioner then contends that there is a substantial variance between the writ of execution and the CA Decision, as the latter did not make mention of petitioner having to make a refund. However, note Section 5, Rule 39 of the Rules of Court, which provides that: Sec. 5. *Effect of reversal of executed judgment.* — Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, **the trial court may, on motion, issue such orders of restitution or reparation of damages** as equity and justice may warrant under the circumstances. Evidently, the action of the RTC in ordering the issuance of the writ of execution against herein petitioner for it to return the excess amount private respondent has paid in compliance with the execution pending appeal, is in accordance with the Rules. In sum, there is nothing amiss in ordering petitioner to refund the amount of µ 1,968,801.616 to herein private respondent, as the appellate court has ruled with finality that petitioner is not entitled to such amount.

APPEARANCES OF COUNSEL

Augusto Gatmaytan for petitioner.
Ricardo C. Orias, Jr. for private respondent.

D E C I S I O N

PERALTA, ***J.***:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Resolution[1] of the Court of Appeals (CA), dated May 24, 2007, refusing to recall its entry of judgment, and its Resolution[2] dated October 19, 2007, denying petitioner's Motion for Reconsideration, be reversed and set aside.

The records of the case bear out the following antecedent facts.

Petitioner leased out two of its properties in Cabanatuan City to Alfredo S. Tan and herein private respondent Adelina S. Tan (*the Tans*). Due to the failure of the Tans to comply with the terms of the lease, petitioner filed a complaint against the Tans for cancellation and termination of contract of lease with the Regional Trial Court of Cabanatuan City (RTC). On December 10, 1996, the RTC rendered a Decision,[3] the dispositive portion of which reads as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff Oscar Ventanilla Enterprises Corporation and against the defendants Alfredo S. Tan, Sr. and Adelina S. Tan, ordering the latter to:
>
> (1) surrender possession and complete control of the premises, Avelune and Capital Theaters, as well as the properties enumerated in the addendum to the lease contract dated 22 June 1992, to the plaintiff;
>
> (2) pay the plaintiff the sum of ₱4,297,004.84 plus interest thereon that may become due at the rate stipulated in the lease contract entered into by the parties on June 22, 1992;

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Portia Aliño-Hormachuelos and Bienvenido L. Reyes (now a member of this Court), concurring; *rollo*, pp. 148-151.

[2] *Id.* at 162-164.

[3] *Rollo*, pp. 53-56.

(3) pay the plaintiff the sum of ₱250,000.00 as exemplary damages to serve as deterrent for others who in the future may follow the bad example set by the herein defendants;

(4) pay the plaintiff by way of liquidated damages as agreed upon in paragraph 23 of the lease contract the sum equivalent to 50% of the unpaid rentals;

(5) declaring the deposit initially made as forfeited in favor of the plaintiff; [and]

(6) pay the sum equivalent to 15% of the unpaid rentals by way of Attorney's fees, and to pay the costs of the suit.

SO ORDERED.[4]

Both Alfredo S. Tan and private respondent Adelina S. Tan appealed from said Decision. However, herein petitioner filed a motion for execution pending appeal and the same was granted by the trial court. Several properties and bank accounts of private respondent and Alfredo S. Tan were levied upon. The Tans decided to pay the amounts as ordered in the RTC Decision, and on September 24, 1997, the trial court issued Orders[5] lifting and cancelling the Notice of Levy on private respondent Adelina Tan's properties and also on several bank accounts in the name of the Tans. Both orders stated that after the court allowed the writ of execution pending appeal, defendant tendered payment in the amount of ₱9,073,694.76 in favor of herein petitioner, who through Mr. Moises C. Ventanilla, acknowledged receipt of said amount as complete and full satisfaction of the adjudged obligations of the Tans to petitioner in this case.[6]

The appeal filed by Alfredo S. Tan was dismissed by the CA, but the appeal filed by herein private respondent Adelina S. Tan (docketed as CA-G.R. CV No. 58817), proceeded in due course. On October 21, 2002, the CA promulgated its

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[4] *Id.* at 55-56.

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

[6] *Id.* at 62, 63.

Decision,[7] the dispositive portion of which is reproduced hereunder:

> WHEREFORE, the appeal is **PARTIALLY GRANTED**. For lack of legal and factual justification, the awards of exemplary damages and attorney's fees shall be **DELETED**. Likewise, the award of liquidated damages under paragraph 23 of the lease contract is further **REDUCED** to 25% of the unpaid rentals. All the other aspects of the decision are **AFFIRMED**.
>
> SO ORDERED.[8]

None of the parties filed any motion for reconsideration or appeal from the CA Decision, thus, the same became final and executory on November 21, 2002, per the Entry of Judgment[9] issued by the CA.

Private respondent Adelina Tan then filed with the trial court a Motion for Execution[10] dated March 27, 2003, praying that the excess of the amounts she previously paid as exemplary damages, attorney's fees and liquidated damages be refunded to her, in accordance with the judgment of the CA. To counter such move, on June 19, 2003, petitioner filed with the CA in CA-G.R. CV No. 58817, an Omnibus Motion (with entry of appearance), praying that the entry of judgment be recalled, lifted and set aside; that the CA Decision dated October 21, 2002 in CA-G.R. CV No. 58817 be recalled, reconsidered, and/or vacated and, thereafter, the appeal of Adelina Tan be dismissed or the appeal be reopened to allow petitioner to file an appeal brief. Petitioner argued that its counsel, Atty. Liberato Bauto died on March 29, 2001, hence, any notice sent to him must be deemed ineffective; that the parties have arrived at a settlement of the case, as shown by the fact that private respondent already paid ₱9,073,694.76 as complete and full satisfaction of the

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[7] *Id.* at 66-70.

[8] *Id.* at 69. (Emphasis in the original)

[9] *Id.* at 82.

[10] *Id.* at 71-74.

adjudged obligations of the defendants to petitioner, and thus, the appeal should have been deemed mooted.

Meanwhile, the RTC granted the motion for execution, and in an Order[11] dated January 23, 2004, ordered as follows:

> Thus, based on the amount computed by defendant Adelina Tan in her motion for execution and following the reduction of the award to the plaintiffs made by the Court of Appeals in its decision, the defendants are entitled to the following amounts:
>
> | | | |
> |---|---|---|
> | Php | 250,000.00 | - amount of the deleted exemplary damages |
> | Php | 644,550.606 | - amount of the deleted attorney's fees |
> | Php | 1,074,251.01 | - amount of the reduced liquidated damages (25% of the unpaid rentals) |
> | **Php1,968,801.616** | | - total amount to be refunded |
>
> WHEREFORE, in view of the foregoing, the Motion for Reconsideration is hereby **GRANTED** and the Order dated December 2, 2003 is hereby **RECONSIDERED** and **SET ASIDE**.
>
> Let an Alias Writ of Execution issue stating the amount to be refunded to defendants which is Php1,968,801.616, the same to be enforced against the herein plaintiff.
>
> SO ORDERED.[12]

On March 8, 2004, petitioner filed with the RTC a Very Urgent Motion (for recall and reconsideration of order and quashal of alias writ of execution, levy, and notice of sheriff's sale, etc.),[13] but this motion was denied in an Order[14] dated March 10, 2004. Petitioner then filed a petition for *certiorari* with the CA (docketed as CA-G.R. SP No. 82608) to assail the trial court's denial of the Very Urgent Motion, but as admitted by petitioner in the present petition,[15] said action for *certiorari*

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[11] *Id.* at 83-85.

[12] *Id.* at 85. (Emphasis in the original)

[13] *Id.* at 95-98.

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

[15] *Id.* at 19.

was denied due course and dismissed by the CA on March 12, 2004.

As to petitioner's Omnibus Motion (with entry of appearance) filed with the CA in CA-G.R. CV No. 58817, the appellate court issued a Resolution[16] dated March 19, 2004, merely noting petitioner's motion because its Decision dated October 21, 2002 has long become final and executory. Undaunted, petitioner again filed on October 2, 2006, a Manifestation and Motion in CA-G.R. CV No. 58817, praying that its Omnibus Motion and Supplemental Motion be resolved on the merits instead of merely being noted as the CA did in its Resolution dated March 19, 2004; that the petition for *certiorari* be resolved and granted; and that the proceedings in the trial court with regard to the execution of the CA Decision in CA-G.R. CV No. 58817, be annulled and set aside.

On May 24, 2007, the CA promulgated the Resolution denying the above-mentioned Manifestation and Motion filed by petitioner on October 2, 2006. The CA pointed out that the separate petition for *certiorari* which petitioner sought to be resolved had already been dismissed on March 12, 2004. The CA also ruled that petitioner's prayer for the recall of the entry of judgment cannot be granted, as petitioner's bare assertion, that its former counsel had not received notices of orders, resolutions or decisions of the court because said counsel died while the appeal was pending, does not qualify as one of those cases where the court allowed such recall. Petitioner moved for reconsideration of said Resolution, but on October 19, 2007, the CA issued a Resolution denying the same. The CA reiterated that it could not find any reason to recall the entry of judgment.

Hence, the present petition.

Although the petition is an appeal from the Resolution of the CA issued on May 24, 2007, refusing to recall its entry of judgment, and its Resolution dated October 19, 2007, denying

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[16] *Id.* at 125-126.

reconsideration of the earlier resolution, petitioner is actually making a vain attempt to reopen a case that has long been final and executory. The Court frowns upon such conduct of litigants and their lawyers.

The Court strikes down the argument that the CA Decision in CA-G.R. CV No. 58817 did not attain finality because petitioner's counsel, who died while the case was pending before the CA, was unable to receive a copy thereof. The CA was correct in ruling that there is no extraordinary circumstance in this case that would merit a recall of the entry of judgment to reopen the case. The reason given by petitioner, that its former counsel had died before the CA Decision was promulgated, hence, it was not properly notified of the judgment, is too tenuous to be given serious consideration. In *Mojar, et al. v. Agro Commercial Security Service Agency, Inc*.,[17] the Court explained that it is the party's duty to inform the court of its counsel's demise, and failure to apprise the court of such fact shall be considered negligence on the part of said party. Expounding further, the Court stated:

> x x x It is not the duty of the courts to inquire, during the progress of a case, whether the law firm or partnership representing one of the litigants continues to exist lawfully, whether the partners are still alive, or whether its associates are still connected with the firm.
>
> x x x They cannot pass the blame to the court, which is not tasked to monitor the changes in the circumstances of the parties and their counsel.
>
> x x x x x x x x x

In *Ampo v. Court of Appeals,* this Court explained the vigilance that must be exercised by a party:

> x x x x x x x x x
>
> Litigants who are represented by counsel should not expect that all they need to do is sit back, relax and await the outcome

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[17] G.R. No. 187188, June 27, 2012; See also *Amatorio v. People*, G.R. No. 150453, February 14, 2003, 397 SCRA 445, 454; 445 Phil. 481, 491 (2003).

> of their cases. Relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence. The circumstances of this case plainly show that petitioner only has himself to blame. Neither can he invoke due process. The essence of due process is simply an opportunity to be heard. Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy. Where a party, such as petitioner, was afforded this opportunity to participate but failed to do so, he cannot complain of deprivation of due process. If said opportunity is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee.

Thus, for failure of petitioner to notify the CA of the death of its counsel of record and have said counsel substituted, then service of the CA Decision at the place or law office designated by its counsel of record as his address, is sufficient notice. The case then became final and executory when no motion for reconsideration or appeal was filed within the reglementary period therefor.

Petitioner's next allegation, that the trial court erred in ordering the issuance of a writ of execution against petitioner, ordering it to refund the amount of ₱1,968,801.616 to herein private respondent, is also unfounded.

Petitioner insists that the fact that private respondent had previously paid petitioner the amount of ₱9,073,694.76 when the trial court granted petitioner's motion for execution pending appeal, means that the parties have arrived at a compromise settlement which should have terminated the case between them. The argument holds no water.

First of all, as held in *Legaspi v. Ong*,[18] "[e]xecution pending appeal does not bar the continuance of the appeal on the merits, for the Rules of Court precisely provides for restitution according to equity in case the executed judgment is reversed on appeal."[19]

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[18] G.R. No. 141311, May 26, 2005, 459 SCRA 122; 498 Phil. 167 (2005).

[19] *Id*. at 145; at 188-189.

Secondly, contrary to petitioner's claim, private respondent merely paid the amount of ₱9,073,694.76 in compliance with the writ of execution pending appeal, and not by reason of a compromise agreement. No such agreement or contract appears on record. Furthermore, petitioner's claim is belied by the fact that private respondent actively pursued the appeal of the case, which resulted in the CA Decision decreasing the amounts awarded by the RTC.

Petitioner then contends that there is a substantial variance between the writ of execution and the CA Decision, as the latter did not make mention of petitioner having to make a refund. However, note Section 5, Rule 39 of the Rules of Court, which provides that:

> Sec. 5. *Effect of reversal of executed judgment*. — Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, **the trial court may, on motion, issue such orders of restitution or reparation of damages** as equity and justice may warrant under the circumstances. (Emphasis supplied)

Evidently, the action of the RTC in ordering the issuance of the writ of execution against herein petitioner for it to return the excess amount private respondent has paid in compliance with the execution pending appeal, is in accordance with the Rules.

In sum, there is nothing amiss in ordering petitioner to refund the amount of ₱1,968,801.616 to herein private respondent, as the appellate court has ruled with finality that petitioner is not entitled to such amount.

WHEREFORE, the petition is *DENIED* for utter lack of merit.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 182358. February 20, 2013]

DEPARTMENT OF HEALTH, THE SECRETARY OF HEALTH, and MA. MARGARITA M. GALON, *petitioners, vs.* **PHIL PHARMAWEALTH, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; STATE IMMUNITY FROM SUIT; DOCTRINE OF NON-SUABILITY, CONSTRUED.— The discussion of this *Court in Department of Agriculture v. National Labor Relations Commission* on the doctrine of non-suability is enlightening. x x x [A] sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends. True, the doctrine, not too infrequently, is derisively called 'the royal prerogative of dishonesty' because it grants the state the prerogative to defeat any legitimate claim against it by simply invoking its non-suability. x x x As a general rule, a state may not be sued. However, if it consents, either expressly or impliedly, then it may be the subject of a suit. There is express consent when a law, either special or general, so provides. On the other hand, there is implied consent when the state "enters into a contract or it itself commences litigation." However, it must be clarified that when a state enters into a contract, it does not automatically mean that it has waived its non-suability. The State "will be deemed to have impliedly waived its non-suability [only] if it has entered into a contract in its proprietary or private capacity. [However,] when the contract involves its sovereign or governmental capacity[,] x x x no such waiver may be implied." "Statutory provisions waiving [s]tate immunity are construed in strictissimi juris. For, waiver of immunity is in derogation of sovereignty."

2. ID.; ID.; ID.; THE DEPARTMENT OF HEALTH CAN VALIDLY INVOKE STATE IMMUNITY; RATIONALE.— In this case, the DOH, being an "unincorporated agency of the government" can validly invoke the defense of immunity from suit because

it has not consented, either expressly or impliedly, to be sued. Significantly, the DOH is an unincorporated agency which performs functions of governmental character. x x x Moreover, it is settled that if a Complaint seeks to "impose a charge or financial liability against the state," the defense of non-suability may be properly invoked. Undoubtedly, in the event that PPI succeeds in its suit, the government or the state through the DOH would become vulnerable to an imposition or financial charge in the form of damages. This would require an appropriation from the national treasury which is precisely the situation which the doctrine of state immunity aims to protect the state from. x x x It must be stressed that the doctrine of state immunity extends its protective mantle also to complaints filed against state officials for acts done in the discharge and performance of their duties. "The suability of a government official depends on whether the official concerned was acting within his official or jurisdictional capacity, and whether the acts done in the performance of official functions will result in a charge or financial liability against the government." Otherwise stated, "public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted *ultra vires* or where there is showing of bad faith." Moreover, "[t]he rule is that if the judgment against such officials will require the state itself to perform an affirmative act to satisfy the same, such as the appropriation of the amount needed to pay the damages awarded against them, the suit must be regarded as against the state x x x. In such a situation, the state may move to dismiss the [C]omplaint on the ground that it has been filed without its consent."

3. CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; THE ESSENCE THEREOF IN ADMINISTRATIVE PROCEEDINGS IS THE OPPORTUNITY TO EXPLAIN ONE'S SIDE OR SEEK A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF; PRESENT IN CASE AT BAR.— At this juncture, it would be trite to mention that "[t]he essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. What is offensive to due

process is the denial of the opportunity to be heard. The Court has repeatedly stressed that parties who chose not to avail themselves of the opportunity to answer charges against them cannot complain of a denial of due process."

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Sua and Alambra Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The state may not be sued without its consent. Likewise, public officials may not be sued for acts done in the performance of their official functions or within the scope of their authority.

This Petition for Review on *Certiorari*[1] assails the October 25, 2007 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 85670, and its March 31, 2008 Resolution[3] denying petitioners' Motion for Reconsideration.[4]

Factual Antecedents

On December 22, 1998, Administrative Order (AO) No. 27 series of 1998[5] was issued by then Department of Health (DOH) Secretary Alfredo G. Romualdez (Romualdez). AO 27 set the guidelines and procedure for accreditation of government suppliers of pharmaceutical products for sale or distribution to the public, such accreditation to be valid for three years but subject to annual review.

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[1] *Rollo*, pp. 27-44.

[2] *Id.* at 7-21; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Edgardo F. Sundiam.

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

[4] CA *rollo*, pp. 156-164.

[5] Records, pp. 16-17.

On January 25, 2000, Secretary Romualdez issued AO 10 series of 2000[6] which amended AO 27. Under Section VII[7] of AO 10, the accreditation period for government suppliers of pharmaceutical products was reduced to two years. Moreover, such accreditation may be recalled, suspended or revoked after due deliberation and proper notice by the DOH Accreditation Committee, through its Chairman.

Section VII of AO 10 was later amended by AO 66 series of 2000,[8] which provided that the two-year accreditation period may be recalled, suspended or revoked only after due deliberation, *hearing* and notice by the DOH Accreditation Committee, through its Chairman.

On August 28, 2000, the DOH issued Memorandum No. 171-C[9] which provided for a list and category of sanctions to be imposed on accredited government suppliers of pharmaceutical products in case of adverse findings regarding their products (*e.g.* substandard, fake, or misbranded) or violations committed by them during their accreditation.

In line with Memorandum No. 171-C, the DOH, through former Undersecretary Ma. Margarita M. Galon (Galon), issued Memorandum No. 209 series of 2000,[10] inviting representatives of 24 accredited drug companies, including herein respondent Phil Pharmawealth, Inc. (PPI) to a meeting on October 27, 2000. During the meeting, Undersecretary Galon handed them copies of a document entitled "Report on Violative Products"[11] issued by the Bureau of Food and Drugs[12] (BFAD), which detailed

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

[7] *Id.* at 24.

[8] *Id.* at 26.

[9] *Id.* at 111.

[10] *Id.* at 27.

[11] *Id.* at 28-40.

[12] Per Republic Act No. 9711 or the Food and Drug Administration (FDA) Act of 2009 which was signed by the President on August 18, 2009, the Bureau of Food and Drugs (BFAD) was renamed and is now called the Food and Drug Administration (FDA).

violations or adverse findings relative to these accredited drug companies' products. Specifically, the BFAD found that PPI's products which were being sold to the public were unfit for human consumption.

During the October 27, 2000 meeting, the 24 drug companies were directed to submit within 10 days, or until November 6, 2000, their respective explanations on the adverse findings covering their respective products contained in the Report on Violative Products.

Instead of submitting its written explanation within the 10-day period as required, PPI belatedly sent a letter[13] dated November 13, 2000 addressed to Undersecretary Galon, informing her that PPI has referred the Report on Violative Products to its lawyers with instructions to prepare the corresponding reply. However, PPI did not indicate when its reply would be submitted; nor did it seek an extension of the 10-day period, which had previously expired on November 6, 2000, much less offer any explanation for its failure to timely submit its reply. PPI's November 13, 2000 letter states:

Madam,

This refers to your directive on 27 October 2000, on the occasion of the meeting with selected accredited suppliers, during which you made known to the attendees of your requirement for them to submit their individual comments on the Report on Violative Products (the "Report") compiled by your office and disseminated on that date.

In this connection, we inform you that we have already instructed our lawyers to prepare on our behalf the appropriate reply to the Report furnished to us. Our lawyers in time shall revert to you and furnish you the said reply.

Please be guided accordingly.

Very truly yours,

(signed)
ATTY. ALAN A.B. ALAMBRA
Vice-President for Legal and Administrative Affairs[14]

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[13] Records, p. 41.

[14] *Id.*

In a letter-reply[15] dated November 23, 2000 Undersecretary Galon found "untenable" PPI's November 13, 2000 letter and therein informed PPI that, effective immediately, its accreditation has been suspended for two years pursuant to AO 10 and Memorandum No. 171-C.

In another December 14, 2000 letter[16] addressed to Undersecretary Galon, PPI through counsel questioned the suspension of its accreditation, saying that the same was made pursuant to Section VII of AO 10 which it claimed was patently illegal and null and void because it arrogated unto the DOH Accreditation Committee powers and functions which were granted to the BFAD under Republic Act (RA) No. 3720[17] and Executive Order (EO) No. 175.[18] PPI added that its accreditation was suspended without the benefit of notice and hearing, in violation of its right to substantive and administrative due process. It thus demanded that the DOH desist from implementing the suspension of its accreditation, under pain of legal redress.

On December 28, 2000, PPI filed before the Regional Trial Court of Pasig City a Complaint[19] seeking to declare null and void certain DOH administrative issuances, with prayer for damages and injunction against the DOH, former Secretary Romualdez and DOH Undersecretary Galon. Docketed as Civil Case No. 68200, the case was raffled to Branch 160. On February 8, 2002, PPI filed an Amended and Supplemental Complaint,[20]

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[15] *Id.* at 42.

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

[17] FOOD, DRUG, AND COSMETIC ACT. June 22, 1963.

[18] FURTHER AMENDING REPUBLIC ACT NO 3720, ENTITLED "AN ACT TO ENSURE THE SAFETY AND PURITY OF FOODS, DRUGS, AND COSMETICS BEING MADE AVAILABLE TO THE PUBLIC BY CREATING THE FOOD AND DRUG ADMINISTRATION WHICH SHALL ADMINISTER AND ENFORCE THE LAWS PERTAINING THERETO", AS AMENDED, AND FOR OTHER PURPOSES. May 22, 1987.

[19] Records, pp. 2-15.

[20] *Id.* at 400-424.

this time impleading DOH Secretary Manuel Dayrit (Dayrit). PPI claimed that AO 10, Memorandum No. 171-C, Undersecretary Galon's suspension order contained in her November 23, 2000 letter, and AO 14 series of 2001[21] are null and void for being in contravention of Section 26(d) of RA 3720 as amended by EO 175, which states as follows:

> SEC. 26. x x x
>
> (d) When it appears to the Director [of the BFAD] that the report of the Bureau that any article of food or any drug, device, or cosmetic secured pursuant to Section twenty-eight of this Act is adulterated, misbranded, or not registered, he shall cause notice thereof to be given to the person or persons concerned and such person or persons shall be given an opportunity to be heard before the Bureau and to submit evidence impeaching the correctness of the finding or charge in question.

For what it claims was an undue suspension of its accreditation, PPI prayed that AO 10, Memorandum No. 171-C, Undersecretary Galon's suspension order contained in her November 23, 2000 letter, and AO 14 be declared null and void, and that it be awarded moral damages of ₱5 million, exemplary damages of ₱1 million, attorney's fees of ₱1 million, and costs of suit. PPI likewise prayed for the issuance of temporary and permanent injunctive relief.

In their Amended Answer,[22] the DOH, former Secretary Romualdez, then Secretary Dayrit, and Undersecretary Galon sought the dismissal of the Complaint, stressing that PPI's accreditation was suspended because most of the drugs it was importing and distributing/selling to the public were found by

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[21] *Id.* at 454-457. Administrative Order No. 14 was a later issuance by DOH Secretary Dayrit which was subsequently included in PPI's amended and supplemental complaint as one of the issuances sought to be nullified. It provided for new accreditation guidelines and granted the Accreditation Committee the power to suspend or revoke a supplier's accreditation after deliberation and notice, and without need of a hearing.

[22] *Id.* at 489-505.

the BFAD to be substandard for human consumption. They added that the DOH is primarily responsible for the formulation, planning, implementation, and coordination of policies and programs in the field of health; it is vested with the comprehensive power to make essential health services and goods available to the people, including accreditation of drug suppliers and regulation of importation and distribution of basic medicines for the public.

Petitioners added that, contrary to PPI's claim, it was given the opportunity to present its side within the 10-day period or until November 6, 2000, but it failed to submit the required comment/reply. Instead, it belatedly submitted a November 13, 2000 letter which did not even constitute a reply, as it merely informed petitioners that the matter had been referred by PPI to its lawyer. Petitioners argued that due process was afforded PPI, but because it did not timely avail of the opportunity to explain its side, the DOH had to act immediately — by suspending PPI's accreditation — to stop the distribution and sale of substandard drug products which posed a serious health risk to the public. By exercising DOH's mandate to promote health, it cannot be said that petitioners committed grave abuse of discretion.

In a January 8, 2001 Order,[23] the trial court partially granted PPI's prayer for a temporary restraining order, but only covering PPI's products which were not included in the list of violative products or drugs as found by the BFAD.

In a Manifestation and Motion[24] dated July 8, 2003, petitioners moved for the dismissal of Civil Case No. 68200, claiming that the case was one against the State; that the Complaint was improperly verified; and lack of authority of the corporate officer to commence the suit, as the requisite resolution of PPI's board of directors granting to the commencing officer — PPI's Vice President for Legal and Administrative Affairs, Alan Alambra, — the authority to file Civil Case No. 68200 was lacking. To this, PPI filed its Comment/Opposition.[25]

[23] *Id.* at 124.

[24] *Id.* at 500-513.

[25] *Id.* at 532-541.

Ruling of the Regional Trial Court

In a June 14, 2004 Order,[26] the trial court dismissed Civil Case No. 68200, declaring the case to be one instituted against the State, in which case the principle of state immunity from suit is applicable.

PPI moved for reconsideration,[27] but the trial court remained steadfast.[28] PPI appealed to the CA.

Ruling of the Court of Appeals

Docketed as CA-G.R. CV No. 85670, PPI's appeal centered on the issue of whether it was proper for the trial court to dismiss Civil Case No. 68200.

The CA, in the herein assailed Decision,[29] reversed the trial court ruling and ordered the remand of the case for the conduct of further proceedings. The CA concluded that it was premature for the trial court to have dismissed the Complaint. Examining the Complaint, the CA found that a cause of action was sufficiently alleged — that due to defendants' (petitioners') acts which were beyond the scope of their authority, PPI's accreditation as a government supplier of pharmaceutical products was suspended without the required notice and hearing as required by Section 26(d) of RA 3720 as amended by EO 175. Moreover, the CA held that by filing a motion to dismiss, petitioners were deemed to have hypothetically admitted the allegations in the Complaint — which state that petitioners were being sued in their individual and personal capacities — thus negating their claim that Civil Case No. 68200 is an unauthorized suit against the State.

The CA further held that instead of dismissing the case, the trial court should have deferred the hearing and resolution of

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[26] *Id.* at 555-561; penned by Judge Amelia A. Fabros.

[27] *Id.* at 562-569.

[28] See Order dated April 19, 2005, *id.* at 593.

[29] *Rollo*, pp. 7-21.

the motion to dismiss and proceeded to trial. It added that it was apparent from the Complaint that petitioners were being sued in their private and personal capacities for acts done beyond the scope of their official functions. Thus, the issue of whether the suit is against the State could best be threshed out during trial on the merits, rather than in proceedings covering a motion to dismiss.

The dispositive portion of the CA Decision reads:

> WHEREFORE, the appeal is hereby **GRANTED**. The Order dated June 14, 2004 of the Regional Trial Court of Pasig City, Branch 160, is hereby **REVERSED** and **SET-ASIDE**. **ACCORDINGLY**, this case is REMANDED to the trial court for further proceedings.
>
> SO ORDERED.[30]

Petitioners sought, but failed, to obtain a reconsideration of the Decision. Hence, they filed the present Petition.

Issue

Petitioners now raise the following lone issue for the Court's resolution:

> Should Civil Case No. 68200 be dismissed for being a suit against the State?[31]

Petitioners' Arguments

Petitioners submit that because PPI's Complaint prays for the award of damages against the DOH, Civil Case No. 68200 should be considered a suit against the State, for it would require the appropriation of the needed amount to satisfy PPI's claim, should it win the case. Since the State did not give its consent to be sued, Civil Case No. 68200 must be dismissed. They add that in issuing and implementing the questioned issuances,

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[30] *Id.* at 21. Emphases in the original.

[31] *Id.* at 730.

individual petitioners acted officially and within their authority, for which reason they should not be held to account individually.

Respondent's Arguments

Apart from echoing the pronouncement of the CA, respondent insists that Civil Case No. 68200 is a suit against the petitioners in their personal capacity for acts committed outside the scope of their authority.

Our Ruling

The Petition is granted.

The doctrine of non-suability.

The discussion of this Court in *Department of Agriculture v. National Labor Relations Commission*[32] on the doctrine of non-suability is enlightening.

> The basic postulate enshrined in the constitution that '(t)he State may not be sued without its consent,' reflects nothing less than a recognition of the sovereign character of the State and an express affirmation of the unwritten rule effectively insulating it from the jurisdiction of courts. It is based on the very essence of sovereignty. x x x [A] sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends. True, the doctrine, not too infrequently, is derisively called 'the royal prerogative of dishonesty' because it grants the state the prerogative to defeat any legitimate claim against it by simply invoking its non-suability. We have had occasion to explain in its defense, however, that a continued adherence to the doctrine of non-suability cannot be deplored, for the loss of governmental efficiency and the obstacle to the performance of its multifarious functions would be far greater in severity than the inconvenience that may be caused private parties, if such fundamental principle is to be abandoned and the availability of judicial remedy is not to be accordingly restricted.

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[32] G.R. No. 104269, November 11, 1993, 227 SCRA 693.

The rule, in any case, is not really absolute for it does not say that the state may not be sued under any circumstance. On the contrary, as correctly phrased, the doctrine only conveys, 'the state may not be sued without its consent;' its clear import then is that the State may at times be sued. The State's consent may be given either expressly or impliedly. Express consent may be made through a general law or a special law. x x x Implied consent, on the other hand, is conceded when the State itself commences litigation, thus opening itself to a counterclaim or when it enters into a contract. In this situation, the government is deemed to have descended to the level of the other contracting party and to have divested itself of its sovereign immunity. This rule, x x x is not, however, without qualification. Not all contracts entered into by the government operate as a waiver of its non-suability; distinction must still be made between one which is executed in the exercise of its sovereign function and another which is done in its proprietary capacity.[33]

As a general rule, a state may not be sued. However, if it consents, either expressly or impliedly, then it may be the subject of a suit.[34] There is express consent when a law, either special or general, so provides. On the other hand, there is implied consent when the state "enters into a contract or it itself commences litigation."[35] However, it must be clarified that when a state enters into a contract, it does not automatically mean that it has waived its non-suability.[36] The State "will be deemed to have impliedly waived its non-suability [only] if it has entered into a contract in its proprietary or private capacity. [However,] when the contract involves its sovereign or governmental capacity[,] x x x no such waiver may be implied."[37] "Statutory provisions waiving [s]tate immunity are construed *in strictissimi juris*. For, waiver of immunity is in derogation of sovereignty."[38]

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[33] *Id.* at 698-699. Citations omitted.

[34] *United States of America v. Judge Guinto*, 261 Phil. 777, 790 (1990).

[35] *Id.* at 792.

[36] *Id.* at 793.

[37] *Id.* at 795.

[38] *Equitable Insurance and Casualty Co., Inc. v. Smith, Bell & Co. (Phils.), Inc*., 127 Phil. 547, 549 (1967).

The DOH can validly invoke state immunity.

a) ***DOH is an unincorporated agency which performs sovereign or governmental functions.***

In this case, the DOH, being an "unincorporated agency of the government"[39] can validly invoke the defense of immunity from suit because it has not consented, either expressly or impliedly, to be sued. Significantly, the DOH is an unincorporated agency which performs functions of governmental character.

The ruling in *Air Transportation Office v. Ramos*[40] is relevant, *viz*:

> An unincorporated government agency without any separate juridical personality of its own enjoys immunity from suit because it is invested with an inherent power of sovereignty. Accordingly, a claim for damages against the agency cannot prosper; otherwise, the doctrine of sovereign immunity is violated. However, the need to distinguish between an unincorporated government agency performing governmental function and one performing proprietary functions has arisen. The immunity has been upheld in favor of the former because its function is governmental or incidental to such function; it has not been upheld in favor of the latter whose function was not in pursuit of a necessary function of government but was essentially a business.[41]

b) ***The Complaint seeks to hold the DOH solidarily and jointly liable with the other defendants for damages which constitutes a charge or financial liability against the state.***

Moreover, it is settled that if a Complaint seeks to "impose a charge or financial liability against the state,"[42] the defense of

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[39] *Department of Health v. Phil Pharmawealth, Inc*., 547 Phil. 148, 154 (2007).

[40] G.R. No. 159402, February 23, 2011, 644 SCRA 36.

[41] *Id.* at 42-43. Citations omitted.

[42] *Department of Health v. Phil Pharmawealth, Inc*., *supra* at 154.

non-suability may be properly invoked. In this case, PPI specifically prayed, in its Complaint and Amended and Supplemental Complaint, for the DOH, together with Secretaries Romualdez and Dayrit as well as Undersecretary Galon, to be held jointly and severally liable for moral damages, exemplary damages, attorney's fees and costs of suit.[43] Undoubtedly, in the event that PPI succeeds in its suit, the government or the state through the DOH would become vulnerable to an imposition or financial charge in the form of damages. This would require an appropriation from the national treasury which is precisely the situation which the doctrine of state immunity aims to protect the state from.

The mantle of non-suability extends to complaints filed against public officials for acts done in the performance of their official functions.

As regards the other petitioners, to wit, Secretaries Romualdez and Dayrit, and Undersecretary Galon, it must be stressed that the doctrine of state immunity extends its protective mantle also to complaints filed against state officials for acts done in the discharge and performance of their duties.[44] "The suability of a government official depends on whether the official concerned was acting within his official or jurisdictional capacity, and whether the acts done in the performance of official functions will result in a charge or financial liability against the government."[45] Otherwise stated, "public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted *ultra vires* or where there is showing of bad faith."[46] Moreover, "[t]he rule is that

[43] See Complaint, pp. 12-13, records, pp. 13-14; Amended and Supplemental Complaint, p. 13, records, p. 422.

[44] *United States of America v. Judge Guinto, supra* note 34 at 791.

[45] *Department of Health v. Phil Pharmawealth, Inc.*, *supra* note 39 at 153.

[46] *M. H. Wylie v. Rarang*, G.R. No. 74135, May 28, 1992, 209 SCRA 357, 368. Citation omitted. See also *United States of America v. Reyes*, G.R. No. 79253, March 1, 1993, 219 SCRA 192, 209 where the Court held:

if the judgment against such officials will require the state itself to perform an affirmative act to satisfy the same, such as the appropriation of the amount needed to pay the damages awarded against them, the suit must be regarded as against the state x x x. In such a situation, the state may move to dismiss the [C]omplaint on the ground that it has been filed without its consent."[47]

It is beyond doubt that the acts imputed against Secretaries Romualdez and Dayrit, as well as Undersecretary Galon, were done while in the performance and discharge of their official functions or in their official capacities, and not in their personal or individual capacities. Secretaries Romualdez and Dayrit were being charged with the issuance of the assailed orders. On the other hand, Undersecretary Galon was being charged with implementing the assailed issuances. By no stretch of imagination could the same be categorized as *ultra vires* simply because the said acts are well within the scope of their authority. Section 4 of RA 3720 specifically provides that the BFAD is an office under the Office of the Health Secretary. Also, the Health Secretary is authorized to issue rules and regulations as may be necessary to effectively enforce the provisions of RA 3720.[48] As regards Undersecretary Galon, she is authorized by law to supervise the offices under the DOH's authority,[49] such as the BFAD.

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x x x [T]he doctrine of immunity from suit will not apply and may not be invoked where the public official is being sued in his private and personal capacity as an ordinary citizen. The cloak of protection afforded the officers and agents of the government is removed the moment they are sued in their individual capacity. This situation usually arises where the public official acts without authority or in excess of the powers vested in him. It is a well-settled principle of law that a public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice and in bad faith, or beyond the scope of his authority or jurisdiction. (Citations omitted)

[47] *United States of America v. Judge Guinto, supra* note 34 at 791-792. See also *Department of Health v. Phil Pharmawealth, Inc., supra* note 39 at 155.

[48] See Section 26, Republic Act No. 3720.

[49] See Section 12, Chapter 3, Title IX, Book IV, Administrative Code of 1987.

Moreover, there was also no showing of bad faith on their part. The assailed issuances were not directed only against PPI. The suspension of PPI's accreditation only came about after it failed to submit its comment as directed by Undersecretary Galon. It is also beyond dispute that if found wanting, a financial charge will be imposed upon them which will require an appropriation from the state of the needed amount. Thus, based on the foregoing considerations, the Complaint against them should likewise be dismissed for being a suit against the state which absolutely did not give its consent to be sued.

Based on the foregoing considerations, and regardless of the merits of PPI's case, this case deserves a dismissal. Evidently, the very foundation of Civil Case No. 68200 has crumbled at this initial juncture.

PPI was not denied due process.

However, we cannot end without a discussion of PPI's contention that it was denied due process when its accreditation was suspended "without due notice and hearing." It is undisputed that during the October 27, 2000 meeting, Undersecretary Galon directed representatives of pharmaceutical companies, PPI included, to submit their comment and/or reactions to the Report on Violative Products furnished them within a period of 10 days. PPI, instead of submitting its comment or explanation, wrote a letter addressed to Undersecretary Galon informing her that the matter had already been referred to its lawyer for the drafting of an appropriate reply. Aside from the fact that the said letter was belatedly submitted, it also failed to specifically mention when such reply would be forthcoming. Finding the foregoing explanation to be unmeritorious, Undersecretary Galon ordered the suspension of PPI's accreditation for two years. Clearly these facts show that PPI was not denied due process. It was given the opportunity to explain its side. Prior to the suspension of its accreditation, PPI had the chance to rebut, explain, or comment on the findings contained in the Report on Violative Products that several of PPI's products are not fit for human consumption. However, PPI squandered its opportunity

to explain. Instead of complying with the directive of the DOH Undersecretary within the time allotted, it instead haughtily informed Undersecretary Galon that the matter had been referred to its lawyers. Worse, it impliedly told Undersecretary Galon to just wait until its lawyers shall have prepared the appropriate reply. PPI however failed to mention when it will submit its "appropriate reply" or how long Undersecretary Galon should wait. In the meantime, PPI's drugs which are included in the Report on Violative Products are out and being sold in the market. Based on the foregoing, we find PPI's contention of denial of due process totally unfair and absolutely lacking in basis. At this juncture, it would be trite to mention that "[t]he essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. What is offensive to due process is the denial of the opportunity to be heard. The Court has repeatedly stressed that parties who chose not to avail themselves of the opportunity to answer charges against them cannot complain of a denial of due process."[50]

Incidentally, we find it interesting that in the earlier case of *Department of Health v. Phil Pharmawealth, Inc.*[51] respondent filed a Complaint against DOH anchored on the same issuances which it assails in the present case. In the earlier case of *Department of Health v. Phil Pharmawealth, Inc.*,[52] PPI submitted to the DOH a request for the inclusion of its products in the list of accredited drugs as required by **AO 27 series of 1998** which was later amended by **AO 10 series of 2000.** In the instant case, however, PPI interestingly claims that these issuances are null and void.

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[50] *Flores v. Montemayor*, G.R. No. 170146, June 8, 2011, 651 SCRA 396, 406-407. Citations omitted.

[51] *Supra* note 39.

[52] *Id.*

WHEREFORE, premises considered, the Petition is *GRANTED*. Civil Case No. 68200 is ordered *DISMISSED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 186344. February 20, 2013]

LEOPARD SECURITY AND INVESTIGATION AGENCY, *petitioner, vs.* **TOMAS QUITOY, RAUL SABANG and DIEGO MORALES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; PLACING AN EMPLOYEE ON TEMPORARY "OFF-DETAIL" OR "FLOATING STATUS" FOR A CONTINUED PERIOD NOT EXCEEDING SIX MONTHS IS NOT EQUIVALENT TO DISMISSAL; RATIONALE.— Applying Article 286 of the *Labor Code of the Philippines* by analogy, this Court has repeatedly recognized that security guards may be temporarily sidelined by their security agency as their assignments primarily depend on the contracts entered into by the latter with third parties. Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when, as here, the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the

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[*] Per Raffle dated February 4, 2013.

available posts under its existing contracts are less than the number of guards in its roster. For as long as such temporary inactivity does not continue for a period exceeding six months, it has been ruled that placing an employee on temporary "off-detail" or "floating status" is not equivalent to dismissal.

2. ID.; ID.; ID.; AWARD OF SEPARATION PAY AS A RELIEF GRANTED IN LIEU OF REINSTATEMENT IS INCONSISTENT WITH A FINDING THAT THERE WAS NO ILLEGAL DISMISSAL; ELUCIDATED.— Under Article 279 of the Labor Code, an illegally dismissed employee is entitled to the twin reliefs of full backwages and reinstatement without loss of seniority rights. Aside from the instances provided under Articles 283 and 284 of the *Labor Code*, separation pay is, however, granted when reinstatement is no longer feasible because of strained relations between the employer and the employee. In cases of illegal dismissal, the accepted doctrine is that separation pay is available in lieu of reinstatement when the latter recourse is no longer practical or in the best interest of the parties. As a relief granted in lieu of reinstatement, however, it consequently goes without saying that an award of separation pay is inconsistent with a finding that there was no illegal dismissal. Standing alone, the doctrine of strained relations will not justify an award of separation pay, a relief granted in instances where the common denominator is the fact that the employee was *dismissed* by the employer. Even in cases of illegal dismissal, the doctrine of strained relations is not applied indiscriminately as to bar reinstatement, especially when the employee has not indicated an aversion to returning to work or does not occupy a position of trust and confidence in or has no say in the operation of the employer's business. Although litigation may also engender a certain degree of hostility, it has likewise been ruled that the understandable strain in the parties' relations would not necessarily rule out reinstatement which would, otherwise, become the rule rather than the exception in illegal dismissal cases.

3. ID.; ID.; ID.; ABSENT ILLEGAL DISMISSAL ON THE PART OF THE EMPLOYER AND ABANDONMENT OF EMPLOYMENT ON THE PART OF THE EMPLOYEES, THE PROPER REMEDY SHOULD BE REINSTATEMENT WITHOUT BACK WAGES; APPLICATION IN CASE AT BAR.— Apprised by Union Bank on 1 April 2005 that it was

no longer renewing its security service contract after 30 April 2005, LSIA may have tarried in informing respondents of the fact only on 29 April 2005. As correctly ruled by the NLRC, however, the resultant inconvenience to respondents cannot detract from the fact that the employer-employee relationship between the parties still subsisted and had yet to be severed when respondents filed their complaint on 3 May 2005. Absent illegal dismissal on the part of LSIA and abandonment of employment on the part of respondents, we find that the latter's reinstatement without backwages is, instead, in order. In addition to respondent's alternative prayer therefor in their position paper, reinstatement is justified by LSIA's directive for them to report for work at its Mandaluyong City office as early of 10 May 2005.

APPEARANCES OF COUNSEL

Amor L. Comia & Joven G. Sevillano for petitioner.
Nilo G. Ahat for respondents.

D E C I S I O N

PEREZ, *J.:*

Is an award of separation pay proper despite lack of showing of illegal dismissal? This is the main issue in this Rule 45 Petition for Review on *Certiorari* assailing the Decision[1] dated 26 September 2008[2] rendered and the Resolution dated 21 January 2009[3] issued by the Twentieth Division of the Court of Appeals (CA) in CA-G.R. SP No. 03097.

The factual antecedents are not in dispute.

Alongside Numeriano ***Ondong***, ***respondents*** Tomas Quitoy, Raul Sabang and Diego Morales were hired as security guards

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[1] Penned by CA Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Francisco P. Acosta and Edgardo L. Delos Santos.

[2] CA's 26 September 2008 Decision, *rollo*, pp. 42-51.

[3] CA's 21 January 2009 Resolution, *id.* at 52.

by petitioner Leopard Security and Investigation Agency (***LSIA***) which maintained its office at BCC House, 537 Shaw Boulevard, Mandaluyong City.[4] All being residents of Cebu City, respondents were assigned by LSIA to the different branches of its only client in said locality, Union Bank of the Philippines (***Union Bank***). On 1 April 2005, it appears that Union Bank served a notice to LSIA, terminating the parties' security service contract effective at the end of business hours of 30 April 2005.[5] Thru its representative, Rogelio ***Morales***, LSIA informed respondents on 29 April 2005 of the termination of its contract with Union Bank which had decided to change its security provider. Upon Morales' instruction, respondents went to the Union Bank Cebu Business Park Branch on 30 April 2005, for the turnover of their service firearms to Arnel ***Cortes***, Union Bank's Chief Security Officer.[6]

On 3 May 2005, respondents and Ondong filed a complaint for illegal dismissal, unpaid 13th month pay and service incentive leave pay (***SILP***), moral and exemplary damages as well as attorney's fees against LSIA, its President, Jose ***Poe*** III, Union Bank, its Regional Service and Operations Officer, Catherine ***Cheung***, Herbert ***Hojas***, Protectors Services, Inc. (***PSI***) and Capt. Gerardo ***Jaro***. With the complaint already docketed as RAB Case No. 07-05-0979-2005 before the Regional Arbitration Branch No. VII of the National Labor Relations Commission (NLRC) in Cebu City,[7] it appears that LSIA sent on 10 May 2005 a notice requiring respondents to report for work to its Mandaluyong City office.[8] In an Order dated 6 June 2005, Cheung and Hojas were later dropped as parties-respondents from the case upon motion of respondents. In view of Ondong's execution of a quitclaim, on the other hand, his complaint was likewise

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[4] Respondents' Personal Data Sheet, *id.* at 124-125.

[5] Union Bank's 1 April 2005 Letter, *id.* at 193.

[6] *Id.* at 85-86; 112; 143.

[7] *Id.* at 27.

[8] *Id.* at 113.

dismissed with prejudice, resulting in the exclusion of PSI and Jaro as parties-respondents from the case.[9]

In support of their complaint, respondents averred that they were hired and assigned by LSIA to the different Cebu City branches of Union Bank which directly paid their salaries and whose branch managers exercised direct control and supervision over them. Required to work from 7:30 a.m. to 9:00 p.m. daily, respondents claimed that they took orders and instructions from Union Bank's branch managers since LSIA had no administrative personnel in Cebu City. Respondents further asserted that, after introducing himself as a representative of LSIA on 29 April 2005, Morales belatedly informed them that their services would be terminated at the end of the office hours on the same business day. Directed by Morales to report to Union Bank's Cebu Business Park Branch the next day, respondents maintained that they surrendered their service firearms to Cortes who told them that Union Bank would be engaging the services of another security agency effective the next working day. Not even reimbursed their firearm bond nor told that Union Bank had no monetary obligation to them, respondents claimed they were constrained to file their complaint and to pray that the former be held jointly and severally liable with LSIA for their claims.[10]

In its position paper, LSIA, on the other hand, asseverated that upon being hired, respondents opted for an assignment in Cebu City and were, accordingly, detailed at the different branches of Union Bank in said locality. Informed by Union Bank on 1 April 2005 of the termination of their security service contract effective 30 April 2005, LSIA claimed that it relieved respondents from their assignments by the end of the business hours of the latter date. Petitioners would, on 10 May 2005, direct respondents to report for work at its Mandaluyong City office. As respondents failed to do so, LSIA alleged that it issued show cause letters on 21 June 2005, requiring the former to explain why they

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[9] *Id.* at 127-129.

[10] Respondents' 23 June 2005 Position Paper, *id.* at 83-95.

should not be administratively sanctioned for their unexplained absences. As the avowed direct employer of respondents, LSIA also prayed that Union Bank be dropped from the case and that the complaint be altogether dismissed for lack of merit.[11] Invoking the security service contract it executed with LSIA from which its lack of an employer-employee relationship with respondents could be readily gleaned, Union Bank, in turn, asserted that the complaint should be dismissed as against it for lack of cause of action.[12]

On 6 April 2006, Labor Arbiter Violeta Ortiz-Bantug rendered a Decision, finding LSIA liable for the illegal dismissal of respondents. Faulting LSIA for informing respondents of the termination of their services only on 30 April 2005 despite Union Bank's 1 April 2005 advice of the termination of its security service contract, the Labor Arbiter ruled that the 10 May 2005 report to work order did not show a sincere intention on the part of LSIA to provide respondents with other assignments. Aside from respondents' claims for backwages, LSIA was ordered by the Labor Arbiter to pay the former's claim for separation pay on the ground that reinstatement was no longer feasible under the circumstances. Although absolved from liability for the foregoing awards upon the finding that LSIA was an independent contractor, Union Bank was, however, held jointly and severally liable with said security agency for the payment of respondents' claims for proportionate 13th month pay and SILP for the three years immediately preceding the institution of the case.[13]

On appeal, the foregoing decision was modified in the 20 March 2007 Decision rendered by the Fourth Division of the NLRC in NLRC Case No. V-000570-2006. Applying the principle that security agencies like LSIA are allowed to put security guards on temporary off-detail or floating status for a period

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[11] LSIA's 7 October 2005 Position Paper, *id.* at 111-119.

[12] *Id.* at 129.

[13] Labor Arbiter's 6 April 2006 Decision, *id.* at 127-136.

not exceeding six months, the NLRC discounted the factual and legal bases for the illegal dismissal determined by the Labor Arbiter as well as the backwages awarded in favor of respondents. Finding that the filing of the complaint on 3 May 2005 was premature, the NLRC took note of the fact that respondents did not even protest against the report to work order issued by LSIA. Even then, the NLRC upheld the Labor Arbiter's award of separation pay on the theory that reinstatement was no longer viable. The awards of proportionate 13th month pay and SILP for which Union Bank and LSIA were held solidarily liable were likewise sustained for failure of the latter to discharge the burden of proving payment of said labor standard benefits.[14] Belatedly submitting documents to prove its payment of SILP, LSIA filed a motion for reconsideration of the foregoing decision[15] which was, however, denied for lack of merit in the NLRC's 23 July 2007 Resolution.[16]

Dissatisfied, LSIA filed the Rule 65 Petition for *Certiorari* docketed before the CA as CA-G.R. SP No. 03097. Calling attention to the impropriety of the award of separation pay absent a finding of illegal dismissal, LSIA also faulted the NLRC for ignoring the evidence it submitted alongside its motion for reconsideration to prove the payment of respondents' SILP for the years 2003, 2004 and 2005.[17] On 26 September 2008, the then Twentieth Division of the CA rendered the herein assailed decision, affirming the NLRC's 23 July 2007 Decision and denying LSIA's petition for lack of merit. Applying the principle that respondents could not be considered illegally dismissed before the lapse of six months from their being placed on floating status by LSIA,[18] the CA justified the awards of separation pay, proportionate 13th month pay and SILP in the following wise:

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[14] NLRC's 20 March 2007 Decision, *id.* at 71-80.

[15] LSIA's 25 May 2007 Motion for Reconsideration, *id.* at 205-218.

[16] NLRC's 23 July 2007 Resolution, *id.* at 81.

[17] LSIA's 30 October 2007 Petition for *Certiorari*, *id.* at 53-70

[18] CA's 26 September 2008 Decision, *id.* at 42-51.

In another vein, however, xxx respondents were caught off guard when Rogelio Morales, [LSIA's] representative summarily told them not to report to Union Bank anymore. They did not understand its implications as no one bothered to explain what would happen to them. At any rate, it is clear as day that xxx respondents no longer wish to continue their employment with [LSIA] because of the shabby treatment previously given them. Their relations have obviously turned sour. Such being the case, separation pay, in lieu of reinstatement, is proper. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employer and the employee.

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The burden of proving payment of holiday pay and salary differentials belong to the employer, not the employee. Here [LSIA] failed to present proofs that xxx respondents received payment for [SILP] and thirteenth month pay which accrued to them under the law. As the labor arbiter ruled, however, payment of [SILP] shall only be for the last three (3) years of xxx respondents' service taking into consideration the provisions on prescription of money claims and proportionate 13th month pay for the year 2004.[19]

Aggrieved by the foregoing decision as well as the CA's 21 January 2009 denial of their motion for reconsideration thereof,[20] LSIA and Poe filed the Petition for Review on *Certiorari* at bench, on the following grounds:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT UPHELD THE NLRC DECISION AWARDING TO RESPONDENTS SEPARATION PAY DESPITE ITS FINDINGS THAT THEY WERE NOT ILLEGALLY DISMISSED.

II

THE COURT OF APPEALS ERRED WHEN IT UPHELD THE NLRC DECISION AWARDING TO RESPONDENTS SERVICE INCENTIVE LEAVE PAY FOR THE YEARS 2003, 2004 AND 2005.[21]

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[19] *Id.* at 49-50.

[20] CA's 21 January 2009 Resolution, *id.* at 52.

[21] *Id.* at 30.

In urging the grant of their petition, LSIA and Poe argue that, upon discounting the factual basis for respondents' claim that they were illegally dismissed from employment, the CA should have disallowed the award of separation pay awarded by the Labor Arbiter and the NLRC. They insist that like backwages, separation pay is the legal consequence of a finding of illegal dismissal and should, perforce, be deleted in the absence thereof, particularly when no evidence was adduced to prove the strained relations between the employer and employee. LSIA and Poe also fault the CA for ignoring the Bank Advice Slips and On Demand Statement of Account belatedly submitted alongside the motion for reconsideration they filed before the NLRC, to prove payment of respondents' SILP for the years 2004 and 2005.[22] In their comment to the petition, on the other hand, respondents insist that they have been illegally dismissed from employment and that the Labor Arbiter's determination to that effect was erroneously reversed by both the NLRC and the CA.[23]

The petition is impressed with merit.

Applying Article 286[24] of the *Labor Code of the Philippines* by analogy, this Court has repeatedly recognized that security guards may be temporarily sidelined by their security agency as their assignments primarily depend on the contracts entered into by the latter with third parties.[25] Temporary "off-detail" or

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[22] *Id.* at 31-37.

[23] *Id.* at 262-276.

[24] Art. 286. *When employment not deemed terminated*. — The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[25] *Mobile Protective & Detective Agency v. Ompad*, 497 Phil. 621, 634 (2005).

"floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when, as here, the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster.[26] For as long as such temporary inactivity does not continue for a period exceeding six months, it has been ruled that placing an employee on temporary "off-detail" or "floating status" is not equivalent to dismissal.[27]

In the case at bench, respondents were informed on 29 April 2005 that they were going to be relieved from duty as a consequence of the 30 April 2005 expiration of the security service contract between Union Bank and LSIA. While respondents lost no time in immediately filing their complaint on 3 May 2005, the record equally shows that they were directed by LSIA to report for work at its Mandaluyong City office on 10 May 2005 or a mere ten days from the time the former were effectively sidelined. Considering that a security guard is only considered illegally dismissed from service when he is sidelined from duty for a period exceeding six months,[28] we find that the CA correctly upheld the NLRC's ruling that respondents were not illegally dismissed by LSIA. Parenthetically, said ruling is binding on respondents who did not appeal either the decision rendered by the NLRC or the CA in line with the entrenched procedural rule in this jurisdiction that a party who did not appeal cannot assign such errors as are designed to have the judgment modified.[29]

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[26] *Salvaloza v. National Labor Relations Commission*, G.R. No. 182086, 24 November 2010, 636 SCRA 184, 197.

[27] *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*, 514, Phil. 488, 499 (2005), citing *Superstar Security Agency, Inc. and/or Col. Andrada v. NLRC*, 262 Phil. 930, 934 (1990).

[28] *Valdez v. NLRC*, 349 Phil. 760, 766 (1998).

[29] *Dizon, Jr. v. National Labor Relations Commission*, 260 Phil. 501, 509 (1990).

Having correctly ruled out illegal dismissal of respondents, the CA reversibly erred, however, when it sustained the NLRC's award of separation pay on the ground that the parties' relationship had already been strained. For one, liability for the payment of separation pay is a legal consequence of illegal dismissal where reinstatement is no longer viable or feasible. Under Article 279 of the *Labor Code*, an *illegally dismissed* employee is entitled to the twin reliefs of full backwages and reinstatement without loss of seniority rights.[30] Aside from the instances provided under Articles 283[31] and 284[32] of the *Labor Code*, separation pay is, however, granted when reinstatement is no longer feasible because of strained relations between the employer and the employee.[33] In cases of illegal dismissal, the accepted doctrine

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[30] *Philippine Long Distance Telephone Company v. Berbano, Jr.*, G.R. No. 165199, 27 November 2009, 606 SCRA 81, 99.

[31] ART. 283. *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[32] ART. 284. *Disease as ground for termination.* — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[33] *Mt. Carmel College v. Resueda*, G.R. No. 173076, 10 October 2007, 535 SCRA 518, 541.

is that separation pay is available in lieu of reinstatement when the latter recourse is no longer practical or in the best interest of the parties.[34]

As a relief granted in lieu of reinstatement, however, it consequently goes without saying that an award of separation pay is inconsistent with a finding that there was no illegal dismissal. Standing alone, the doctrine of strained relations will not justify an award of separation pay, a relief granted in instances where the common denominator is the fact that the employee *was dismissed* by the employer.[35] Even in cases of illegal dismissal, the doctrine of strained relations is not applied indiscriminately as to bar reinstatement, especially when the employee has not indicated an aversion to returning to work[36] or does not occupy a position of trust and confidence in[37] or has no say in the operation of the employer's business.[38] Although litigation may also engender a certain degree of hostility, it has likewise been ruled that the understandable strain in the parties' relations would not necessarily rule out reinstatement which would, otherwise, become the rule rather than the exception in illegal dismissal cases.[39]

Our perusal of the position paper they filed *a quo* shows that, despite erroneously believing themselves to have been illegally dismissed, respondents had alleged no circumstance indicating the strained relations between them and LSIA and had even alternatively prayed for reinstatement alongside the payment of separation pay.[40] Since application of the doctrine of strained

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[34] *Velasco v. National Labor Relations Commission*, G.R. No. 161694, 26 June 2006, 492 SCRA 686, 699.

[35] *Capili v. National Labor Relations Commission*, 337 Phil. 210, 215.

[36] *Coca-Cola Bottlers Phils., Inc. v. Daniel*, 499 Phil. 491, 551 (2005).

[37] *Globe-Mackay Cable and Radio Corporation v. NLRC*, G.R. No. 82511, 3 March 1992, 206 SCRA 701, 712.

[38] *Abalos v. Philex Mining Corporation*, 441 Phil. 386, 394 (2002).

[39] *Procter and Gamble Philippines v. Bondesto*, 468 Phil. 932, 943 (2004).

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

relations presupposes a question of fact which must be demonstrated and adequately supported by evidence,[41] the CA clearly erred in ruling that the parties' relations had already soured and that an award of separation pay in favor of respondents is proper. Apprised by Union Bank on 1 April 2005 that it was no longer renewing its security service contract after 30 April 2005, LSIA may have tarried in informing respondents of the fact only on 29 April 2005. As correctly ruled by the NLRC, however, the resultant inconvenience to respondents cannot detract from the fact that the employer-employee relationship between the parties still subsisted and had yet to be severed when respondents filed their complaint on 3 May 2005.

Absent illegal dismissal on the part of LSIA and abandonment of employment on the part of respondents, we find that the latter's reinstatement without backwages is, instead, in order. In addition to respondent's alternative prayer therefor in their position paper, reinstatement is justified by LSIA's directive for them to report for work at its Mandaluyong City office as early of 10 May 2005. As for the error ascribed the CA for failing to correct the NLRC's disregard of the evidence showing LSIA's payment of respondents' SILP, suffice it to say that the NLRC is not precluded from receiving evidence, even for the first time on appeal, because technical rules of procedure are not binding in labor cases.[42] Considering that labor officials are, in fact, encouraged to use all reasonable means to ascertain the facts speedily and objectively, with little resort to technicalities of law or procedure,[43] LSIA correctly faults the CA for likewise brushing aside the evidence of SILP payments it submitted during the appeal stage before the NLRC.

The record shows that respondents were uniformly awarded SILP at the rate of ₱666.00 for the period May 3 to December

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[41] *Golden Ace Builders v. Talde*, G.R. No. 187200, 5 May 2010, 620 SCRA 283, 290.

[42] *Clarion Printing House, Inc. v. NLRC*, 500 Phil. 61, 76 (2005).

[43] *Andaya v. NLRC*, 502 Phil. 151, 158 (2005).

31, 2002, ₱1,000.00 for the period January 1 to December 31, 2003, ₱1,040.00 for the period January 1 to December 31, 2004 and ₱347.36 for the period January 1 to May 3, 2005 or a total of ₱3,053.36 each.[44] The Bank Advice Slips and On Demand Statement of Account[45] submitted by LSIA before the NLRC shows uniform payments of SILP to respondents in the sum of ₱1,025 for the year 2004 which should, therefore, be deducted from the award of said benefit in favor of respondent. Although LSIA also submitted a Bank Advice Slip showing a supposed ₱1,065.00 payment of SILP for the year 2005 in favor of respondent Sabang only, the absence of an On Demand Statement of Account for said amount impels Us to disallow the further deduction thereof from the SILP award.

WHEREFORE, premises considered, the petition is *GRANTED* and the assailed Decision dated 26 September 2008 is, accordingly, *MODIFIED* to direct the reinstatement of respondents in lieu of the award of separation pay and to deduct the sum of ₱1,025.00 from the SILP individually awarded in favor of respondents. The rest is *AFFIRMED*.

SO ORDERED.

Carpio, Brion, Del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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[44] Computation of the Labor Arbiter's Award, *rollo*, pp. 161-162.

[45] *Id.* at 213-218.

SPECIAL SECOND DIVISION

[G.R. No. 187919. February 20, 2013]

RAFAEL H. GALVEZ and KATHERINE L. GUY, *petitioners, vs.* **HON. COURT OF APPEALS AND ASIA UNITED BANK,** *respondents.*

[G.R. No. 187979. February 20, 2013]

ASIA UNITED BANK, *petitioner, vs.* **GILBERT G. GUY, PHILIP LEUNG, KATHERINE L. GUY, RAFAEL H. GALVEZ and EUGENIO H. GALVEZ, JR.,** *respondents.*

[G.R. No. 188030. February 20, 2013]

GILBERT G. GUY, PHILIP LEUNG and EUGENIO H. GALVEZ, JR., *petitioners, vs.* **ASIA UNITED BANK,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; *ESTAFA*; DEFINED.— Under Article 315 (2)(a) of the Revised Penal Code, *estafa* is committed by any person who shall defraud another by, among others, false pretenses or fraudulent acts executed prior to or simultaneous with the commission of fraud, *i.e.*, by using a fictitious name, falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

2. ID.; PRESIDENTIAL DECREE NO. 1689 (INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR *ESTAFA*); SYNDICATED *ESTAFA*; ELEMENTS, CONSTRUED; NOT PRESENT IN CASE AT BAR.— While this case is all about finding probable cause to hold the petitioners for trial for syndicated *estafa*, and, while, without doubt, a commercial bank is covered by Presidential Decree No. 1689, as deduced from our pronouncements in *People v.*

Balasa, People v. Romero, and People v. Menil, Jr., cases where the accused used the legitimacy of the entities/ corporations to perpetrate their unlawful and illegal acts, a careful re-evaluation of the issues indicate that while we had ample reason to look into whether funds from commercial bank may be subject of syndicated *estafa*, the issue of who may commit the crime should likewise be considered. x x x Thus, the elements of syndicated *estafa* are: (a) *estafa* or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code is committed; (b) the *estafa* or swindling is committed by a syndicate of five or more persons; and (c) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "samahang nayon(s)," or farmers' associations or of funds solicited by corporations/associations from the general public. On review of the cases applying the law, we note that the swindling syndicate used the association that they manage to defraud the general public of funds contributed to the association. Indeed, Section 1 of Presidential Decree No. 1689 speaks of a syndicate formed with the intention of carrying out the unlawful scheme for the misappropriation of the money contributed by the members of the association. In other words, only those who formed and manage associations that receive contributions from the general public who misappropriated the contributions can commit syndicated *estafa*.

APPEARANCES OF COUNSEL

Ignacio & Ignacio Law Firm and *Herminio T. Banico, Jr. and Associates* for Rafael H. Galvez, et al.

Zamora Poblador Vasquez & Bretaña for Asia United Bank.

Mondragon and Montoya Law Offices for Gilbert G. Guy, Philip Leung and Eugenio H. Galvez, Jr.

RESOLUTION

PEREZ, *J.*:

We resolve the Motion for Reconsideration filed by petitioner-movants, Rafael H. Galvez and Katherine L. Guy in G.R. No. 187919,[1] and, Gilbert G. Guy, Philip Leung and Eugenio H. Galvez, Jr. in G.R. No. 188030[2] addressed to our consolidated Decision dated 25 April 2012[3] finding probable cause to charge petitioners of the crime of **SYNDICATED *ESTAFA*** under Article 315 (2)(a) in relation to Presidential Decree No. 1689.

Our consolidated decision read:

WHEREFORE**,** the Decision of the Court of Appeals dated 27 June 2008 in CA-G.R. SP No. 97160 is herby **AFFIRMED** with **MODIFICATION** that Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy and Eugenio H. Galvez, Jr. be charged for **SYNDICATED *ESTAFA*** under Article 315 (2) (a) of the Revised Penal Code in relation to Section 1 of Presidential Decree No. 1689.[4]

The Motion for Reconsideration

In the main, petitioners submit the following arguments in support of their motion for reconsideration:

First, the petitioners cannot be charged for *estafa* whether simple or syndicated for the element of deceit was absent in

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[1] *Rollo* in G.R. No. 187979, pp. 716-763.

[2] *Rollo* in G.R. No. 188030, pp. 736-783.

[3] *Rafael H. Galvez and Katherine L. Guy v. Court of Appeals and Asia United Bank* (G.R. No. 187919); *Asia United Bank v. Gilbert G. Guy, Philip Leung, Katherine L. Guy, Rafael H. Galvez and Eugenio H. Galvez, Jr.,* (G.R. No. 187979); *Gilbert G. Guy, Philip Leung and Eugenio H. Galvez, Jr., v. Asia United Bank* (G.R. No. 188030). Penned by Associate Justice Jose Portugal Perez with Associate Justices Antonio T. Carpio, Arturo D. Brion, now Chief Justice Maria Lourdes P. A. Sereno and Bienvenido L. Reyes, concurring. *Rollo* in G.R. No. 188030, pp. 714-735; *Rollo* in G.R. No. 187919, pp. 696-715; *Rollo* in G.R. No. 187979, pp. 678-696.

[4] *Rollo* in G.R. No. 188030, pp. 733-734.

the transactions that transpired between the petitioners and respondent. This is a case of collection of sum of money, hence, civil in nature.

Second, the petitioners cannot be charged for syndicated *estafa* defined in Presidential Decree No. 1689 because they did not solicit funds from the general public, an indispensable element for syndicated *estafa* to prosper.[5]

In our 25 April 2012 Decision, we have more than amply discussed the petitioners' arguments, specifically, as to the first issue whether deceit was present in the transaction as to warrant prosecution for the crime of *estafa.* If only to emphatically write *finis* to this aspect of the case, we examine again the petitioners' arguments *vis-à-vis* this Court's ruling.

The facts

In 1999, Radio Marine Network Inc. (RMSI) claiming to do business under the name Smartnet Philippines[6] and/or Smartnet Philippines, Inc. (SPI),[7] applied for an Omnibus Credit Line for various credit facilities with Asia United Bank (AUB). To induce AUB to extend the Omnibus Credit Line, RMSI, through its directors and officers, presented its Articles of Incorporation with its 400-peso million capitalization and its congressional telecom franchise. RMSI was represented by the following officers and directors occupying the following positions:

Gilbert Guy	-	Exec. V-Pres./Director
Philip Leung	-	Managing Director
Katherine Guy	-	Treasurer
Rafael Galvez	-	Executive Officer
Eugenio Galvez, Jr.	-	Chief Financial Officer/Comptroller

[5] *Id.* at 742-743.

[6] *Id.* at 111.

[7] In Civil Case No. 68366, RMSI filed a complaint, claiming that it was doing business under the name Smartnet Philippines **and Smartnet Philippines, Inc.** *Id* at 486.

Satisfied with the credit worthiness of RMSI, AUB granted it a ₱250 Million Omnibus Credit Line, under the name of Smartnet Philippines, RMSI's Division. On 1 February 2000, the credit line was increased to ₱452 Million pesos after a third-party real estate mortgage by Goodland Company, Inc., an affiliate of Guy Group of Companies, in favor of Smartnet Philippines, was offered to the bank. Simultaneous to the increase of the Omnibus Credit Line, RMSI submitted a proof of authority to open the Omnibus Credit Line and peso and dollar accounts in the name of Smartnet Philippines, Inc., which Gilbert Guy, *et al.,* represented as a division of RMSI, as evidenced by the letterhead used in its formal correspondences with the bank and the financial audit made by SGV & Co., an independent accounting firm. Attached to this authority was the Amended Articles of Incorporation of RMSI, doing business under the name of Smartnet Philippines, and the Secretary's Certificate of SPI authorizing its directors, Gilbert Guy and Philip Leung to transact with AUB.[8] Prior to this major transaction, however, and, unknown to AUB, while RMSI was doing business under the name of Smartnet Philippines, and that there was a division under the name Smartnet Philippines, Gilbert Guy, *et al.* formed a subsidiary corporation, the SPI with a paid-up capital of only ₱62,500.00.

Believing that SPI is the same as Smartnet Philippines — the division of RMSI — AUB granted to it, among others, Irrevocable Letter of Credit No. 990361 in the total sum of $29,300.00 in favor of Rohde & Schwarz Support Centre Asia Ptd. Ltd., which is the subject of these consolidated petitions. To cover the liability of this Irrevocable Letter of Credit, Gilbert Guy executed Promissory Note No. 010445 in behalf of SPI in favor of AUB. This promissory note was renewed twice, once, in the name of SPI (Promissory Note No. 011686), and last, in the name of Smartnet Philippines under Promissory Note No. 136131, bolstering AUB's belief that RMSI's directors and officers consistently treated this letter of credit, among others, as obligations of RMSI.

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[8] *Id.* at 472.

When RMSI's obligations remained unpaid, AUB sent letters demanding payments. RMSI denied liability contending that the transaction was incurred solely by SPI, a corporation which belongs to the Guy Group of Companies, but which has a separate and distinct personality from RMSI. RMSI further claimed that while Smartnet Philippines is an RMSI division, SPI, is a subsidiary of RMSI, and hence, is a separate entity.

Aggrieved, AUB filed a case of syndicated *estafa* under Article 315 (2)(a) of the Revised Penal Code in relation to Section 1 of Presidential Decree No. 1689 against the interlocking directors of RMSI and SPI, namely, Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy, and Eugenio H. Galvez, Jr., before the Office of the City Prosecutor of Pasig City.

AUB alleged that the directors of RMSI deceived it into believing that SPI was a division of RMSI, only to insist on its separate juridical personality later on to escape from its liabilities with AUB.AUB contended that had it not been for the fraudulent scheme employed by Gilbert Guy, *et al.,* AUB would not have parted with its money, which, including the controversy subject of this petition, amounted to hundreds of millions of pesos.

Our Ruling

We already emphasized in the 25 April 2012 Decision that "this controversy could have been just a simple case for collection of sum of money had it not been for the sophisticated fraudulent scheme which Gilbert Guy, *et al.,* employed in inducing AUB to part with its money."[9] Our Decision meticulously discussed how we found probable cause, a finding affirming that of the prosecutor and the Court of Appeals, to indict petitioners for the crime of *estafa* under Article 315 (2)(a) of the Revised Penal Code.[10] We noted there and we now reiterate that it was

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[9] *Id.* at 723.

[10] Article 315 (2)(a) of the Revised Penal Code provides:

Art. 315. *Swindling (estafa).* – any person who shall defraud another by any of the means mentioned herein below x x x:

neither the petitioners' act of borrowing money and not paying it, nor their denial thereof, but their very act of deceiving AUB in order for the latter to part with its money that is sought to be penalized. Thus:

> x x x As early as the Penal Code of Spain, which was enforced in the Philippines as early as 1887 until it was replaced by the Revised Penal Code in 1932, the act of fraud through false pretenses or similar deceit was already being punished. Article 335 of the Penal code of Spain punished a person who defrauded another 'by falsely pretending to possess any power, influence, qualification, property, credit, agency or business, or by means of similar deceit.'[11]

Under Article 315 (2)(a) of the Revised Penal Code, *estafa* is committed by any person who shall defraud another by, among others, false pretenses or fraudulent acts executed prior to or simultaneous with the commission of fraud, *i.e.,* by using a fictitious name, falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

Underscoring the aforesaid discussion, we found that:

> *First,* Gilbert Guy, Philip Leung, Katherine Guy, Rafael Galvez and Eugene Galvez, Jr., interlocking directors of RMSI and SPI, represented to AUB in their transactions that Smartnet Philippines and SPI were one and the same entity. While Eugene Galvez, Jr. was not a director of SPI, he actively dealt with AUB in his capacity as RMSI's Chief Financial Officer/Comptroller by falsely representing that SPI and RMSI were the same entity. Gilbert Guy, Philip Leung, Katherine Guy, Rafael Galvez, and Eugene Galvez, Jr. used the business names Smartnet Philippines, RMSI, and SPI interchangeably and

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2. By means of any of the following **false pretenses or fraudulent acts executed prior to or simultaneous with the commission of the fraud:**

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, **or by means of other similar deceits.** (Emphasis supplied)

[11] *Rollo* in G.R. No. 188030, p. 692. *See Lozano v. Martinez,* G.R. No. 63419, 18 December 1986, 146 SCRA 323, 332.

without any distinction. They successfully did this by using the confusing similarity of RMSI's business name, *i.e.*, Smartnet Philippines — its division, and, Smartnet Philippines, Inc. — the subsidiary corporation. Further, they were able to hide the identity of SPI, by having almost the same directors as that of RMSI. In order to let it appear that SPI is the same as that of Smartnet Philippines, they submitted in their application documents of RMSI, including its Amended Articles of Incorporation, third-party real estate mortgage of Goodland Company in favor of Smartnet Philippines, and audited annual financial statement of SGV & Co. Gilbert Guy, *et al.* also used RMSI letterhead in their official communications with the bank and the contents of these official communications conclusively pointed to RMSI as the one which transacted with the bank.

These circumstances are all *indicia* of deceit. Deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury. [Citation omitted]

Second, the intent to deceive AUB was manifest from the start. Gilbert Guy *et al.*[,] laid down first all the necessary materials they need for this deception before defrauding the bank by first establishing Smartnet Philippines as a division of Radio Marine under which Radio Marine Network Inc. operated its business. Then it organized a subsidiary corporation, the SPI, with a capital of only ₱62,000.00. Later, it changed the corporate name of Radio Marine Network Inc. into RMSI.

Undoubtedly, deceit here was conceived in relation to Gilbert Guy, *et al.'s* transaction with AUB. There was a plan, documented in corporation's papers, that led to the defraudation of the bank. The circumstances of the directors' and officers' acts in inserting in Radio Marine the name of Smartnet; the creation of its division — Smartnet Philippines; and its registration as business name as Smartnet Philippines with the Department of Trade and Industry, together with the incorporation of its subsidiary, the SPI, are *indicia* of a pre-conceived scheme to create this elaborate fraud, victimizing a banking institution, which perhaps, is the first of a kind in Philippine business.

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Third, AUB would not have granted the Irrevocable Letter of Credit No. 990361, among others, had it known that SPI which had only ₱62,500.00 paid-up capital and no assets, is a separate entity and not the division or business name of RMSI. x x x.

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It is true that ordinarily, in a letter of credit transaction, the bank merely substitutes its own promise to pay for the promise to pay of one of its customers, who in turn promises to pay the bank the amount of funds mentioned in the letters of credit plus credit or commitments fees mutually agreed upon. Once the issuing bank shall have paid the beneficiary after the latter's compliance with the terms of the letter of credit, the issuing bank is entitled to reimbursement for the amount it paid under the letter of credit. [Citation omitted]

In the present case, however, no reimbursement was made outright, precisely because the letter of credit was secured by a promissory note executed by SPI. The bank would have not agreed to this transaction had it not been deceived by Gilbert Guy, *et al.* into believing the RMSI and SPI were one and the same entity. Guy and his cohorts' acts in (1) securing the letter of credit guaranteed by a promissory note in behalf of SPI; and, (2) their act of representing SPI as RMSI's Division, were *indicia* of fraudulent acts because they fully well know, even before transacting with the bank, that: (a) SPI was a separate entity from Smartnet Philippines, the RMSI's Division, which has the Omnibus Credit Line; and (b) despite this knowledge, they misrepresented to the bank that SPI is RMSI's division. Had it not [been] for this false representation, AUB would [not] have granted SPI's letter of credit to be secured with a promissory note because SPI as a corporation has no credit line with AUB and SPI by its own, has no credit standing.

Fourth, it is not in dispute that the bank suffered damage, which, including this controversy, amounted to hundreds of millions of pesos.[12] (Emphasis supplied)

We revisit, however, our ruling as to the second issue, *i.e.,* whether or not the petitioners may be charged and tried for syndicated *estafa* under Presidential Decree No. 1689.

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[12] *Rollo* in G.R. No. 188030, pp. 724-728.

While this case is all about finding probable cause to hold the petitioners for trial for syndicated *estafa,* and, while, without doubt, a commercial bank is covered by Presidential Decree No. 1689, as deduced from our pronouncements in *People v. Balasa,*[13] *People v. Romero,*[14] and *People v. Menil, Jr.,*[15] cases where the accused used the legitimacy of the entities/corporations to perpetrate their unlawful and illegal acts, a careful re-evaluation of the issues indicate that while we had ample reason to look into whether funds from commercial bank may be subject of syndicated *estafa*, the issue of who may commit the crime should likewise be considered.

Section 1 of Presidential Decree No. 1689 provides:

Section 1. Any person or persons who shall commit *estafa* or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (*estafa*) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon(s)*", or farmers' associations, or of funds solicited by corporations/associations from the general public.

When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to *reclusion perpetua* if the amount of the fraud exceeds 100,000 pesos.

Thus, the elements of syndicated *estafa* are: (a) *estafa* or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code is committed; (b) the *estafa* or swindling is committed by a syndicate of five or more persons; and (c) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, *"samahang nayon(s),"* or farmers' associations or of funds solicited by corporations/associations from the general public.

[13] 356 Phil. 362 (1998).

[14] 365 Phil. 531 (1999).

[15] 394 Phil. 433 (2000).

On review of the cases applying the law, we note that the swindling syndicate used the association that they manage to defraud the general public of funds contributed to the association. Indeed, Section 1 of Presidential Decree No. 1689 speaks of a syndicate formed with the intention of carrying out the unlawful scheme for the misappropriation of the money contributed by the members of the association. In other words, only those who formed and manage associations that receive contributions from the general public who misappropriated the contributions can commit syndicated *estafa.*

Gilbert Guy, *et al.,* however, are not in any way related either by employment or ownership to AUB. They are outsiders who, by their cunning moves were able to defraud an association, which is the AUB. Theirs would have been a different story, had they been managers or owners of AUB who used the bank to defraud the public depositors.

This brings to fore the difference between the case of Gilbert Guy *et al.,* and that of *People v. Balasa, People v. Romero,* and *People v. Menil, Jr.*

In *People v. Balasa,* the accused formed the *Panata* Foundation of the Philippines, Inc., a non-stock/non-profit corporation and the accused managed its affairs, solicited deposits from the public and misappropriated the same funds.

We clarified in *Balasa* that although, the entity involved, the Panata Foundation, was not a rural bank, cooperative, *samahang nayon* or farmers' association, it being a corporation, does not take the case out of the coverage of Presidential Decree No. 1689. Presidential Decree No. 1689's third "whereas clause" states that it also applies to other "corporations/associations operating on funds solicited from the general public." It is this pronouncement about the coverage of "corporations/associations" that led us to the ruling in our 25 April 2012 Decision that a commercial bank falls within the coverage of Presidential Decree No. 1689. We have to note though, as we do now, that the *Balasa* case, differs from the present petition because while in *Balasa,* the offenders were insiders, *i.e.,* owners and employees

who used their position to defraud the public, in the present petition, the offenders were not at all related to the bank. In other words, while in *Balasa* the offenders used the corporation as the means to defraud the public, in the present case, the corporation or the bank is the very victim of the offenders.

Balasa has been reiterated in *People v. Romero,* where the accused Martin Romero and Ernesto Rodriguez were the General Manager and Operation Manager, respectively, of Surigao San Andres Industrial Development Corporation, a corporation engaged in marketing which later engaged in soliciting funds and investments from the public.

A similar reiteration was by *People v. Menil, Jr.,* where the accused Vicente Menil, Jr. and his wife were proprietors of a business operating under the name ABM Appliance and Upholstery. Through ushers and sales executives, the accused solicited investments from the general public and thereafter, misappropriated the same.

The rulings in *Romero* and *Menil, Jr.* further guide us in the present case. Notably, *Romero* and *Menil, Jr.* applied the second paragraph of Section 1 of Presidential Decree No. 1689 because the number of the accused was below five, the minimum needed to form the syndicate.

The second paragraph, Section 1 of Presidential Decree No. 1689 states:

> When not committed by a syndicate as above defined, the penalty imposable shall be *reclusion temporal* to *reclusion perpetua* if the amount of fraud exceeds 100,000 pesos.

Effectively, *Romero* and *Menil, Jr.* read as written the phrase "when not committed by a syndicate as above defined," such that, for the second paragraph of Section 1 to apply the definition of swindling in the first paragraph must be satisfied: the offenders should have used the association they formed, own or manage to misappropriate the funds solicited from the public.

In sum and substance and by precedential guidelines, we hold that, *first,* Presidential Decree No. 1689 also covers

commercial banks; *second,* to be within the ambit of the Decree, the swindling must be committed **through** the association, the bank in this case, which operate on funds solicited from the general public; *third,* when the number of the accused are five or more, the crime is syndicated *estafa* under paragraph 1 of the Decree; *fourth,* if the number of accused is less than five but the defining element of the crime under the Decree is present, the second paragraph of the Decree applies (*People v. Romero, People v. Balasa*); *fifth,* the Decree does **not** apply regardless of the number of the accused, when, (*a*) the entity soliciting funds from the general public is the victim and not the means through which the *estafa* is committed, or (*b*) the offenders are not owners or employees who used the association to perpetrate the crime, in which case, Article 315 (2)(a) of the Revised Penal Code applies.

The present petition involves an *estafa* case filed by a commercial bank as the offended party against the accused who, as clients, defrauded the bank.

WHEREFORE, we *MODIFY* our 25 April 2012 Decision and **RULE** that Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy and Eugenio H. Galvez, Jr., be charged for *SIMPLE ESTAFA* under Article 315 (2)(a) of the Revised Penal Code.

SO ORDERED.

Sereno, C.J., Brion (Acting Chairperson), Del Castillo,[*] and *Reyes, JJ.,* concur.

[*] Per Raffle dated 13 February 2013.

THIRD DIVISION

[G.R. No. 195032. February 20, 2013]

ISABELO A. BRAZA, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN (1st Division),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; DOUBLE JEOPARDY; REQUISITES.— To substantiate a claim for double jeopardy, the accused has the burden of demonstrating the following requisites: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as in the first. As to the first requisite, the first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment, (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent. The test for the third element is whether one offense is identical with the other or is an attempt to commit it or a frustration thereof; or whether the second offense includes or is necessarily included in the offense charged in the first information.

2. ID.; ID.; ID.; ID.; FORBIDS PROSECUTION FOR THE SAME OFFENSE.— The doctrine of double jeopardy is a revered constitutional safeguard against exposing the accused from the risk of being prosecuted twice for the same offense, and not a different one. There is simply no double jeopardy when the subsequent information charges another and different offense, although arising from the same act or set of acts. Prosecution for the same act is not prohibited. What is forbidden is the prosecution for the same offense.

3. ID.; ID.; ID.; ID.; ID.; FOR DOUBLE JEOPARDY TO EXIST, THE ELEMENTS OF ONE OFFENSE SHOULD IDEALLY ENCOMPASS OR INCLUDE THOSE OF THE OTHER; VIOLATION UNDER SECTION 3(E) AND SECTION 3(G) OF R.A. No. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT), DISTINGUISHED.— A comparison of

the elements of violation of Sec. 3(g) of R.A. No. 3019 and those of violation of Sec. 3(e) of the same law, however, will disclose that there is neither identity nor exclusive inclusion between the two offenses. For conviction of violation of Sec. 3(g), the prosecution must establish the following elements: 1. The offender is a public officer; 2. He entered into a contract or transaction in behalf of the government; and 3. The contract or transaction is manifestly and grossly disadvantageous to the government. On the other hand, an accused may be held criminally liable of violation of Section 3(e) of R.A. No. 3019, provided that the following elements are present: 1. The accused must be a public officer discharging administrative, judicial or official functions; 2. The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and 3. His action caused undue injury to any party, including the government or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. Although violation of Sec. 3(g) of R.A. No. 3019 and violation of Sec. 3(e) of the same law share a common element, the accused being a public officer, the latter is not inclusive of the former. The essential elements of each are not included among or do not form part of those enumerated in the other**.** For double jeopardy to exist, the elements of one offense should ideally encompass or include those of the other. What the rule on double jeopardy prohibits refers to identity of elements in the two offenses.

4. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); TWO WAYS BY WHICH PUBLIC OFFICIAL VIOLATES SECTION 3(E) THEREOF, EXPLAINED; APPLICATION IN CASE AT BAR.— In a catena of cases, this Court has held that there are two (2) ways by which a public official violates Section 3(e) of R.A. No. 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or under both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019. In other words, the presence of one would suffice for conviction. It must be emphasized that Braza was indicted for violation of Section 3(e) of R.A. No. 3019 under

the second mode. "To be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative and judicial functions." The element of damage is not required for violation of Section 3(e) under the second mode. x x x Settled is the rule that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. No. 3019. Considering that all the elements of the offense of violation of Sec. 3(e) were alleged in the second information, the Court finds the same to be sufficient in form and substance to sustain a conviction.

5. CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF A CASE; WHEN VIOLATED.— The right to a speedy disposition of a case is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. The constitutional guarantee to a speedy disposition of cases is a relative or flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory. In *Dela Peña v. Sandiganbayan*, the Court laid down certain guidelines to determine whether the right to a speedy disposition has been violated, as follows: x x x The doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

APPEARANCES OF COUNSEL

LIBRA Law for petitioner.
Office of the Special Prosecutor for respondent.

D E C I S I O N

MENDOZA, *J.:*

This is a petition for *certiorari* filed by petitioner Isabelo Braza *(Braza)* seeking to reverse and set aside the October 12, 2009 Resolution[1] of the Sandiganbayan in Criminal Case No. SB-08-CRM-0275, entitled *People v. Robert G. Lala, et al.,* as well as its October 22, 2010 Resolution,[2] denying his motion for reconsideration.

The Facts

The Philippines was assigned the hosting rights for the 12th Association of Southeast Asian Nations *(ASEAN)* Leaders Summit scheduled in December 2006. In preparation for this international diplomatic event with the province of Cebu as the designated venue, the Department of Public Works and Highways *(DPWH)* identified projects relative to the improvement and rehabilitation of roads and installation of traffic safety devices and lighting facilities. The then Acting Secretary of the DPWH, Hermogenes E. Ebdane, approved the resort to alternative modes of procurement for the implementation of these projects due to the proximity of the ASEAN Summit.

One of the ASEAN Summit-related projects to be undertaken was the installation of street lighting systems along the perimeters of the Cebu International Convention Center in Mandaue City and the ceremonial routes of the Summit to upgrade the appearance of the convention areas and to improve night-time visibility for security purposes. Four (4) out of eleven (11) street lighting projects were awarded to FABMIK Construction and Equipment Supply Company, Inc. (*FABMIK*) and these were

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[1] Penned by Associate Justice Norberto Y. Geraldez with Associate Justice Rodolfo A. Ponferrada and Associate Justice Alexander G. Gesmundo, concurring; *rollo,* pp. 58-68

[2] *Id.* at 69-90.

covered by Contract I.D. Nos. 06H0021, 06H00049, 06H00050, and 06H00052. Contract I.D. No. 06H00050, the subject transaction of this case, involved the supply and installation of street lighting facilities along the stretch of Mandaue-Mactan Bridge 1 to Punta Engaño Section in Lapu-Lapu City, with an estimated project cost of 83,950,000.00.

With the exception of the street lighting project covered by Contract I.D. No. 06H0021, the three other projects were bidded out only on November 28, 2006 or less than two (2) weeks before the scheduled start of the Summit. Thereafter, the DPWH and FABMIK executed a Memorandum of Agreement *(MOA)* whereby FABMIK obliged itself to implement the projects at its own expense and the DPWH to guarantee the payment of the work accomplished. FABMIK was able to complete the projects within the deadline of ten (10) days utilizing its own resources and credit facilities. The schedule of the international event, however, was moved by the national organizers to January 9-15, 2007 due to typhoon Seniang which struck Cebu for several days.

After the summit, a letter-complaint was filed before the Public Assistance and Corruption Prevention Office *(PACPO),* Ombudsman — Visayas, alleging that the ASEAN Summit street lighting projects were overpriced. A panel composing of three investigators conducted a fact-finding investigation to determine the veracity of the accusation. Braza, being the president of FABMIK, was impleaded as one of the respondents. On March 16, 2007, the Ombudsman directed the Department of Budget and Management *(DBM)* and the DPWH to cease and desist from releasing or disbursing funds for the projects in question.[3]

On March 23, 2007, the fact-finding body issued its Evaluation Report[4] recommending the filing of charges for violation of Section 3(e) of Republic Act *(R.A.)* No. 3019, otherwise known as the Anti-Graft and Corrupt Practice Act, against the DPWH officials

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[3] *Id.* at 9-13.

[4] *Id.* at 144-151.

and employees in Region VII and the cities of Mandaue and Lapu-lapu, and private contractors FABMIK and GAMPIK Construction and Development, Inc. (*GAMPIK*). This report was filed before the Office of the Ombudsman-Visayas (*OMB-Visayas*) for the conduct of a preliminary investigation and was docketed therein as OMB-V-C-07-124-C, entitled *PACPO-OMB-Visayas v. Lala, et. al*.

After the preliminary investigation, the OMB-Visayas issued its Resolution,[5] dated January 24, 2008, finding probable cause to indict the concerned respondents for violation of Section 3(g) of R.A. No. 3019. It was found that the lampposts and other lighting facilities installed were indeed highly overpriced after a comparison of the costs of the materials indicated in the Program of Works and Estimates *(POWE)* with those in the Bureau of Customs *(BOC)* documents; and that the contracts entered into between the government officials and the private contractors were manifestly and grossly disadvantageous to the government.

Subsequently, the OMB-Visayas filed several informations before the Sandiganbayan for violation of Sec. 3(g) of R.A. 3019 against the officials of DPWH Region VII, the officials of the cities of Mandaue and Lapu-lapu and private contractors, FABMIK President Braza and GAMPIK Board Chairman Gerardo S. Surla *(Surla)*. The Information docketed as SB-08-CRM-0275[6] *(first information)* which involved the street lighting project covered by Contract I.D. No. 06H00050 with FABMIK, was raffled to the First Division of the Sandiganbayan. It was alleged therein that Braza acted in conspiracy with the public officials and employees in the commission of the crime charged.

On June 6, 2008, Braza was arraigned as a precondition to his authorization to travel abroad. He entered a plea of "not guilty."

On August 14, 2008, the motions for reinvestigation filed by Arturo Radaza *(Radaza),* the Mayor of Lapu-lapu City, and

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[5] *Id.* at 163-192.

[6] *Id.* at 193-196.

the DPWH officials were denied by the Sandiganbayan for lack of merit. Consequently, they moved for the reconsideration of said resolution.[7] On August 27, 2008, Braza filed a motion for reinvestigation[8] anchored on the following grounds: (1) the import documents relied upon by the OMB-Visayas were spurious and falsified; (2) constituted new evidence, if considered, would overturn the finding of probable cause; and (3) the finding of overpricing was bereft of factual and legal basis as the same was not substantiated by any independent canvass of prevailing market prices of the subject lampposts. He prayed for the suspension of the proceedings of the case pending such reinvestigation. The Sandiganbayan treated Braza's motion as his motion for reconsideration of its August 14, 2008 Resolution.

On November 13, 2008, Braza filed a manifestation[9] to make of record that he was maintaining his previous plea of "not guilty" without any condition.

During the proceedings held on November 3, 2008, the Sandiganbayan reconsidered its August 14, 2008 resolution and directed a reinvestigation of the case.[10] According to the anti-graft court, the allegations to the effect that no independent canvass was conducted and that the charge of overpricing was based on falsified documents were serious reasons enough to merit a reinvestigation of the case. The Sandiganbayan said that it could be reasonably inferred from the July 30, 2008 Order of the Ombudsman in OMB-V-C-07-0124-C that the latter would not object to the conduct of a reinvestigation of all the cases against the accused.

Braza filed his Manifestation,[11] dated February 2, 2009, informing the Sandiganbayan of his intention to abandon his

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[7] *Id.* at 60.

[8] *Id.* at 229-259.

[9] *Id.* at 305.

[10] *Id.* at 307-310.

[11] *Id.* at 317-319.

previous motion for reinvestigation. He opined that the prosecution would merely use the reinvestigation proceedings as a means to engage in a second unbridled fishing expedition to cure the lack of probable cause.

On March 23, 2009, Braza filed a motion[12] in support of the abandonment of reinvestigation with a plea to vacate Information, insisting that the further reinvestigation of the case would only afford the prosecution a second round of preliminary investigation which would be vexatious, oppressive and violative of his constitutional right to a speedy disposition of his case, warranting its dismissal with prejudice.

After concluding its reinvestigation of the case, the OMB-Visayas issued its Resolution,[13] dated May 4, 2009, *(Supplemental Resolution)* which upheld the finding of probable cause but modified the charge from violation of Sec. 3(g) of R.A. No. 3019[14] to violation of Sec. 3(e)[15] of the same law. Accordingly, the prosecution filed its Manifestation and Motion to Admit Amended Information[16] on May 8, 2009.

On July 1, 2009, Braza filed his Comment (to the motion to admit amended information) with Plea for Discharge and/or Dismissal of the Case.[17] He claimed that the first information had been rendered ineffective or had been deemed vacated by

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[12] *Id.* at 321-337.

[13] *Id.* at 357-419.

[14] (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

[15] (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[16] *Rollo*, pp. 342-346.

[17] *Id.* at 420-460.

the issuance of the Supplemental Resolution and, hence, his discharge from the first information was in order. By way of an alternative prayer, Braza sought the dismissal of the case with prejudice claiming that his right to a speedy disposition of the case had been violated and that the Supplemental Resolution failed to cure the fatal infirmities of the January 24, 2008 Resolution since proof to support the allegation of overpricing remained wanting. Braza averred that he could not be arraigned under the second information without violating the constitutional proscription against double jeopardy.

On October 12, 2009, the Sandiganbayan issued the first assailed resolution admitting the Amended Information,[18] dated May 4, 2009, *(second Information)* and denying Braza's plea for dismissal of the criminal case. The Sandiganbayan ruled that Braza would not be placed in double jeopardy should he be arraigned anew under the second information because his previous arraignment was conditional. It continued that even if he was regularly arraigned, double jeopardy would still not set in because the second information charged an offense different from, and which did not include or was necessarily included in, the original offense charged. Lastly, it found that the delay in the reinvestigation proceedings could not be characterized as vexatious, capricious or oppressive and that it could not be attributed to the prosecution. The dispositive portion of the said resolution reads:

> WHEREFORE, premises considered, the *Motion to Admit Attached Amended Information* filed by the prosecution is hereby **GRANTED**. The Amended Information charging all the accused therein with violation of Sec. 3 (e) of R.A. 3019, being the proper offense, is hereby **ADMITTED**.
>
> Consequently, accused Braza's *Alternative Relief for Dismissal* of the Case is hereby **DENIED**.
>
> Let the arraignment of all the accused in the Amended Information be set on November 18, 2009, at 8:30 in the morning.
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> SO ORDERED.[19]

[18] *Id.* at 349-353.

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

On November 6, 2009, Braza moved for reconsideration with alternative motion to quash the information[20] reiterating his arguments that his right against double jeopardy and his right to a speedy disposition of the case were violated warranting the dismissal of the criminal case with prejudice. In the alternative, Braza moved for the quashal of the second information vigorously asserting that the same was fatally defective for failure to allege any actual, specified and quantifiable injury sustained by the government as required by law for indictment under Sec. 3(e) of R.A. 3019, and that the charge of overpricing was unfounded.

On October 22, 2010, the Sandiganbayan issued the second assailed resolution stating, among others, the denial of Braza's Motion to Quash the information. The anti-graft court ruled that the Amended Information was sufficient in substance as to inform the accused of the nature and causes of accusations against them. Further, it held that the specifics sought to be alleged in the Amended Information were evidentiary in nature which could be properly presented during the trial on the merits. The Sandiganbayan also stated that it was possible to establish the fact of overpricing if it would be proven that the contract price was excessive compared to the price for which FABMIK purchased the street lighting facilities from its supplier. Braza was effectively discharged from the first Information upon the filing of the second Information but said discharge was without prejudice to, and would not preclude, his prosecution for violation of Sec. 3(e) of R.A. No. 3019. It added that his right to speedy disposition of the case was not violated inasmuch as the length of time spent for the proceedings was in compliance with the procedural requirements of due process. The Sandiganbayan, however, deemed it proper that a new preliminary investigation be conducted under the new charge. Accordingly, the Sandiganbayan disposed:

> WHEREFORE, in the light of all the foregoing, the separate omnibus motions of accused-movant Radaza and accused-movants Bernido, Manggis and Ojeda, insofar as the sought preliminary investigation is concerned is **GRANTED**.

[20] *Id.* at 481-524.

Accordingly, this case is hereby remanded to the Office of the Ombudsman/Special Prosecutor for preliminary investigation of violation of Section 3(e) of RA 3019. The said office/s are hereby ordered to complete the said preliminary investigation and to submit to the Court the result of the said investigation within sixty (60) days from notice.

However, the Motion for Bill of Particulars of accused-movants Lala, Dindin Alvizo, Fernandez, Bagolor, Galang and Diano, the Motion for Quashal of Information of accused-movants Bernido, Manggis and Ojeda, and accused-movant Braza's Motion to Quash, are hereby DENIED for lack of merit.

SO ORDERED.[21]

ISSUES

Undaunted, Braza filed this petition for *certiorari* ascribing grave abuse of discretion on the Sandiganbayan for issuing the Resolutions, dated October 12, 2009 and October 22, 2010, respectively. Braza raised the following issues:

A) The Sandiganbayan committed grave abuse of discretion in sustaining the withdrawal of the Information in violation of the constitutional guarantee against double jeopardy, the petitioner having entered a valid plea and vigorously objected to any further conduct of reinvestigation and amendment of Information.

B) The Sandiganbayan acted with grave abuse of discretion in allowing the withdrawal and amendment of the Information without prejudice, the proceedings being fraught with flip-flopping, prolonged and vexatious determination of probable cause, thereby violating petitioner's constitutional right to speedy disposition of his case, warranting his discharge with prejudice regardless of the nature of his previous arraignment.

C) The Sandiganbayan acted with grave abuse of discretion in denying the motion to quash Amended Information, there being no allegation of actual, specified, or quantifiable injury sustained by the government as required by law (in cases involving

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

Sec. 3 (e) of RA 3019) with the Reinvestigation Report itself admitting on record that the government has not paid a single centavo for the fully-implemented project.

D) The Sandiganbayan acted with grave abuse of discretion in sustaining the new indictment under Sec. 3(e) of R.A. 3019 without threshing out the fatal infirmities that hounded the previous finding of overpricing – the erroneous reliance on spurious import documents and lack of price canvass to establish prevailing market price – thereby rendering the new Resolution fatally defective.[22]

Essentially, Braza posits that double jeopardy has already set in on the basis of his "not guilty" plea in the first Information and, thus, he can no longer be prosecuted under the second Information. He claims that his arraignment was unconditional because the conditions in the plea were ineffective for not being unmistakable and categorical. He theorizes that the waiver of his constitutional guarantee against double jeopardy was not absolute as the same was qualified by the phrase "as a result of the pending incidents." He argues that even granting that his arraignment was indeed conditional, the same had become simple and regular when he validated and confirmed his plea of "not guilty" by means of a written manifestation which removed any further condition attached to his previous plea.

Braza submits that the prolonged, vexatious and flip-flopping determination of probable cause violated his right to a speedy disposition of the case which would justify the dismissal of the case with prejudice. Further, he assails the sufficiency of the allegation of facts in the second Information for failure to assert any actual and quantifiable injury suffered by the government in relation to the subject transaction. He points out that the admission in the Reinvestigation Report to the effect that the government had not paid a single centavo to FABMIK for the fully implemented project, had rendered as invalid, baseless and frivolous any indictment or prosecution for violation of Sec. 3(e) of R.A. 3019. Braza insists that the Supplemental

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[22] *Id.* at 22.

Resolution of the OMB-Visayas was fatally defective considering that the Ombudsman did not conduct an independent price canvass of the prevailing market price of the subject lampposts and merely relied on the spurious and false BOC documents to support its conclusion of overpricing.

By way of comment,[23] the Office of the Special Prosecutor *(OSP)* retorts that the withdrawal of the first information and the subsequent filing of the second information did not place Braza in double jeopardy or violate his right to speedy disposition of the case. The OSP reasons that Braza waived his right to invoke double jeopardy when he agreed to be conditionally arraigned. It further argues that even granting that the arraignment was unconditional, still double jeopardy would not lie because the charge of violation of Section 3(e) of R.A. 3019 in the second information is a different offense with different elements from that of the charge of violation of Sec. 3(g) in the first Information. The OSP posits that his right to a speedy disposition of the case was not violated as the delay in the proceedings cannot be considered as oppressive, vexatious or capricious. According to the OSP, such delay was precipitated by the many pleadings filed by the accused, including Braza, and was in fact incurred to give all the accused the opportunities to dispute the accusation against them in the interest of fairness and due process.

The OSP also submits that proof of the actual injury suffered by the government and that of overpricing, are superfluous and immaterial for the determination of probable cause because the alleged mode for committing the offense charged in the second Information was by giving any private party unwarranted benefit, advantage or preference. The second Information sufficiently alleges all the elements of the offense for which the accused were indicted.

The Court's Ruling

Simply put, the pivotal issue in this case is whether the Sandiganbayan acted with grave abuse of discretion in denying

[23] *Id.* at 716-747.

Braza's plea for the dismissal of Case No. SB-08-CRM-0275 and his subsequent motion to quash the second Information, particularly on the grounds of double jeopardy, violation of his right to a speedy disposition of the case, and failure of the Information to state every single fact to constitute all the elements of the offense charged.

The petition is devoid of merit.

It is Braza's stance that his constitutional right under the double jeopardy clause bars further proceedings in Case No. SB-08-CRM-0275. He asserts that his arraignment under the first information was simple and unconditional and, thus, an arraignment under the second information would put him in double jeopardy.

The Court is not persuaded. His argument cannot stand scrutiny.

The June 6, 2008 Order[24] of the Sandiganbayan reads:

> This morning, accused Isabelo A. Braza was summoned to arraignment **as a precondition** in authorizing his travel. The arraignment of the accused was **conditional** in the sense that **if the present Information will be amended as a result of the pending incidents herein, he cannot invoke his right against double jeopardy and he shall submit himself to arraignment anew under such Amended Information.** On the other hand, his conditional arraignment shall not prejudice his right to question such Amended Information, if one shall be filed. These conditions were thoroughly explained to the accused and his counsel. After consultation with his counsel, the accused willingly submitted himself to such conditional arraignment.
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> Thereafter, the accused, **with the assistance of counsel**, was arraigned by reading the Information to him in English, a language understood by him. Thereafter, he pleaded Not Guilty to the charge against him. [Emphases supplied]

While it is true that the practice of the Sandiganbayan of conducting "provisional" or "conditional" arraignment of the

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[24] *Id.* at 64.

accused is not specifically sanctioned by the Revised Internal Rules of the Procedure of the Sandiganbayan or by the regular Rules of Procedure, this Court had tangentially recognized such practice in *People v. Espinosa*,[25] provided that the alleged conditions attached to the arraignment should be "unmistakable, express, informed and enlightened." The Court further required that the conditions must be expressly stated in the order disposing of arraignment, otherwise, it should be deemed simple and unconditional.[26]

A careful perusal of the record in the case at bench would reveal that the arraignment of Braza under the first information was conditional in nature as it was a mere accommodation in his favor to enable him to travel abroad without the Sandiganbayan losing its ability to conduct *trial in absentia* in case he would abscond. The Sandiganbayan's June 6, 2008 Order clearly and unequivocally states that the conditions for Braza's arraignment as well as his travel abroad, that is, that if the Information would be amended, he shall waive his constitutional right to be protected against double jeopardy and shall allow himself to be arraigned on the amended information without losing his right to question the same. It appeared that these conditions were duly explained to Braza and his lawyer by the anti-graft court. He was afforded time to confer and consult his lawyer. Thereafter, he voluntarily submitted himself to such conditional arraignment and entered a plea of "not guilty" to the offense of violation of Sec. 3(g) of R.A. No. 3019.

Verily, the relinquishment of his right to invoke double jeopardy had been convincingly laid out. Such waiver was clear, categorical and intelligent. It may not be amiss to state that on the day of said arraignment, one of the incidents pending for the consideration of the Sandiganbayan was an omnibus motion for determination of probable cause and for quashal of information

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[25] 456 Phil. 507 (2003).

[26] *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 288.

or for reinvestigation filed by accused Radaza. Accordingly, there was a real possibility that the first information would be amended if said motion was granted. Although the omnibus motion was initially denied, it was subsequently granted upon motion for reconsideration, and a reinvestigation was ordered to be conducted in the criminal case.

Having given his conformity and accepted the conditional arraignment and its legal consequences, Braza is now estopped from assailing its conditional nature just to conveniently avoid being arraigned and prosecuted of the new charge under the second information. Besides, in consonance with the ruling in *Cabo v. Sandiganbayan,*[27] this Court cannot now allow Braza to renege and turn his back on the above conditions on the mere pretext that he affirmed his conditional arraignment through a pleading denominated as Manifestation filed before the Sandiganbayan on November 13, 2008. After all, there is no showing that the anti-graft court had acted on, much less noted, his written manifestation.

Assuming, in *gratia argumenti*, that there was a valid and unconditional plea, Braza cannot plausibly rely on the principle of double jeopardy to avoid arraignment under the second information because the offense charged therein is different and not included in the offense charged under the first information. The right against double jeopardy is enshrined in Section 21 of Article III of the Constitution, which reads:

> No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

This constitutionally mandated right is procedurally buttressed by Section 17 of Rule 117[28] of the Revised Rules of Criminal

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[27] 524 Phil. 575, 584 (2006)

[28] Sec. 7, Rule 117. Former conviction or acquittal; double jeopardy. - When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of

Procedure. To substantiate a claim for double jeopardy, the accused has the burden of demonstrating the following requisites: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as in the first.[29] As to the first requisite, the first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment, (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.[30] The test for the third element is whether one offense is identical with the other or is an attempt to commit it or a frustration thereof; or whether the second offense includes or is necessarily included in the offense charged in the first information.

Braza, however, contends that double jeopardy would still attach even if the first information charged an offense different from that charged in the second information since both charges arose from the same transaction or set of facts. Relying on the antiquated ruling of *People v. Del Carmen,*[31] Braza claims that an accused should be shielded against being prosecuted for several offenses made out from a single act.

It appears that Braza has obviously lost sight, if he is not altogether aware, of the ruling in *Suero v. People*[32] where it

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competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

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[29] *Dimayacyac v. Court of Appeals,* G.R. No. 136264, May 28, 2004, 430 SCRA 121, 129.

[30] *Pacoy v. Cajigal*, G.R. No. 157472, September 28, 2007, 534 SCRA 338, 352.

[31] 88 Phil. 51, 53 (1951).

[32] 490 Phil.760, 771 (2005).

was held that the same criminal act may give rise to two or more separate and distinct offenses; and that no double jeopardy attaches as long as there is variance between the elements of the two offenses charged. The doctrine of double jeopardy is a revered constitutional safeguard against exposing the accused from the risk of being prosecuted twice for the same offense, and not a different one.

There is simply no double jeopardy when the subsequent information charges another and different offense, although arising from the same act or set of acts.[33] Prosecution for the same act is not prohibited. What is forbidden is the prosecution for the same offense.

In the case at bench, there is no dispute that the two charges stemmed from the same transaction. A comparison of the elements of violation of Sec. 3(g) of R.A. No. 3019 and those of violation of Sec. 3(e) of the same law, however, will disclose that there is neither identity nor exclusive inclusion between the two offenses. For conviction of violation of Sec. 3(g), the prosecution must establish the following elements:

1. The offender is a public officer;
2. He entered into a contract or transaction in behalf of the government; and
3. The contract or transaction is manifestly and grossly disadvantageous to the government.[34]

On the other hand, an accused may be held criminally liable of violation of Section 3(e) of R.A. No. 3019, provided that the following elements are present:

1. The accused must be a public officer discharging administrative, judicial or official functions;

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[33] *People v. Deunida*, G.R. Nos. 105199-200, March 28, 1994, 231 SCRA 520, 530.

[34] *Ingco v. Sandiganbayan*, 338 Phil. 1061, 1072 (1997); *Dans, Jr. v. People*, 349 Phil. 434, 460 (1998).

2. The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and

3. His action caused undue injury to any party, including the government or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[35]

Although violation of Sec. 3(g) of R.A. No. 3019 and violation of Sec. 3(e) of the same law share a common element, the accused being a public officer, the latter is not inclusive of the former. The essential elements of each are not included among or do not form part of those enumerated in the other**.** For double jeopardy to exist, the elements of one offense should ideally encompass or include those of the other. What the rule on double jeopardy prohibits refers to identity of elements in the two offenses.[36]

Next, Braza contends that the long delay that characterized the proceedings for the determination of probable cause has resulted in the transgression of his constitutional right to a speedy disposition of the case. According to him, the proceedings have unquestionably been marred with vexatious, capricious and oppressive delay meriting the dismissal of Case No. SB-08-CRM-0275. Braza claims that it took the OMB more than two (2) years to charge him and his co-accused with violation of Section 3(e) in the second information.

The petitioner's contention is untenable.

Section 16, Article III of the Constitution declares in no uncertain terms that "[A]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." The right to a speedy disposition of a case is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when

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[35] *People v. Atienza,* G.R. No. 171671, June 18, 2012.

[36] *People v. Reyes*, G.R. Nos. 101127-31, November 18, 1993, 228 SCRA 13, 17.

unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.[37] The constitutional guarantee to a speedy disposition of cases is a relative or flexible concept.[38] It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.[39]

In *Dela Peña v. Sandiganbayan,*[40] the Court laid down certain guidelines to determine whether the right to a speedy disposition has been violated, as follows:

> The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

Using the foregoing yardstick, the Court finds that Braza's right to speedy disposition of the case has not been infringed.

Record shows that the complaint against Braza and twenty-three (23) other respondents was filed in January 2007 before the PACPO-Visayas. After the extensive inquiries and data-gathering, the PACPO-Visayas came out with an evaluation report on March 23, 2007 concluding that the installed lampposts and lighting facilities were highly overpriced.[41] PACPO-Visayas

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[37] *Perez v. People*, G.R. No. 164763, February 12, 2008, 544 SCRA 532, 558, citing *Gonzales v. Sandiganbayan,* 276 Phil. 323, 333-334 (1991).

[38] *Enriquez v. Office of the Ombudsman*, G.R. Nos. 174902-06, February 15, 2008, 545 SCRA 618, 626.

[39] *Caballero v. Alfonso, Jr.,* 237 Phil. 154, 163 (1987).

[40] 412 Phil. 921, 929 (2001).

[41] *Rollo*, p. 167.

recommended that the respondents be charged with violation of Section 3(e) of R.A. No. 3019. Thereafter, the investigatory process was set in motion before the OMB-Visayas where the respondents filed their respective counter-affidavits and submitted voluminous documentary evidence to refute the allegations against them. Owing to the fact that the controversy involved several transactions and varying modes of participation by the 24 respondents and that their respective responsibilities had to be established, the OMB-Visayas resolved the complaint only on January 24, 2008 with the recommendation that the respondents be indicted for violation of Section 3(g) of R.A. 3019. The Court notes that Braza never decried the time spent for the preliminary investigation. There was no showing either that there were unreasonable delays in the proceedings or that the case was kept in idle slumber.

After the filing of the information, the succeeding events appeared to be part of a valid and regular course of the judicial proceedings not attended by capricious, oppressive and vexatious delays. On November 3, 2008, Sandiganbayan ordered the reinvestigation of the case upon motion of accused Radaza, petitioner Braza and other accused DPWH officials. In the course of the reinvestigation, the OMB-Visayas furnished the respondents with the additional documents/papers it secured, especially the Commission on Audit Report, for their verification, comment and submission of countervailing evidence.[42] Thereafter, the OMB-Visayas issued its Supplemental Resolution, dated May 4, 2009, finding probable cause against the accused for violation of Section 3(e) of R.A. 3019.

Indeed, the delay can hardly be considered as "vexatious, capricious and oppressive." The complexity of the factual and legal issues, the number of persons charged, the various pleadings filed, and the volume of documents submitted, prevent this Court from yielding to the petitioner's claim of violation of his right to a speedy disposition of his case. Rather, it appears that Braza and the other accused were merely afforded sufficient

[42] *Id.* at 387.

opportunities to ventilate their respective defenses in the interest of justice, due process and fair investigation. The re-investigation may have inadvertently contributed to the further delay of the proceedings but this process cannot be dispensed with because it was done for the protection of the rights of the accused. Albeit the conduct of investigation may hold back the progress of the case, the same was essential so that the rights of the accused will not be compromised or sacrificed at the altar of expediency.[43] The bare allegation that it took the OMB more than two (2) years to terminate the investigation and file the necessary information would not suffice.[44] As earlier stated, mere mathematical reckoning of the time spent for the investigation is not a sufficient basis to conclude that there was arbitrary and inordinate delay.

The delay in the determination of probable cause in this case should not be cause for an unfettered abdication by the anti-graft court of its duty to try and determine the controversy in Case No. SB-08-CRM-0275. The protection under the right to a speedy disposition of cases should not operate to deprive the government of its inherent prerogative in prosecuting criminal cases.

Finally, Braza challenges the sufficiency of the allegations in the second information because there is no indication of any actual and quantifiable injury suffered by the government. He then argues that the facts under the second information are inadequate to support a valid indictment for violation of Section 3(e) of R.A. No. 3019.

The petitioner's simple syllogism must fail.

Section 3 (e) of R.A. No. 3019 states:

Sec. 3. Corrupt practices of public officers — In addition to acts or omission of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

[43] *Matalam v. The Second Division of the Sandiganbayan*, 495 Phil. 664, 679-680 (2005).

[44] *Ty-Dazo v. Sandiganbayan*, 424 Phil. 945, 952 (2002).

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In a catena of cases, this Court has held that there are two (2) ways by which a public official violates Section 3(e) of R.A. No. 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference.[45] The accused may be charged under either mode or under both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019.[46] In other words, the presence of one would suffice for conviction.

It must be emphasized that Braza was indicted for violation of Section 3(e) of R.A. No. 3019 under the second mode. "To be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative and judicial functions."[47] The element of damage is not required for violation of Section 3(e) under the second mode.[48]

In the case at bench, the second information alleged, in substance, that accused public officers and employees, discharging official or administrative function, together with Braza, confederated and conspired to give FABMIK unwarranted benefit

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[45] *Velasco v. Sandiganbayan*, 492 Phil. 669, 677 (2005); *Constantino v. Sandiganbayan*, G.R. Nos. 140656 & 154482, September 13, 2007, 533 SCRA 205, 221.

[46] *Cabrera v. Sandiganbayan*, 484 Phil. 350, 360 (2004).

[47] *Ambil, Jr. v. Sandiganbayan*, G.R. No. 175457, July 6, 2011, 653 SCRA 576, 602.

[48] *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010, 614 SCRA 670, 681.

or preference by awarding to it Contract I.D. No. 06H00050 through manifest partiality or evident bad faith, without the conduct of a public bidding and compliance with the requirement for qualification contrary to the provisions of R.A. No. 9184 or the Government Procurement Reform Act. Settled is the rule that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. No. 3019.[49] Considering that all the elements of the offense of violation of Sec. 3(e) were alleged in the second information, the Court finds the same to be sufficient in form and substance to sustain a conviction.

At any rate, the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.[50] It is not proper, therefore, to resolve the issue right at the outset without the benefit of a full-blown trial. This issue requires a fuller ventilation and examination.

All told, this Court finds that the Sandiganbayan did not commit grave abuse of discretion amounting to lack or excess of jurisdiction, much less did it gravely err, in denying Braza's motion to quash the information/dismiss Case No. SB-08-CRM-0275. This ruling, however, is without prejudice to the actual merits of this criminal case as may be shown during the trial before the court *a quo.*

WHEREFORE, the petition for *certiorari* is *DENIED*. The Sandiganbayan is hereby *DIRECTED* to dispose of Case No. SB-08-CRM-0275 with reasonable dispatch.

SO ORDERED.

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

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[49] *Go. v. Fifth Division, Sandiganbayan*, G.R. No. 172602, April 13, 2007, 521 SCRA 270, 287.

[50] *Andres v. Cuevas*, 499 Phil. 36, 49-50 (2005).

[*] Designated additional member in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated February 18, 2013.

SECOND DIVISION

[G.R. No. 198338. February 20, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **P/SUPT. ARTEMIO E. LAMSEN, PO2 ANTHONY D. ABULENCIA and SPO1 WILFREDO L. RAMOS,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; CREDIBILITY; THE TRIAL COURT'S ASSESSMENT IS ENTITLED TO GREAT WEIGHT AND SOMETIMES EVEN FINALITY; RATIONALE.— Well-settled is the rule that the trial court's assessment of the credibility of the witnesses is entitled to great weight, sometimes even with finality, considering that it was the trial judge who personally heard such witnesses, observed their demeanor, and the manner in which they testified during trial. Thus, where there is no showing that the trial judge overlooked or misinterpreted some material facts or that it gravely abused its discretion, then the Court shall not disturb the assessment of the facts and credibility of the witnesses by the trial court. x x x Considering the absence of either a mistake in the appreciation of material facts or grave abuse of discretion on the part of the trial judge who had the opportunity to directly observe the eyewitnesses and ascertain their credibility, there is no reason to disturb the court *a quo*'s findings, which the CA affirmed.

2. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT TO PRODUCE CONVICTION BEYOND REASONABLE DOUBT.— Circumstantial evidence is defined as that evidence that indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established. It is sufficient for conviction if: [a] there is more than one (1) circumstance; [b] the facts from which the inferences are derived are proven; and [c] the combination of all the circumstances is such as to produce a conviction beyond

reasonable doubt. To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proved must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with the accused's innocence.

3. CRIMINAL LAW; REVISED PENAL CODE; CONSPIRACY; WHEN ESTABLISHED.— It is settled that direct proof is not essential to establish conspiracy as it may be inferred from the collective acts of the accused before, during and after the commission of the crime. It can be presumed from and proven by acts of the accused themselves when the said acts point to a joint purpose, design, concerted action, and community of interests. As correctly found by the court *a quo* and affirmed by the CA, the events surrounding the commission of the crime would readily establish conspiracy among the accused-appellants in committing robbery with homicide. Thus, they were correctly convicted of the aforementioned crime.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Carlos M. Taminaya for private complainant.
Bautista & Limbos Law Office for PO2 Anthony Abulencia.
Josefino G. De Guzman for SPO1 Wilfredo Ramos.
Defensor Lantion Villamor & Tolentino Law Offices for P/Supt. Artemio E. Lamsen.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal assailing the February 28, 2011 Decision[1] and June 28, 2011 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03468 finding accused-appellants P/Supt. Artemio E. Lamsen (Lamsen), PO2 Anthony D. Abulencia (Abulencia), and SPO1 Wilfredo L. Ramos (Ramos) guilty beyond reasonable doubt of the felony of Robbery with Homicide.[3]

The Facts

On February 19, 2001, PCI Bank Manager Fernando Sy (Sy), together with his security guards, Arturo Mariado (Mariado) and Jolly Ferrer (Ferrer), went to Malasiqui, Pangasinan using Sy's owner-type jeep to collect cash deposits in the amount of ₱2,707,400.77 from their clients. On their way back to their office in San Carlos City, a white Toyota car overtook the jeep. The car's occupants then fired at Sy and his companions. Thereafter, a green Lancer car, which was coming from San Carlos City, made a U-turn, chased and sideswiped the jeep, with its passengers also firing at Sy and his companions. This resulted in the jeep going off the road and hitting two (2) concrete posts. Sy and Mariado succumbed to gunshot wounds, while Ferrer got away unscathed as he jumped out of the jeep during the shooting. The malefactors then took the bag containing the cash deposits and immediately fled towards the direction of San Carlos City.[4]

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[1] *Rollo*, pp. 2-33. Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Andres B. Reyes, Jr. and Jane Aurora C. Lantion, concurring.

[2] Records, pp. 790-795.

[3] *Rollo,* p. 2-3.

[4] *Id.* at 6.

After investigation, Lamsen, Abulencia, Ramos, and four (4) John Does, were charged in an Information dated March 1, 2001 for the aforesaid crime.[5] Accused-appellants pleaded "not guilty" then, individually filed their respective petitions for bail.[6]

Opposing the petitions for bail, the prosecution presented four (4) eyewitnesses, namely John Delos Santos (Delos Santos), Arnel Reyes (Reyes), Esteban Mercado (Mercado), and Domingo Marcelo (Marcelo). The prosecution likewise presented two (2) investigators, namely P/Supt. Alejandro Valerio (Valerio) and NBI Agent Diogenes Gallang (Gallang).[7]

Delos Santos, Reyes, Mercado, and Marcelo gave their respective accounts as to what transpired, identifying Lamsen, Abulencia, and Ramos in the process.[8] For their part, Valerio testified, among others, that Abulencia admitted that he was driving the green car subjected to a flash alarm and that Lamsen was with him at the time.[9] On the other hand, Gallang testified that the dents and streaks of paint found on Sy's jeep matched the dents and scratches found on the green and white car, respectively owned by Abulencia and Ramos.[10]

In an Order[11] dated June 25, 2002, the Regional Trial Court (court *a quo*) granted Abulencia's petition for bail, while denying Lamsen's and Ramos' respective petitions.[12] It found that the testimonies of eyewitnesses Delos Santos, Reyes and Mercado, aside from positively identifying Lamsen and Ramos, were candid, straightforward, and categorical.[13] However, it found that

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

[6] *Id.* at 4.

[7] *Id.*

[8] *Id.* at 12-19; records, pp. 167-172.

[9] Records, p. 164-165.

[10] *Id.* at 165-167.

[11] *Id.* at 450-456. Penned by Judge Salvador P. Vedaña.

[12] *Id.* at 456.

[13] *Id.* at 452.

Marcelo's testimony, the one positively identifying Abulencia as one of the perpetrators, is incredible because it is absurd, inconsistent, unnatural, and has strong indication of fabrication and concoction.[14]

At the trial, the parties stipulated on the fact of Mariado's death, the sufferings of his widow, and moral damages in connection thereto, in the amount of ₱150,000.00.[15]

Aside from adopting the testimonies of its witnesses during the hearing of accused-appellants' respective petitions for bail, the prosecution presented additional witnesses, namely:[16] [a] Dr. Isaias Delos Santos (not related to eyewitness John Delos Santos), Rural Health Physician of San Carlos City, on the autopsy reports of Sy and Mariado;[17] [b] Veronica Ravancho, manager of Equitable PCI Bank, San Carlos City Branch, on the bank's losses due to the robbery;[18] and [c] Dolores Sy, widow of Sy, on the actual damages and loss of earning capacity arising from her husband's death.[19]

Accused-appellant Ramos interposed the defense of alibi,[20] presenting his testimony,[21] along with the testimonies of his co-workers at the Lingayen Traffic Management Office, namely Corazon Genuino,[22] Roberto Villanueva,[23] and PO2 Eduardo Mabutas,[24] to substantiate such defense.

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[14] *Id.* at 452-456.

[15] *Id.* at 174.

[16] *Rollo*, p. 5.

[17] Records, pp. 172-173.

[18] *Id.* at 173.

[19] *Id.* at 174.

[20] *Id.*

[21] *Id.* at 177-179.

[22] *Id.* at 175.

[23] *Id.* at 175-176.

[24] *Id.* at 176-177.

On the other hand, both Lamsen and Abulencia raised the defense of denial.[25] In support of their defense, they presented their respective testimonies[26] as well as the testimonies of Cayetano dela Vega,[27] Atty. Salvador Imus,[28] Vilma Soriano,[29] and P/Sr. Inspector Jimmy Agtarap.[30]

The RTC Ruling

In its Decision[31] dated May 7, 2008, the court *a quo* found accused-appellants guilty beyond reasonable doubt of the crime of robbery with homicide, sentencing them to suffer the penalty of *reclusion perpetua*, and holding them jointly and severally liable to pay: [a] the heirs of victim Fernando Sy ₱267,500.00 as actual damages, ₱4,968,320.10 as loss of earning capacity, ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱50,000.00 as attorney's fees; [b] the heirs of victim Arturo Mariado the amount of ₱150,000.00 as stipulated damages; [c] Equitable PCI Bank the amount of ₱2,707,400.77 as the amount taken during the robbery; and [d] costs of suit.[32]

In convicting accused-appellants, the court *a quo* found that the crime of robbery with homicide was indeed committed[33] and that the collective testimonies of four (4) eyewitnesses who gave almost identical accounts clearly pointed to accused-appellants as the perpetrators of the crime.[34] Since the accused-

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[25] *Id.* at 174-175.

[26] *Id* at 181-186.

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

[28] *Id.* at 180.

[29] *Id.* at 181.

[30] *Id.* at 186-187.

[31] *Id.* at 162-197. Penned by Judge Anthony O. Sison.

[32] *Id.* at 196-197.

[33] *Id.* at 187.

[34] *Id.* at 188-193.

appellants did not present any evidence which may ascribe improper motive for the eyewitnesses to perjure themselves, the court *a quo* gave full faith and credit to their respective testimonies.[35]

Further, the court *a quo* found that the manner by which accused-appellants committed the crime reveals a community of criminal design; thus, conspiracy exists and there is no need to determine the individual participation of each of them.[36]

Aggrieved, accused-appellants filed their respective notices of appeal,[37] mainly challenging the finding that accused-appellants perpetrated the crime.[38]

The CA Ruling

In its Decision[39] dated February 28, 2011, the CA affirmed the court *a quo*'s judgment of conviction, with modifications reducing the award of actual damages in favor of Fernando Sy's heirs to ₱100,000.00 and deleting the awards of temperate damages and attorney's fees.[40]

Although the CA conceded that there were inconsistencies in the eyewitnesses' testimonies, they jibe on material points and the slight clashing of statements neither affects the veracity nor the credibility of such testimonies as a whole. It even opined that such slight contradictions even serve to strengthen the eyewitnesses' testimonies.[41] As such, the eyewitnesses' testimonies positively asserting the active participation of Lamsen and Ramos to the crime were given credence.[42]

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[35] *Id.* at 194.

[36] *Id.* at 195.

[37] *Id.* at 42-45.

[38] *Rollo*, p. 12.

[39] *Id.* at 2-33.

[40] *Id.* at 33.

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

[42] *Id.* at 26.

As for Abulencia, his participation in the commission of the crime may be proved by circumstantial evidence, considering the admission of Abulencia and Lamsen that they were together that fateful afternoon in the car owned and driven by Abulencia which was positively identified as the vehicle used in perpetuating the crime.[43]

Accused-appellants filed their respective motions for reconsideration[44] which were denied in the CA's Resolution[45] dated June 28, 2011. Hence, accused-appellants elevated the matter to the Court via their respective notices of appeal.[46]

The Issue

The sole issue to be resolved is whether or not accused-appellants P/Supt. Artemio E. Lamsen, PO2 Anthony D. Abulencia, and SPO1 Wilfredo L. Ramos are guilty of the crime robbery with homicide.

Ruling of the Court

The appeal is without merit.

A. The eyewitnesses positively identified accused-appellants Lamsen and Ramos as active participants to the crime.

Well-settled is the rule that the trial court's assessment of the credibility of the witnesses is entitled to great weight, sometimes even with finality, considering that it was the trial judge who personally heard such witnesses, observed their demeanor, and the manner in which they testified during trial. Thus, where there is no showing that the trial judge overlooked or

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

[44] Records, pp. 709-739 (Lamsen), 740-748 (Abulencia), 750-758 (Ramos).

[45] *Id.* at 790-795.

[46] *Id.* at 803-804 (Lamsen and Abulencia), 805-806 (Ramos).

misinterpreted some material facts or that it gravely abused its discretion, then the Court shall not disturb the assessment of the facts and credibility of the witnesses by the trial court.[47]

Contrary to Lamsen's and Ramos' contentions in their respective briefs,[48] as early as the court *a quo*'s Order dated June 25, 2002[49] denying their respective petitions for bail, the trial judge already gave weight and credence to the testimonies of eyewitnesses Delos Santos, Reyes, and Mercado positively identifying Lamsen and Ramos as active participants to the crime as their testimonies were candid, straightforward, and categorical.[50] Moreover, the CA reiterated such findings when it decided on the matter on appeal,[51] explaining that while there were indeed inconsistencies in the eyewitnesses' testimonies, they are only with respect to minor, collateral or incidental matters which do not impair the weight of their unified testimony to the prominent facts.[52]

Considering the absence of either a mistake in the appreciation of material facts or grave abuse of discretion on the part of the trial judge who had the opportunity to directly observe the eyewitnesses and ascertain their credibility, there is no reason to disturb the court *a quo*'s findings, which the CA affirmed.

B. There is enough circumstantial evidence to prove that accused-appellant Abulencia participated in the commission of the crime.

Circumstantial evidence is defined as that evidence that indirectly proves a fact in issue through an inference which the

[47] *People v. Bautista*, G.R. No. 191266, June 6, 2011, 650 SCRA 689, 700, citing *People v. Gabrino*, G.R. No. 189981, March 9, 2011, 645 SCRA 187, 193-195.

[48] *Rollo,* pp. 57-107 (Lamsen), 172-200 (Ramos).

[49] Records, p. 450-456.

[50] *Id.* at 452.

[51] *Rollo,* pp. 20-26.

[52] *Id.*

fact-finder draws from the evidence established.[53] It is sufficient for conviction if: [a] there is more than one (1) circumstance; [b] the facts from which the inferences are derived are proven; and [c] the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[54]

To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proved must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with the accused's innocence.[55]

Contrary to Abulencia's contention in his brief,[56] there are numerous circumstances sufficient to prove his participation in the crime, *to wit*: [a] it was established that Lamsen was an active participant to the crime; [b] Lamsen and Abulencia both admitted they were together in the vicinity of the crime scene when it happened;[57] [c] his car with plate number PEW 781 was subjected to a flash alarm in connection with the crime;[58] [d] Abulencia admitted he was driving his car when the flash alarm was raised;[59] and [e] the dents and bluish green streaks

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[53] *People v. Matito*, G.R. No. 144405, February 24, 2004, 423 SCRA 617, 626.

[54] Section 4, Rule 133, Rules of Court.

[55] *People v. Lopez*, G.R. No. 176354, August 3, 2010, 676 SCRA 485, 496, citing *Aoas v. People*, G.R. No. 155339, March 3, 2008, 547 SCRA 311, 318.

[56] *Rollo,* pp. 125-171.

[57] Records, pp. 181-186.

[58] *Id.* at 164.

[59] *Id.*

of paint found on Sy's jeep matched the dents and scratches found on Abulencia's car.[60]

The combination of the aforementioned circumstances forms an unbroken chain which irrefragably points to Abulencia as among the perpetrators of the crime.

C. The manner by which the crime was perpetrated shows conspiracy among the accused-appellants.

It is settled that direct proof is not essential to establish conspiracy as it may be inferred from the collective acts of the accused before, during and after the commission of the crime. It can be presumed from and proven by acts of the accused themselves when the said acts point to a joint purpose, design, concerted action, and community of interests.[61]

As correctly found by the court *a quo*[62] and affirmed by the CA,[63] the events surrounding the commission of the crime would readily establish conspiracy among the accused-appellants in committing robbery with homicide. Thus, they were correctly convicted of the aforementioned crime.[64]

WHEREFORE, the instant appeal is *DISMISSED*. Accordingly, the February 28, 2011 Decision and June 28, 2011 Resolution of the Court of Appeals in CA-G.R. CR-HC No. 03468 finding accused-appellants P/Supt. Artemio E. Lamsen, PO2 Anthony D. Abulencia, and SPO1 Wilfredo L. Ramos *GUILTY BEYOND REASONABLE DOUBT* of the crime of robbery with homicide are hereby *AFFIRMED in toto*. Accused-appellants are sentenced

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[60] *Id.* at 165-167.

[61] *People v. Buntag*, G.R. No. 123070, April 14, 2004, 427 SCRA 180, 189.

[62] Records, p. 195.

[63] *Rollo*, p. 31.

[64] *Crisostomo v. People*, G.R. No. 171526, September 1, 2010, 629 SCRA 590, 602-603.

to suffer the penalty of *reclusion perpetua*, and to jointly and severally pay: [a] the heirs of victim Fernando Sy the amount of ₱100,000.00 as actual damages, ₱4,968,320.10 as loss of earning capacity, ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages; [b] the heirs of victim Arturo Mariado the amount of ₱150,000.00 as stipulated damages; [c] Equitable PCI Bank the amount of ₱2,707,400.77 as the amount taken during the robbery; and [d] costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 199713. February 20, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARK JOSEPH ZAPUIZ Y RAMOS @ "JAYMART,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.— To hold the accused liable for murder, the prosecution must prove that: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) the killing is neither parricide nor infanticide.

2. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; CREDIBILITY; FACTUAL FINDINGS OF THE TRIAL COURTS ARE ACCORDED RESPECT; RATIONALE.— It is a fundamental rule that factual findings

of the trial courts involving the credibility of witnesses 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. There is no reason herein for the Court to depart from the general rule.

3. ID.; ID.; ID.; ALIBI DESERVES LITTLE WEIGHT IN THE FACE OF A CATEGORICAL AND POSITIVE IDENTIFICATION OF THE ACCUSED; APPLICATION IN CASE AT BAR.— Jaymart's alibi deserves little weight in the face of Edwin's categorical and positive identification of Jaymart as the one who shot Emmanuel, especially as there is no showing that Edwin was harboring any ill motive to falsely testify against Jaymart. Indeed, alibi is an inherently weak defense, and it becomes weaker in the face of the positive identification made by the prosecution witness. It is likewise well-settled that where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit. In addition, for his alibi to prosper, Jaymart must prove that not only was he somewhere else when Emmanuel was killed, but also that it was physically impossible for him to have been at the scene of the crime. "Physical impossibility" refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.

4. CRIMINAL LAW; REVISED PENAL CODE; TREACHERY; PRESENT IN CASE AT BAR.— The law provides that an offender acts with treachery when he "commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." Thus, there is treachery when the attack against an unarmed victim is so sudden that he had clearly no inkling of what the assailant was about

to do. In this case, Emmanuel was sitting down before a table, busily writing, when Jaymart came up behind him and, without warning, shot him at the back of the head. Evidently, Emmanuel, who was unarmed and unaware, had no opportunity at all to defend himself.

5. ID.; CIVIL LIABILITY; AWARD OF DAMAGES, WHEN PROPER; THE INTEREST IMPOSED IS THE LEGAL RATE OF 6% PER ANNUM RECKONED FROM THE FINALITY OF JUDGMENT.— Anent the award of damages, the Court of Appeals properly ordered Jaymart to pay Emmanuel's heirs the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱42,600.00 as actual damages. In crimes, interest may be adjudicated in a proper case as part of the damages in the discretion of the court. The Court considers it proper to now impose interest on the civil indemnities, moral damages, and exemplary damages being awarded in this case, considering that there has been delay in the recovery. The imposition is declared to be also a natural and probable consequence of the acts of the accused complained of. The interest imposed is the legal rate of 6% per annum reckoned from the finality of this judgment.

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.*:

On appeal is the Decision[1] dated March 31, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03983, which affirmed with modification the Decision[2] dated June 3, 2009 of the Regional

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[1] *Rollo*, pp. 2-12; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) with Associate Justices Antonio L. Villamor and Elihu A. Ybañez, concurring.

[2] Records, pp. 129-133; penned by Acting Presiding Judge Teresa P. Soriaso.

Trial Court (RTC), National Capital Judicial Region, Branch 41, Manila, in Criminal Case No. 06-242758, finding accused-appellant Mark Joseph Zapuiz y Ramos *aka* Jaymart (Jaymart) guilty of murder, as defined under Article 248 of the Revised Penal Code.

The Information filed before the RTC on March 23, 2006 charged Jaymart with murder, committed as follows:

> That on or about OCTOBER 10, 2005, in the City of Manila, Philippines, the said accused with intent to kill, evident premeditation and treachery and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon one EMMANUEL RAMIREZ y ARELLANO, by then and there shooting the latter once at the back of his head exiting through his right eye, thereby inflicting upon the said EMMANUEL RAMIREZ y ARELLANO mortal gun shot wound, which was the direct and immediate cause of his death thereafter.[3]

When arraigned on April 17, 2006, Jaymart pleaded not guilty to the crime charged.[4]

During trial, the prosecution presented three witnesses.

Edwin Patente y Salcedo (Edwin)[5] claimed to have personally witnessed the shooting incident. On October 10, 2005, at around seven o'clock in the evening, victim Emmanuel Ramirez y Arellano (Emmanuel) was at his house, located at Area B, Gate 12, Parola, Tondo, Manila, sitting before a table, writing something. Emmanuel's house was well lighted since Avon products were being sold there. Edwin was just standing around on the street, about five steps away from Emmanuel, when Edwin noticed a man, later identified as Jaymart, walk past him. Jaymart positioned himself behind Emmanuel, and poked and fired a gun at the back of Emmanuel's head. Emmanuel fell from where he was sitting. Jaymart walked away still holding the gun. Although frightened, Edwin managed to bring Emmanuel to the Gat

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[3] *Id.* at 1.

[4] *Id.* at 24.

[5] TSN, August 2, 2006.

Bonifacio Hospital where Emmanuel was pronounced dead on arrival. Thereafter, Edwin informed Emmanuel's mother, Olivia A. Ramirez (Olivia), about the shooting. The very next day, on October 11, 2005, Edwin executed a Sworn Statement before Senior Police Officer (SPO) 3 Diomedes A. Labarda (Labarda), in which he averred that the man who shot Emmanuel is called Jaymart and that he would be able to recognize Jaymart if he sees him again. Several months later, on March 16, 2006, police operatives brought Edwin to the Ospital ng Maynila where Edwin was able to identify Jaymart. Jaymart was then confined at said hospital for a gunshot wound. On even date, Edwin executed a second Sworn Statement explicitly identifying Jaymart as the one who shot Emmanuel on October 10, 2005.

Dr. Romeo T. Salen (Dr. Salen),[6] Medico-Legal Officer of the Western Police District (WPD), conducted an autopsy of Emmanuel's body on October 11, 2005, upon the request of the Homicide Section of the Manila Police District (MPD). Dr. Salen prepared and signed Medico-Legal Report No. W-2005-572 containing the following findings:

POSTMORTEM FINDINGS:

Fairly developed, fairly nourished male cadaver in rigor mortis with postmortem lividity at the dependent portions of the body. Conjuntivae are pale. Lips and mailbeds are cyanotic.

HEAD AND TRUNK:

1. Gunshot wound, thru and thru, point of entry, occipital region, measuring 0.4 by 0.3 cm, inferiorly, directed anteriorwards, upwards and medialwards, fracturing the occipital bone, lacerating both cerebral hemispheres of the brain, making a point of exit at the right supra-orbital region, measuring 1 by 0.6 cm, 4 cm. right of the anterior midline.

2. Abrasion, left shoulder, measuring 5 by 4 cm, 10 cm from the posterior midline.

The occipital and frontal bones are fractured with massive subdural and subarachnoidal hemorrhages.

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[6] TSN, November 13, 2006.

The rest of the visceral organs are markedly pale.
Stomach contains small amount of grayish sticky liquid.

CONCLUSION:

Cause of death is Gunshot Wound, Head.[7]

Dr. Salen further described for the RTC the gunshot wound sustained by Emmanuel, to wit:

Q Can you more or less describe this gunshot wound?

A The gunshot wound is a thru [and] thru gunshot wound meaning there is an entry and there is an exit and it is located on the occipital region. The occipital region is the back portion of the head and the bullet goes thru, it is directed anteriorwards or going to the front from the back, it is upward and going to the middle. And the gunshot wound of exit was located at the right eye, just above the eyes and in doing so, the bullet fractured the skull and it lacerates both cerebral hemispheres of the brain and it cause[d] severe bleeding on the cranial cavity, sir.[8]

Dr. Salen additionally testified that the barrel of the gun was fired at Emmanuel's back, about two or more feet away from the gunshot entry wound as there was no tattooing (unburnt gunpowder) on said wound. During his cross-examination, Dr. Salen stated that given the trajectory of the bullet, it was possible that the person who fired the gun was in a lower position or that the victim was in an elevated position.

SPO3 Labarda[9] of the Crimes Against Persons Section of the MPD narrated that Emmanuel's mother, Olivia, filed a complaint for murder at their office on October 10, 2005. SPO3 Labarda took the Sworn Statement of eyewitness Edwin the following day, on October 11, 2005, during which, Edwin identified a certain Jaymart as the gunman. Despite follow-up investigation,

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[7] Records, p. 14.

[8] TSN, November 13, 2006, pp. 9-10.

[9] TSN, March 22, 2007.

the police failed to locate Jaymart. On March 16, 2006, a confidential agent informed the police that Jaymart was confined at the Ospital ng Maynila for a gunshot wound. A police team, which included SPO3 Labarda, fetched and brought Edwin to the Ospital ng Maynila, wherein Edwin positively identified Jaymart as the person who shot Emmanuel. The police team arrested Jaymart after informing him of his constitutional rights. Jaymart was then subjected to inquest investigation.

Olivia's testimony on the civil aspect of the crime was dispensed with after the parties voluntarily stipulated that Emmanuel's heirs incurred expenses amounting to ₱42,600.00 for Emmanuel's wake and burial. [10]

For its part, the defense presented as sole witness accused-appellant Jaymart himself.

According to Jaymart, Emmanuel was his friend (*kabarkada*). On October 10, 2005, he was with his parents selling hairpins and combs in front of KP Tower in Divisoria, Manila beginning 7:00 a.m. until he went home at around 9:00 p.m. Once home, Jaymart was informed by Kagawad Teddy Cinco that police officers went to Jaymart's house. The police officers were accompanied by Emmanuel's sister who identified Jaymart as the suspect in the shooting of Emmanuel. Jaymart maintained that he did not know anything about Emmanuel's shooting. Jaymart also claimed that he did not leave home and was just around the area from October 2005 to March 2006. On March 12, 2006, Jaymart was shot by a certain Roger, Emmanuel's friend, who blamed Jaymart for Emmanuel's death. Jaymart was confined at the Ospital ng Maynila for about a week due to the gunshot wound on the right portion of his body, below his chest. While Jaymart was sleeping on the hospital bed, he was handcuffed by police officers and placed under arrest. Jaymart was then guarded by police officers from said date until he was discharged on March 17, 2006. After his discharge from the hospital, Jaymart was detained at the police station

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[10] TSN, September 10, 2007, pp. 3-5.

along U.N. Avenue, Manila. Jaymart averred that he was forced by the police officers to admit to the shooting of Emmanuel. Jaymart was transferred to the Manila City Jail on April 19, 2006.[11] During his cross-examination, Jaymart admitted that Divisoria (where he purportedly was on October 10, 2005) was only five minutes away by tricycle from Parola (where Emmanuel was shot).

The RTC promulgated its Decision on June 3, 2009, giving full faith and credit to the testimony of the eyewitness, Edwin, who positively identified Jaymart as the one who shot the victim, Emmanuel. Given the presence of the qualifying circumstance of treachery, the RTC convicted Jaymart of murder, thus:

> WHEREFORE, in view of all the foregoing, the Court finds accused **MARK JOSEPH ZAPUIZ y RAMOS @ JAYMART GUILTY** beyond reasonable doubt of the crime of **Murder**, the qualifying circumstance of treachery having attended the killing, and hereby sentences him to suffer the penalty of Reclusion Perpetua.
>
> Accused is ordered to indemnify the heirs of the victim in the amount of ₱50,000.00, to further pay them the additional sum of ₱50,000.00 as moral damages and ₱42,600.00 as actual damages.
>
> Costs against the accused.[12]

Upon appeal, the Court of Appeals affirmed the foregoing RTC judgment, only modifying the damages awarded to Emmanuel's heirs. The dispositive portion of the Decision dated March 31, 2011 of the appellate court reads:

> WHEREFORE, in view of the foregoing, the Decision rendered by the RTC on June 3, 2009, finding appellant guilty beyond reasonable doubt of murder and ordering the payment of civil indemnity and actual and moral damages to the heirs of the victim, is **AFFIRMED with modifications** that civil indemnity is increased to Php75,000.00 and exemplary damages in the amount of Php30,000.00 is further awarded.[13]

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[11] TSN, September 3, 2008.

[12] Records, p. 133.

[13] *Rollo*, p. 11.

Hence, the present appeal.

Both Jaymart and the People (represented by the Office of the Solicitor General) did not file any supplemental brief as there was no new issue to discuss before the Court. Jaymart raises the same assignment of errors earlier passed upon by the Court of Appeals, *viz*:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT BASED ON THE UNRELIABLE TESTIMONY OF ALLEGED PROSECUTION EYE-WITNESS EDWIN PATENTE.

III

THE COURT *A QUO* GRAVELY ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF TREACHERY DESPITE THE DEARTH OF EVIDENCE PROVING THE SAME.[14]

Jaymart asserts that his guilt has not been proven beyond reasonable doubt. He argues that Edwin's testimony is inconsistent with the physical evidence, particularly, the location of Emmanuel's wounds. Edwin testified that Jaymart shot Emmanuel at the back of the head while Emmanuel was sitting down, writing something; yet Dr. Salen reported that the trajectory of the bullet was upward so that the gunman, when he fired the fatal shot, must have been in a position lower than Emmanuel.

The Court is not persuaded.

Article 248 of the Revised Penal Code, as amended, provides:

Art. 248. *Murder.* — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder

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[14] CA *rollo*, pp. 44-45.

and shall be punished by *reclusion perpetua*, to death if committed with any of the following circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity[.]

To hold the accused liable for murder, the prosecution must prove that: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) the killing is neither parricide nor infanticide.[15] All elements were established beyond reasonable doubt by the prosecution in the present case.

First, it is undisputed that Emmanuel died from a gunshot wound sustained on October 10, 2005.

Second, Jaymart was positively identified by eyewitness Edwin as the one who shot and killed Emmanuel. Although Jaymart attempts to attack Edwin's credibility, it is not lost upon the Court that both the RTC and the Court of Appeals gave full faith and credence to Edwin's testimony. It is a fundamental rule that factual findings of the trial courts involving the credibility of witnesses 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] There is no reason herein for the Court to depart from the general rule.

As the RTC and the Court of Appeals observed, Edwin was positive and steadfast in his identification of Jaymart as the

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[15] *People v. Medice and Dollendo*, G.R. No. 181701, January 18, 2012, 663 SCRA 334, 342.

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

man who shot and killed Emmanuel. Edwin clearly saw Jaymart shoot Emmanuel at the back of the head because the *locus criminis* was well lighted and Edwin was just a few steps away from both Jaymart and Emmanuel at the time of the shooting. Edwin also had an opportunity to take a good look at Jaymart when Jaymart passed by him before the shooting.

Edwin's testimony was actually not in conflict with Dr. Salen's autopsy report. The upward trajectory of the bullet was logically explained by the OSG as follows:

> In the case at bar, it must be noted that the victim was sitting while he was writing something on the table. What accused-appellant failed to consider was that when a person writes while seated, his head is naturally bowing down. Consequently, the path of the bullet, that is — entering from the back portion of the head and exiting on top of the right eye, will take an upward trajectory. Thus, contrary to the argument advanced by accused-appellant, that the assailant must have positioned himself lower than his victim, the posture of the victim's head caused the upward trajectory of the bullet.[17]

Jaymart's alibi deserves little weight in the face of Edwin's categorical and positive identification of Jaymart as the one who shot Emmanuel, especially as there is no showing that Edwin was harboring any ill motive to falsely testify against Jaymart. Indeed, alibi is an inherently weak defense, and it becomes weaker in the face of the positive identification made by the prosecution witness.[18] It is likewise well-settled that where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[19]

In addition, for his alibi to prosper, Jaymart must prove that not only was he somewhere else when Emmanuel was killed,

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[17] CA *rollo*, p. 72.

[18] *People v. Bromo,* 376 Phil. 877, 897 (1999).

[19] *Velasco v. People,* 518 Phil. 780, 797 (2006).

but also that it was physically impossible for him to have been at the scene of the crime. "Physical impossibility" refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.[20] Although Jaymart claimed that he was in Divisoria from 7:00 a.m. to 9:00 p.m. on October 10, 2005, Jaymart himself admitted that it would only take a five-minute tricycle ride to get from Divisoria to Parola, where Emmanuel was shot.[21]

Moreover, Jaymart's alibi was uncorroborated. Jaymart's mother, father, or any of the other vendors at Divisoria could have vouched for his presence in Divisoria at the time Emmanuel was shot, but other than Jaymart himself, no one else took the witness stand for the defense. Jaymart's bare assertions cannot prevail over the positive testimony of the prosecution's principal witness, Edwin. Between Jaymart's self-serving testimony and Edwin's positive identification of Jaymart as the gunman, the latter deserves greater credence.[22]

Third, the killing of Emmanuel was attended by treachery. The law provides that an offender acts with treachery when he "commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." Thus, there is treachery when the attack against an unarmed victim is so sudden that he had clearly no inkling of what the assailant was about to do.[23] In this case, Emmanuel was sitting down before a table, busily writing, when Jaymart came up

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[20] *People v. Anticamara*, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 510-511.

[21] TSN, September 2, 2008, p. 19.

[22] *People v. Iligan*, 369 Phil. 1005, 1036 (1999).

[23] *People v. Medice and Dollendo*, *supra* note 15 at 343.

behind him and, without warning, shot him at the back of the head. Evidently, Emmanuel, who was unarmed and unaware, had no opportunity at all to defend himself.

And finally, the killing of Emmanuel constitutes neither parricide nor infanticide.

All told, the prosecution proved beyond reasonable doubt that Jaymart was responsible for the murder of Emmanuel.

Anent the award of damages, the Court of Appeals properly ordered Jaymart to pay Emmanuel's heirs the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages,[24] and ₱42,600.00 as actual damages. In crimes, interest may be adjudicated in a proper case as part of the damages in the discretion of the court. The Court considers it proper to now impose interest on the civil indemnities, moral damages, and exemplary damages being awarded in this case, considering that there has been delay in the recovery. The imposition is declared to be also a natural and probable consequence of the acts of the accused complained of. The interest imposed is the legal rate of 6% per annum reckoned from the finality of this judgment.[25]

WHEREFORE, the appeal is *DENIED*. The Decision dated March 31, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03983 is *AFFIRMED with the MODIFICATION* that Mark Joseph Zapuiz y Ramos *aka* Jaymart is further *ORDERED* to pay to the heirs of Emmanuel Ramirez y Arellano interest on all amounts awarded as damages at the legal rate of six percent per annum from finality of this judgment until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

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[24] *People v. Malicdem*, G.R. No. 184601, November 12, 2012; *People v. Laurio*, September 13, 2012.

[25] *People v. Taguibuya*, G.R. No. 180497, October 5, 2011, 658 SCRA 685, 694.

[*] Per Raffle dated February 20, 2013.

THIRD DIVISION

[G.R. Nos. 164155 & 175543. February 25, 2013]

FORT BONIFACIO DEVELOPMENT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

TAXATION; NATIONAL INTERNAL REVENUE CODE, AS AMENDED; DOCUMENTARY STAMP TAX (DST); DST IS BY NATURE AN EXCISE TAX; EXEMPTION FROM PAYMENT THEREOF, SUSTAINED IN CASE AT BAR.— DST is by nature, an excise tax since it is levied on the exercise by persons of privileges conferred by law. These privileges may cover the creation, modification or termination of contractual relationships by executing specific documents like deeds of sale, mortgages, pledges, trust and issuance of shares of stock. The sale of Fort Bonifacio land was not a privilege but an obligation imposed by law which was to sell lands in order to fulfill a public purpose. To charge DST on a transaction which was basically a compliance with a legislative mandate would go against its very nature as an excise tax. Besides, it is clear from Section 8 of R.A . 7227 that the capital of BCDA, which shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, was not intended to be diminished by the payment of DST. x x x Had FBDC paid the amount on February 8, 1995 when it was supposed to be due, such payment would have resulted in diminishing the proceeds of the sale that the Republic received and turned over to BCDA to capitalize it. The above-quoted provision of Section 8 clearly exempted the proceeds of the sale of the Fort Bonifacio land from all forms of taxes, including DST.

APPEARANCES OF COUNSEL

Estelito P. Mendoza for petitioner.
The Solicitor General for respondent.

D E C I S I O N

ABAD, *J.*:

These cases are concerned with the imposition of an assessment for unpaid documentary stamp tax (DST) allegedly due on the Government's sale of the military land in Fort Bonifacio to Fort Bonifacio Development Corporation (FBDC), then a wholly-owned government corporation.

The Facts and the Case

In 1992 Congress enacted Republic Act (R.A.) 7227 creating the Bases Conversion Development Authority (BCDA) for the purpose of raising funds through the sale to private investors of military camps located in bustling Metro Manila. To do this, on February 3, 1995 the BCDA established the FBDC for the purpose of enabling it to develop a 440-hectare area in Fort Bonifacio, Taguig City, for mixed residential, commercial, business, institutional, recreational, tourism, and other purposes. At the time of its incorporation, FBDC was a wholly-owned subsidiary of BCDA.

As part of the scheme that would enable BCDA to raise funds through FBDC,[1] on February 7, 1995 the Republic of the Philippines transferred by land grant to FBDC, through Special Patent 3596, a 214-hectare land in Fort Bonifacio. FBDC in turn executed a Promissory Note for ₱71.2 billion plus in favor of the Republic. The Republic for its part assigned the promissory note to BCDA which assigned it back to FBDC as full and complete payment of BCDA's subscription to FBDC's authorized capital stock.

Further, on February 8, 1995 the Republic executed a Deed of Absolute Sale with Quitclaim in favor of FBDC covering the same 214-hectare land also for ₱71.2 billion. Based on this deed, on February 19, 1995 the Register of Deeds issued Original

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[1] REPUBLIC ACT 7227, Section 8.

Certificate of Title SP-001 in favor of FBDC, replacing Special Patent 3596. On February 24, 1995, within the same month of the issuance of the Special Patent and the execution of the deed of absolute sale, Congress enacted R.A. 7917, declaring exempt from all forms of taxes the proceeds of the Government sale of the Fort Bonifacio land. Subsequently, fulfilling its task of raising funds for specified government projects, BCDA sold at public bidding 55% of its shares in FBDC to private investors, retaining ownership of the remaining 45%.

More than three years later or on September 15, 1998 respondent Commissioner of Internal Revenue issued a Letter of Authority, providing for the examination of FBDC's books and other accounting records covering all its internal revenue liabilities for the 1995 taxable year, the year it came into being. On December 10, 1999 the Commissioner issued a Final Assessment Notice to FBDC for deficiency documentary stamp tax of ₱1,068,412,560.00 based on the Republic's 1995 sale to it of the Fort Bonifacio land.

FBDC protested the assessment. On January 6, 2000 it wrote respondent Commissioner a letter, invoking R.A. 7917, which exempted the proceeds of the sale of the Fort Bonifacio land from all forms of taxes. When respondent Commissioner failed to act on FBDC's request for tax exemption despite the lapse of the 180-day period,[2] FBDC filed a petition for review[3] before the Court of Tax Appeals (CTA) contesting the deficiency assessment.

On March 5, 2003 the CTA rendered a decision denying FBDC's petition and affirming the Commissioner's DST assessment. The CTA treated the Republic's issuance of the Special Patent separate and distinct from the Deed of Absolute Sale that it executed. The former, said the CTA, was tax exempt but the latter was not. Still, the Commissioner filed a motion for partial reconsideration of the decision on the ground that

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[2] As provided for in Section 228 of the National Internal Revenue Code.

[3] Docketed as CTA Case 6149.

the CTA failed to impose a 25% surcharge and a 20% delinquency interest on top of the unpaid DST.

For its part, FBDC filed a petition for review[4] of the CTA decision before the Court of Appeals (CA) alleging that the CTA erred in affirming the imposition of the assessment. On August 14, 2003, while that petition for review was pending, the CTA issued a resolution modifying its March 5, 2003 decision and imposed on FBDC a 20% delinquency interest on the ₱1,068,412,560.00 DST, computed from January 26, 2000 until full payment. From this resolution, FBDC filed a separate petition for review[5] before the CA questioning the imposition of the 20% delinquency interest.

The CA first affirmed the March 5, 2003 CTA decision. Subsequently, it also affirmed the August 14, 2003 CTA resolution. The CA held that FBDC was not exempt from the payment of DST in connection with the execution of the deed of sale covering the Fort Bonifacio land. The CA, in the subsequent decision also held that the CTA properly imposed the 20% delinquency interest. The CA decisions prompted FBDC to file these consolidated petitions.

During the pendency of these petitions or on December 17, 2004 the FBDC filed a manifestation and motion informing the Court that the disputed assessment had already been paid through a Special Allotment Release Order issued by the Department of Budget and Management (DBM) to BCDA for ₱1,189,121,947.00. The amount "covers the payment of documentary stamp taxes, transfer fees, 5% withholding tax and registration fees relative to the sale of [a] portion of Fort Bonifacio," chargeable against the Military Camps Sale Proceeds Fund.

Commenting on the manifestation, the Commissioner claimed that the payment was illegal since it breached the scope of the tax exemption provided in Section 8 of R.A. 7917 and since BCDA paid the tax for the benefit of FBDC, a private corporation.

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[4] Docketed as CA-G.R. SP 76017.

[5] Docketed as CA-G.R. SP 79010.

The Issues Presented

These consolidated cases essentially present two issues:

1. Whether or not the CA erred in ruling that FBDC was liable for the payment of the DST and a 20% delinquency interest on the Deed of Absolute Sale of the 214-hectare Fort Bonifacio land that the Republic executed in FBDC's favor; and

2. Whether or not the case is already moot and academic by the

fact of payment of the DST assessment by BCDA.

The Rulings of the Court

The CTA ruled that, while the Special Patent that the Republic issued to FBDC in consideration of ₱71.2 billion plus was exempt from the payment of DST, the Deed of Absolute Sale that the Republic subsequently executed in FBDC's favor covering the same land is not.

Section 196 of the NIRC, as amended by Republic Act 7660, provides:

> Sec. 196. *Stamp tax on deeds of sale and conveyance of real property*. — On all conveyances, deeds, instruments, or writings, **other than grants, patents, or original certificates of adjudication issued by the Government,** whereby any lands, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax at the following rates: x x x. (Emphasis supplied)

But the two documents—the Special Patent and the Deed of Absolute Sale—covered the Republic's conveyance to FBDC of the same Fort Bonifacio land for the same price that the FBDC paid but once. It is one transaction, twice documented.

On February 7, 1995 the Republic through the President, issued Special Patent 3596 to FBDC pursuant to an Act of

Congress or R.A. 7227. That legislative act removed the public character of the Fort Bonifacio land and allowed the President to cede ownership of the same to FBDC, then a wholly-owned government corporation under the BCDA, for the price of ₱71.2 billion plus, covered by a negotiable promissory note. The Republic could not just spend or use the money it received from the sale without authority from Congress. In this case, the basis for appropriation is found also in R.A. 7227 which earmarked the proceeds of the sale of the Fort Bonifacio land for use in capitalizing the BCDA. Section 6 of R.A. 7227 thus provides:

> Section 6. *Capitalization*. — The Conversion Authority [BCDA] shall have an authorized capital of One hundred billion pesos (₱100,000,000,000) **which may be fully subscribed by the Republic of the Philippines and shall either be paid up from the proceeds of the sales of its land assets as provided for in Section 8 of this Act** or by transferring to the Conversion Authority properties valued in such amount. (Emphasis supplied)

At the time the sale subject of this case was entered into, FBDC was a wholly-owned subsidiary of the BCDA pursuant to Section 16[6] of R.A. 7227. Notably, the Republic sold the Fort Bonifacio land to FBDC and the latter paid for it with a promissory note. When the Republic in turn assigned that promissory note to BCDA, not only did it comply with its obligation under the above provision to capitalize BCDA from the proceeds of the sales of its land assets but it also enabled the latter to fully and completely pay for its subscription to FBDC's authorized capital stock. Consequently, to tax the proceeds of that sale would be to tax an appropriation made by law, a power that the Commissioner of Internal Revenue does not have.

The Republic's subsequent execution of a Deed of Absolute Sale cannot be regarded as a separate transaction subject to the payment of DST. The Republic's sale of the land to FBDC

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[6] Section 16. *Subsidiaries.* – The Conversion Authority shall have the power to form, establish, organize and maintain a subsidiary corporation or corporations. x x x

under the Special Patent was a complete and valid sale that conveyed ownership of the land to the buyer.[7] Notably, FBDC paid for the land with a negotiable promissory note. Indeed, paragraph 4 of the Deed of Absolute Sale acknowledges the absolute and irrevocable nature of the sale made under the special patent. Thus, the pertinent portion of paragraph 4 states:

> 4. To implement the transfer and registration of the Subject Property in the name of the Buyer [FBDC], the Seller [Republic] **has issued** or shall hereafter cause to be issued, **a Special Patent which will absolutely and irrevocably grant and convey the legal and beneficial title to the Subject Property to and in favor of the Buyer**. x x x. (Emphasis supplied)

Clearly, in acknowledging that the Republic "has issued x x x a Special Patent which will absolutely and irrevocably grant and convey" the legal title over the land to FBDC, the Republic in effect admitted that the Deed of Absolute Sale was only a formality, not a vehicle for conveying ownership, that it thought essential for the issuance of an Original Certificate of Title (OCT) covering the land. The issuance of the OCT lent itself to unrestricted commercial use that helped attain the law's objective of raising through the BCDA and its subsidiaries the funds needed for specified government projects.

DST is by nature, an excise tax since it is levied on the exercise by persons of privileges conferred by law. These privileges may cover the creation, modification or termination of contractual relationships by executing specific documents like deeds of sale, mortgages, pledges, trust and issuance of shares of stock.[8] The sale of Fort Bonifacio land was not a privilege but an obligation imposed by law which was to sell lands in order to fulfill a

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[7] Under Section 103 of Presidential Decree 1529 (Property Registration Decree), the patent from the Government issued to the grantee shall operate as a contract between them and as evidence of authority for the Register of Deeds to cause registration of the land.

[8] *Philippine Home Assurance Corporation v. Court of Appeals*, 361 Phil. 368, 372-373 (1999).

public purpose. To charge DST on a transaction which was basically a compliance with a legislative mandate would go against its very nature as an excise tax.

Besides, it is clear from Section 8 of R.A. 7227 that the capital of BCDA, which shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, was not intended to be diminished by the payment of DST. Section 8 states:

> SEC. 8. *Funding Scheme*. — **The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nichols) Air Base,** namely: x x x
>
> x x x x x x x x x
>
> The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government properties: *Provided*, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. **However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines.** The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. **The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be used for the following purposes with their corresponding percent shares of proceeds**: x x x (Emphasis supplied)

Had FBDC paid the amount on February 8, 1995 when it was supposed to be due, such payment would have resulted in diminishing the proceeds of the sale that the Republic received and turned over to BCDA to capitalize it. The above-quoted

provision of Section 8 clearly exempted the proceeds of the sale of the Fort Bonifacio land from all forms of taxes, including DST.

As it developed, while this case was pending before this Court, the BCDA paid the DST assessment for the benefit of FBDC through a government release of funds from the national treasury, chargeable against the Military Camps Sale Proceeds Fund. Clearly, by allowing such payment, the government acknowledges that it made the private investors who submitted bids to acquire 55% of the capital stock of FBDC believe that the proceeds of the government's sale of the land that capitalized FBDC was exempt from all forms of taxes as the law provides. Indeed, the government warranted under the Deed of Absolute Sale it executed in FBDC's favor that "[T]here are no x x x taxes due and owing on or in respect of the subject property or the transfer thereof in favor of the buyer."

With the Court's above ruling, it would be useless to resolve the further issue of whether or not the case has been rendered moot and academic by BCDA's payment of the DST assessment.

WHEREFORE, the Court *GRANTS* the consolidated petitions and **REVERSES** and **SETS ASIDE** the Decisions of the Court of Appeals in CA-G.R. SP 76017 and CA-G.R. SP 79010 dated June 11, 2004 and November 27, 2006, respectively, and *DECLARES VOID* Assessment ST-DST-95-0131-99 of respondent Commissioner of Internal Revenue.

SO ORDERED.

Velasco, Jr. (Chairperson), Del Castillo,[*] *Mendoza,* and *Leonen, JJ.,* concur.

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[*] Designated additional member, in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated November 26, 2012.

THIRD DIVISION

[G.R. No. 173489. February 25, 2013]

ALILEM CREDIT COOPERATIVE, INC., now known as ALILEM MULTIPURPOSE COOPERATIVE, INC., *petitioner, vs.* **SALVADOR M. BANDIOLA, JR.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; VIOLATION OF PERSONNEL POLICY, AS A GROUND; WHEN PROPER; CASE AT BAR.— Contrary to respondent's claim, with the amendment of the Personnel Policy, petitioner did not create a new ground for the termination of employment to make sure that respondent is removed from his position. The quoted ground under the old policy is similar to that provided for in the new policy. The enumeration containing the specific act of "illicit marital affairs" is not an additional ground, but an example of an act that brings discredit to the cooperative. It is merely an interpretation of what petitioner considers as such. It is, thus, clear from the foregoing that engaging in extra-marital affairs is a ground for termination of employment not only under the new but even under the old Personnel Policy of petitioner. The effectivity of the policy as to respondent cannot, therefore, be questioned. To be sure, an employer is free to regulate all aspects of employment. It may make reasonable rules and regulations for the government of its employees which become part of the contract of employment provided they are made known to the employee. In the event of a violation, an employee may be validly terminated from employment on the ground that an employer cannot rationally be expected to retain the employment of a person whose lack of morals, respect and loyalty to his employer, regard for his employer's rules and application of the dignity and responsibility, has so plainly and completely been bared.

2. ID.; ID.; ID.; TWO WRITTEN NOTICES ARE REQUIRED TO VALIDLY TERMINATE THE SERVICES OF AN EMPLOYEE; PROPERLY OBSERVED IN CASE AT

BAR.— "Before the services of an employee can be validly terminated, the employer must furnish him two written notices: (a) a written notice served on the employee specifying the ground or grounds for termination, and giving the employee reasonable opportunity to explain his side; and (b) 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." The employer must inform the employee of the charges against him and to hear his defenses. A full adversarial proceeding is not necessary as the parties may be heard through pleadings, written explanations, position papers, memorandum or oral argument. In this case, respondent was adequately afforded the opportunity to defend himself and explain the accusation against him. Upon receipt of the complaint, petitioner conducted a preliminary investigation and even created an Ad Hoc Committee to investigate the matter. Respondent was directed to explain either in writing or by a personal confrontation with the Board why he should not be terminated for engaging in illicit affair. Not only did petitioner give him the opportunity but respondent in fact informed petitioner that he opted to present his side orally and did so as promised when he specifically denied such allegations before the AdHoc Committee. Moreover, respondent was also allowed to peruse the investigation report prepared by the Ad Hoc Committee and was advised that he was entitled to assistance of counsel. Afterwhich, hearing was conducted. It was only after thorough investigation and proper notice and hearing to respondent that petitioner decided whether to dismiss the former or not. The decision to terminate respondent from employment was embodied in Board Resolution No. 05, series of 1997 a copy of which was furnished respondent. With this resolution, respondent was adequately notified of petitioner's decision to remove him from his position. Respondent cannot now claim that his right to due process was infringed upon.

APPEARANCES OF COUNSEL

Francisco S. Reyes Law Office for petitioner.
Patrick Henry M. Villanueva for respondent.

D E C I S I O N

PERALTA, ***J.*:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Alilem Credit Cooperative, Inc. against respondent Salvador M. Bandiola, Jr. assailing the Court of Appeals (CA) Decision[1] dated January 16, 2006 and Resolution[2] dated July 5, 2006 in CA-G.R. SP No. 64554.

The case stemmed from the following facts:

Respondent was employed by petitioner as bookkeeper. Petitioner's Board of Directors (the Board) received a letter from a certain Napoleon Gao-ay (Napoleon) reporting the alleged immoral conduct and unbecoming behavior of respondent by having an illicit relationship with Napoleon's sister, Thelma G. Palma (Thelma). This prompted the Board to conduct a preliminary investigation.[3]

During the preliminary investigation, the Board received the following evidence of respondent's alleged extramarital affair:

1. Melanie Gao-ay's (Melanie) sworn statement declaring that sometime in December 1996, respondent slept on the same bed with Thelma in a boarding house in San Fernando, La Union where she (Melanie) and Thelma resided. She personally witnessed the intimacy of respondent and Thelma when they engaged in lovemaking as they slept in one room and openly displayed their affection for each other.[4]
2. Rosita Tegon's (Rosita) sworn statement that on May 23, 1997, she saw Thelma talk to respondent in petitioner's office asking him to accompany her in San Fernando, La Union.[5]

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[1] Penned by Associate Justice Roberto A. Barrios, with Associate Justices Mario L. Guariña III and Santiago Javier Ranada, concurring; *rollo,* pp. 29-37.

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

[3] *Rollo,* pp. 99-100.

[4] *Id.* at 30.

[5] *Id.* at 31.

3. Emma Gao-ay Lubrin's (Emma, Thelma's sister) interview wherein she admitted that she and her family confronted Thelma about the alleged extramarital affair which Thelma allegedly admitted.[6]

4. Napoleon's interview with the Board wherein he claimed that their family tried to convince Thelma to end her extramarital affair with respondent but instead of complying, she in fact lived together with respondent.[7]

The Board decided to form an Ad Hoc Committee to investigate the charges against respondent yielding the following additional evidence:

1. Agustina Boteras' (Agustina) sworn statement that she witnessed a confrontation between Thelma and her sister in the latter's residence concerning the alleged extramarital affair. At that time, respondent's wife was allegedly present who in fact pleaded Thelma to end her relationship with respondent but she supposedly said "No way!"[8]

2. Milagros Villacorte's sworn statement that while she was at the Bethany Hospital in San Fernando, La Union where her husband was confined, respondent approached her and asked her to look for Thelma who was then having her class. When he finally found her, respondent and Thelma met and talked in the hospital premises.[9]

3. Julienne Marie L. Dalangey's certification that on August 9 to 10, 1996, respondent attended a seminar on Internal Control and Systems Design I at the Northern Luzon Federation of Cooperatives and Development Center (NORLU) Pension House in Baguio City, together with a lady companion whom he introduced as his wife. Apparently, the lady was not his wife because at that time, his wife reported for work in the Municipal Hall of Alilem.[10]

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[6] *Id.*

[7] *Id.*

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

[9] *Id.* at 32.

[10] *Id.*

Respondent, on the other hand, denied the accusation against him. He, instead, claimed that the accusation was a result of the insecurity felt by some members of the cooperative and of the Board because of his growing popularity owing to his exemplary record as an employee.[11] Thelma executed an affidavit likewise denying the allegations of extra-marital affair.[12]

Meanwhile, on June 7, 1997, the Board received a petition from about fifty members of the cooperative asking the relief of respondent due to his illicit affair with Thelma.[13]

In its Summary Investigation Report, the Ad Hoc Committee concluded that respondent was involved in an extra-marital affair with Thelma. On July 10, 1997, the Chairman of the Board sent a letter[14] to respondent informing him of the existence of a *prima facie* case against him for "illicit marital affair, an act that brings discredit to the cooperative organization and a cause for termination per AMPC (Alilem Multi-Purpose Cooperative) Personnel Policy. Respondent was directed to appear and be present at the AMPC office for a hearing. He was likewise advised of his right to be assisted by counsel.

On the day of the hearing, respondent requested[15] for postponement on the ground that his lawyer was not available. The request was, however, denied and the hearing proceeded as scheduled.

In a Memorandum[16] dated July 16, 1997, respondent was informed of Board Resolution No. 05, series of 1997[17] embodying the Board's decision to terminate his services as bookkeeper of

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[11] *Id.*

[12] *Id.*

[13] *Id.* at 31.

[14] *Id.* at 85.

[15] Embodied in a letter dated July 12, 1997; *id.* at 86.

[16] *Rollo*, p. 87.

[17] *Id.* at 88-89.

petitioner, effective July 31, 1997, without any compensation or benefit except the unpaid balance of his regular salary for services actually rendered.[18]

Aggrieved, respondent filed a Complaint for Illegal Dismissal against petitioner before the Regional Arbitration Branch of the National Labor Relations Commission (NLRC).[19]

On April 30, 1998, the Labor Arbiter (LA) dismissed[20] respondent's complaint for lack of merit. The LA concluded that respondent had been or might still be carrying on an affair with a married woman. The LA found it unforgiving in the case of a married employee who sleeps with or has illicit relations with another married person for in such case, the employee sullies not only the reputation of his spouse and his family but the reputation as well of the spouse of his paramour and the latter's family.[21] As opposed to respondent's claim that the accusation is a mere fabrication of some of the directors or cooperative members who were allegedly envious of his growing popularity, the LA gave more credence to the testimonies of petitioner's witnesses who were relatives of Thelma and who had no motive to falsely testify because their family reputation was likewise at a risk of being tarnished.[22] The LA, thus, found respondent to have been validly dismissed from employment for violation of the cooperative's Personnel Policy, specifically "the commission of acts that bring discredit to the cooperative organization, especially, but not limited to conviction of any crime, illicit marital affairs, scandalous acts inimical to established and accepted social mores." The LA also found no violation of respondent's right to due process as he was given ample opportunity to defend himself from the accusation against him.[23]

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[18] *Id.* at 88.

[19] *Id.* at 33.

[20] *Id.* at 99-110.

[21] *Id.* at 106.

[22] *Id.* at 106-107.

[23] *Id.* at 108.

On appeal, the NLRC set aside[24] the LA decision and rendered a judgment disposed in this wise:

> WHEREFORE, the appealed Decision of the Executive Labor Arbiter is SET ASIDE. Judgment is hereby rendered:
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> 1. declaring respondent Alilem Credit Cooperative, Inc. (ACCI) also known as Alilem Multi-Purpose Cooperative (AMPC) guilty of illegal dismissal for the reasons above-discussed;
> 2. directing the said respondent to pay complainant Salvador Bandiola, Jr. full backwages computed from the time of (sic) his wages were withheld until finality of this judgment;
> 3. directing, on account of strained relationship between the parties, the above-named respondent to pay complainant, in lieu of reinstatement, separation pay computed at one (1) month pay for every year of service, a fraction of six (6) months to be computed as one (1) whole year; [and]
> 4. directing respondent to pay complainant ten (10%) percent attorney's fees based on the total monetary award.
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> SO ORDERED.[25]

The NLRC found petitioner's Personnel Policy to be of questionable existence and validity because it was unnumbered.[26] It held that even assuming that respondent had an extra-marital affair with a married woman, the latter is not his fellow worker in petitioner's business establishment.[27] It, thus, concluded that respondent's dismissal was not founded on any of the just causes for termination of employment under Article 282 of the Labor Code, as amended.[28] It, likewise, declared that respondent was

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[24] Embodied in a Decision dated June 21, 2000, penned by Commissioner Vicente S.E. Veloso III and concurred in by Commissioner Alberto R. Quimpo; *id.* at 131-156.

[25] *Rollo*, pp. 155-156.

[26] *Id.* at 150.

[27] *Id.* at 152.

[28] *Id.*

not afforded his right to his counsel of choice as his request for postponement was not allowed.[29] Therefore, the NLRC declared respondent's dismissal from employment illegal, entitling him to the payment of backwages, separation pay, and attorney's fees.[30]

Petitioner elevated the matter to the CA, but it failed to obtain a favorable decision. The CA found respondent's dismissal being founded on the serious misconduct he allegedly committed by carrying an illicit relationship with a married woman.[31] While considering said act a serious misconduct, it refused to consider it sufficient to justify respondent's dismissal, because it was not done in the performance of his duties as would make him unfit to continue working for petitioner.[32] Petitioner's motion for reconsideration was likewise denied in the assailed July 5, 2006 resolution.

Unsatisfied, petitioner now comes before the Court in this petition for review on *certiorari* insisting on the validity of respondent's dismissal from employment.

We find merit in the petition.

It is undisputed that respondent was dismissed from employment for engaging in extramarital affairs, a ground for termination of employment stated in petitioner's Personnel Policy. This basis of termination was made known to respondent as early as the first communication made by petitioner. In its June 20, 1997 letter, petitioner directed respondent to explain in writing or personal confrontation why he should not be terminated for violation of Section 4.1.4 of the Personnel Policy.[33] Respondent merely denied the accusation against him[34] and did not question

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[29] *Id.* at 149-150.

[30] *Id.* at 153.

[31] *Id.* at 35.

[32] *Id.* at 36.

[33] *Id.* at 80.

[34] *Id.* at 84.

the basis of such termination. When the LA was called upon to decide the illegal dismissal case, it ruled in favor of petitioner and upheld the basis of such dismissal which is the cited Personnel Policy. The NLRC, however, refused to recognize the existence and validity of petitioner's Personnel Policy on which the ground for termination was embodied.[35]

The existence of the Personnel Policy containing provisions on the grounds for termination of employees was not questioned by respondent. In his position paper, respondent only assailed the effectivity of the policy, as for him as it was amended on the same date as the letter-complaints against him. In other words, he claimed that the policy was amended in order to include therein the ground for his termination to make sure that he is removed from his position.[36]

We do not subscribe to such an argument.

A comparison of petitioner's old and new Personnel Policies attached by respondent himself to his Position Paper shows that under the old policy, one of the grounds for termination of an employee is ***"commission of acts or commission (sic) of duties that bring discredit to the organization,***[37]" while under the new policy, one of the grounds is the "***commission of acts that brings (sic) discredit to the cooperative organization, especially, but not limited to, conviction of any crime, illicit marital affairs, scandalous acts inimical to established and accepted social mores."***[38] Contrary to respondent's claim, with the amendment of the Personnel Policy, petitioner did not create a new ground for the termination of employment to make sure that respondent is removed from his position. The quoted ground under the old policy is similar to that provided for in the new policy. The enumeration containing the specific act of "illicit

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[35] *Id.* at 150.

[36] *Id.* at 69-70.

[37] *Id.* at 90.

[38] *Id.* at 93.

marital affairs" is not an additional ground, but an example of an act that brings discredit to the cooperative. It is merely an interpretation of what petitioner considers as such. It is, thus, clear from the foregoing that engaging in extra-marital affairs is a ground for termination of employment not only under the new but even under the old Personnel Policy of petitioner. The effectivity of the policy as to respondent cannot, therefore, be questioned.

To be sure, an employer is free to regulate all aspects of employment.[39] It may make reasonable rules and regulations for the government of its employees which become part of the contract of employment provided they are made known to the employee.[40] In the event of a violation, an employee may be validly terminated from employment on the ground that an employer cannot rationally be expected to retain the employment of a person whose lack of morals, respect and loyalty to his employer, regard for his employer's rules and application of the dignity and responsibility, has so plainly and completely been bared.[41]

Applying now the above-discussed ground for termination, we now determine whether respondent was properly dismissed from employment. In other words, did petitioner adequately prove that respondent indeed engaged in extra-marital affairs, an act which petitioner considers as would bring discredit to the cooperative?

We answer in the affirmative.

The employer's evidence consists of sworn statements of either relatives or friends of Thelma and respondent. They either had direct personal knowledge of the illicit relationship or revealed circumstances indicating the existence of such relationship. As aptly observed by the LA:

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[39] *Lagatic v. NLRC*, 349 Phil. 172, 179 (1998).

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

[41] *Salavarria v. Letran College*, G.R. No. 110396, September 25, 1998, 296 SCRA 184, 190; 357 Phil. 189, 195 (1998).

x x x Moreover, the credibility of the persons who bore witness against him can hardly be questioned because some of these persons are relatives or friends of either [respondent] or his lover. In particular, it is hard to see how Napoleon Gao-ay, the brother of his lover, Thelma, could have resorted to a lie just to destroy him when the same scandal could also result in tarnishing the reputation of his own family. The motive of Napoleon in bringing the matter to the attention of the Board of Directors, after all, was based on ethical grounds — he wanted a stop to the affair because it was a disgrace to the community.

There is also no reason to doubt the statement of Melanie Gao-ay, the wife of Napoleon, who witnessed the embarrassing "encounter", to borrow the term she used, between [respondent] and Thelma in her own boarding house.[42]

While respondent's act of engaging in extra—marital affairs may be considered personal to him and does not directly affect the performance of his assigned task as bookkeeper, aside from the fact that the act was specifically provided for by petitioner's Personnel Policy as one of the grounds for termination of employment, said act raised concerns to petitioner as the Board received numerous complaints and petitions from the cooperative members themselves asking for the removal of respondent because of his immoral conduct.[43]

The next question is whether procedural due process was observed in the termination of respondent's services. "Before the services of an employee can be validly terminated, the employer must furnish him two written notices: (a) a written notice served on the employee specifying the ground or grounds for termination, and giving the employee reasonable opportunity to explain his side; and (b) 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."[44] The employer must inform the employee of the

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[42] *Rollo*, pp. 106-107.

[43] *Id.* at 101.

[44] *Ventura v. Court of Appeals*, G.R. No. 182570, January 27, 2009, 577 SCRA 83, 91.

charges against him and to hear his defenses. A full adversarial proceeding is not necessary as the parties may be heard through pleadings, written explanations, position papers, memorandum or oral argument.[45]

In this case, respondent was adequately afforded the opportunity to defend himself and explain the accusation against him. Upon receipt of the complaint, petitioner conducted a preliminary investigation and even created an Ad Hoc Committee to investigate the matter. Respondent was directed to explain either in writing or by a personal confrontation with the Board why he should not be terminated for engaging in illicit affair.[46] Not only did petitioner give him the opportunity but respondent in fact informed petitioner that he opted to present his side orally[47] and did so as promised when he specifically denied such allegations before the AdHoc Committee.[48] Moreover, respondent was also allowed to peruse the investigation report prepared by the Ad Hoc Committee and was advised that he was entitled to assistance of counsel.[49] Afterwhich, hearing was conducted. It was only after thorough investigation and proper notice and hearing to respondent that petitioner decided whether to dismiss the former or not. The decision to terminate respondent from employment was embodied in Board Resolution No. 05, series of 1997 a copy of which was furnished respondent.[50] With this resolution, respondent was adequately notified of petitioner's decision to remove him from his position. Respondent cannot now claim that his right to due process was infringed upon.

WHEREFORE, premises considered, the petition is hereby *GRANTED*. The Court of Appeals Decision dated January 16,

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[45] *Id.* at 91-92.

[46] *Rollo*, p. 80.

[47] *Id.* at 83.

[48] *Id.* at 84.

[49] *Id.* at 85.

[50] *Id.* at 88-89.

2006 and Resolution dated July 5, 2006 in CA-G.R. SP No. 64554, are *SET ASIDE*. The Labor Arbiter's Decision dated April 30, 1998 in NLRC Case No. RAB-I-08-1144-97 (IS) dismissing respondent Salvador M. Bandiola, Jr.'s complaint against petitioner Alilem Credit Cooperative, Inc., is *REINSTATED*.

SO ORDERED.

Velasco, Jr.(Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

THIRD DIVISION

[G.R. No. 173987. February 25, 2013]

PADILLA MERCADO, ZULUETA MERCADO, BONIFACIA MERCADO, DAMIAN MERCADO and EMMANUEL MERCADO BASCUG, *petitioners, vs.* **SPOUSES AGUEDO ESPINA and LOURDES ESPINA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ISSUES RAISED FOR THE FIRST TIME ON APPEAL AND NOT RAISED IN THE PROCEEDINGS IN THE LOWER COURT ARE BARRED BY ESTOPPEL; RATIONALE.— It is well established that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic considerations of due process impel the adoption of this rule.

2. ID.; CIVIL PROCEDURE; AMENDED PLEADINGS; AN AMENDED COMPLAINT SUPERSEDES AN ORIGINAL ONE; EFFECT IN CASE AT BAR.— Under Section 8, Rule 10 of the Rules of Court, an amended complaint supersedes an original one. As a consequence, the original complaint is deemed withdrawn and no longer considered part of the record. In the present case, the Amended Complaint is, thus, treated as an entirely new complaint. As such, respondents had every right to move for the dismissal of the said Amended Complaint. Were it not for the filing of the said Motion, respondents would not have been able to file a petition for *certiorari* before the CA which, in turn, rendered the presently assailed judgment in their favor.

3. ID.; ID.; CAUSE OF ACTION; ELEMENTS; FAILURE TO STATE CAUSE OF ACTION AS A GROUND FOR THE DISMISSAL OF COMPLAINT; PRESENT IN CASE AT BAR.— Failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the Rules of Court. A complaint states a cause of action if it avers the existence of the three essential elements of a cause of action, namely: (a) The legal right of the plaintiff; (b) The correlative obligation of the defendant; and (c) The act or omission of the defendant in violation of said legal right. If the allegations in the complaint do not aver the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action. A perusal of the Amended Complaint in the present case would show that there is, indeed, no allegation of any act or omission on the part of respondents which supposedly violated the legal rights of petitioners. Thus, the CA is correct in dismissing the complaint on the ground of failure to state a cause of action.

APPEARANCES OF COUNSEL

Cinco & Bastes Law Office for petitioners.
Baduel Espina and Associates for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed before the Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision[1] and Resolution,[2] dated April 27, 2005 and July 12, 2006, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 84537.

Subject of the instant controversy is a 338 square meter parcel of land located at the Poblacion of the then Municipality of Maasin (now a city), in the Province of Southern Leyte.

On May 8, 2000, herein petitioners filed with the Regional Trial Court (RTC) of Maasin, Southern Leyte, a Complaint for Recovery of Property and Declaration of Nullity of Deed of Sale, Certificate of Title and Damages. The case was docketed as Civil Case No. R-3147.

Petitioners alleged in their Complaint that they are the heirs of the late spouses Santiago and Sofronia Mercado, who were the owners of the subject parcel of land; after the death of Santiago and Sofronia, petitioners inherited the disputed lot, possessing the same as owners; sometime in 1996, herein respondents claimed ownership over the subject parcel of land, alleging that they bought the same from one Josefa Mercado Espina (Josefa) who, in turn, previously bought the same in 1939 from a certain Genivera Mercado Kavanaugh; that Genivera supposedly purchased the same property from one Escolastico Mercado in 1937 who, in turn, allegedly bought it from Santiago Mercado. Petitioners further alleged that in 1962, Josefa, through fraudulent machinations, was able to obtain a title (Original

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[1] Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Arsenio J. Magpale and Sesinando E. Villon, concurring; Annex "A" to Petition, *rollo*, pp. 13-27.

[2] Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Vicente L. Yap and Romeo F. Barza, concurring; Annex "B" to Petition, *rollo*, pp. 28-29.

Certificate of Title No. 35) over the subject property in her name. Asserting that the above-mentioned contracts of sale never happened, petitioners prayed for the declaration of nullity of the deeds of sale between Santiago and Escolastico, Escolastico and Genivera, and between Genivera and Josefa. They prayed that the Transfer Certificate of Title (TCT) in the name of herein respondents be nullified and that petitioners be declared as the owners of the disputed lot. They asked that the court award them actual, moral and exemplary damages, and attorney's fees.

On June 29, 2000, respondents filed a Motion to Dismiss on grounds that the RTC has no jurisdiction over the case due to the failure of the complainant to state the assessed value of the property, that petitioners' cause of action is barred by prescription, laches and indefeasibility of title, and that the complaint does not state sufficient cause of action against respondents who are buyers in good faith.[3]

The RTC denied respondents' Motion to Dismiss. Respondents then filed a motion for reconsideration, but the same was denied by the RTC.

Respondents then filed a special civil action for *certiorari* with the CA assailing the above orders of the RTC.

In its Resolution[4] dated March 13, 2001, the CA denied due course and dismissed respondents' petition for *certiorari*. Respondents filed a motion for reconsideration, but the same was denied by the CA in its Resolution dated October 21, 2003.

Meanwhile, on August 17, 2000, petitioners, by leave of court, filed an Amended Complaint to include the assessed value of the subject property.[5]

On November 21, 2003, respondents filed a Motion to Dismiss Amended Complaint on grounds of prescription, laches, indefeasibility of title and lack of cause of action.[6]

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[3] CA *rollo*, pp. 56-64.

[4] *Rollo*, pp. 40-41.

[5] *Id.* at 30-39.

[6] *Id.* at 42-51.

On February 18, 2004, the RTC issued an Order[7] denying respondents' Motion to Dismiss Amended Complaint. Respondents filed a motion for reconsideration, but the RTC denied it in its Order dated April 19, 2004.[8]

Respondents filed a special civil action for *certiorari* with the CA praying that the February 18, 2004 and April 19, 2004 Orders of the RTC be set aside and petitioners' complaint dismissed.

On April 27, 2005, the CA promulgated its assailed Decision, the dispositive portion of which reads as follows:

> WHEREFORE, the petition is granted. The assailed orders of the Regional Trial Court dated February 18, 2004 and April 19, 2004 must be as they are hereby, SET ASIDE. The COMPLAINT in Civil Case No. R-3147 is DISMISSED. The Regional Trial Court of Maasin City, Branch 25 is hereby **enjoined** from proceeding with the case. No pronouncement as to costs.
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> SO ORDERED.[9]

The CA ruled that respondents' title has become indefeasible and incontrovertible by lapse of time and that petitioners' action is already barred by prescription. The CA also held that since petitioners did not allege that respondents were not buyers in good faith, the latter are presumed to be purchasers in good faith and for value.

Petitioners filed a motion for reconsideration, but the CA denied it in its Resolution[10] dated July 12, 2006.

Hence, the instant petition for review on *certiorari* raising the following issues:

1) Procedurally, whether or not the Court of Appeals erred in giving due course to respondents' second motion to dismiss

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[7] *Id.* at 52-53.

[8] CA *rollo*, pp. 29-30.

[9] *Rollo*, p. 26. (Emphasis in the original)

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

filed on November 21, 2003 on the amended complaint filed on August 16, 2000;

2) Substantively, whether or not the Court of Appeals erred in ordering the Regional Trial Court to dismiss the case and enjoining it from proceeding with the case on the ground of indefeasibility of title, prescription and/or laches.[11]

On the first issue, petitioners contend that respondents' Motion to Dismiss Amended Complaint was filed beyond the period allowed by the Rules of Court. Petitioners also aver that the above Motion to Dismiss Amended Complaint is a circumvention of the Rules of Court, because the matters raised therein are mere reiterations of their first motion to dismiss, which was dismissed by the RTC and, on petition for *certiorari*, was denied due course by the CA.

Anent the second issue, petitioners argue that respondents' ground of indefeasibility of title in their Motion to Dismiss Amended Complaint is not an authorized ground under Rule 16 of the Rules of Court. Petitioners also assert that the other grounds, *i.e.*, good faith, lack of cause of action and prescription, raised by respondents in their motion are not supported by evidence.

The petition lacks merit.

As to the first issue, there is no dispute that the issue of timeliness of respondents' Motion to Dismiss petitioners' Amended Complaint was not raised by petitioners before the RTC. Neither was this issue raised in their Comment to respondents' petition for *certiorari* filed with the CA. It was only in their Motion for Reconsideration of the CA Decision that this matter was raised. It is well established that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel.[12] Points of law, theories, issues, and arguments

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

[12] *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012, 665 SCRA 38, 49-50.

not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal.[13] Basic considerations of due process impel the adoption of this rule.[14]

Moreover, respondent's filing of their Motion to Dismiss Amended Complaint may not be considered as a circumvention of the rules of procedure. Under Section 8, Rule 10 of the Rules of Court, an amended complaint supersedes an original one. As a consequence, the original complaint is deemed withdrawn and no longer considered part of the record.[15] In the present case, the Amended Complaint is, thus, treated as an entirely new complaint. As such, respondents had every right to move for the dismissal of the said Amended Complaint. Were it not for the filing of the said Motion, respondents would not have been able to file a petition for *certiorari* before the CA which, in turn, rendered the presently assailed judgment in their favor.

With respect to the second issue, the CA correctly ruled that petitioners' Amended Complaint failed to state a cause of action. The Court quotes with approval the following disquisition of the appellate court, to wit:

x x x x x x x x x

With particular reference to the petitioners [herein respondents], We observed that there is no allegation at all in respondents' [herein petitioners'] complaint that they [respondents] are buyers or transferees in bad faith or with notice of the alleged defect in the title of their vendor/s with the result that the allegations of said pleading are not sufficient to constitute a cause of action.

While private respondents [petitioners] accused Escolastico Mercado of fraudulent conduct, due to the alleged dubious character of the

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[13] *Ayala Land, Inc. v. Castillo,* G.R. No. 178110, June 15, 2011, 652 SCRA 143, 158; *Sime Darby Pilipinas, Inc. v. Goodyear Philippines, Inc.*, G.R. Nos. 182148 and 183210, June 8, 2011, 651 SCRA 551, 567-568.

[14] *Id.*

[15] *Figuracion v. Libi*, G.R. No. 155688, November 28, 2007, 539 SCRA 50, 63.

document of sale which passed the ownership of Santiago's property to him and that the signature of Santiago was not authentic, **there is no allegation whatsoever as to the fraudulent nature of the succeeding transfers or of the succeeding transferee's knowledge about the irregularity and defect of the first sale. Most importantly, the complaint contains no averment that herein petitioners [respondents] had any knowledge, much less any participation, voluntarily or otherwise, in the alleged irregularity or anomaly of the original sale transaction between Santiago and Escolastico Mercado or in the acquisition/issuance of the OCT No. 35. Neither was there any allegation in the complaint attributing petitioners [respondents] with negligence. Petitioners [Respondents] cannot also be presumed to be negligent.** On the contrary, the revised rules of court provides a disputable presumption in Petitioners' [respondents'] favor to the effect "that a person takes ordinary care of his concerns[“] and that [“]private transactions have been fair and regular.[“] The allegations of the complaint would even lend a conclusion that there is nothing questionable as to the way petitioners[respondents] obtained their title over the property. This is where We denounce the court *a quo's* act of entertaining evidence *aliunde* and supplying the missing facts which should have been alleged to constitute a cause of action.

We have carefully perused the complaint and We find that it is devoid of the following allegations: 1) that Josefa is the mother of petitioners [respondents]; 2) that Genivera Mercado Kavanaugh is an American citizen, and 3) that, petitioners [respondents] are not buyers in good faith. Hence, the court *a quo* clearly committed grave abuse of discretion, when, in denying the motion to dismiss, he made some findings "that petitioners [respondents] are not buyers in good faith because all along they know or they ought to know that the land does not belong to their mother Josefa Espina, and that their mother could not have legally acquired the same from her sister Genivera Kavanaugh, an American citizen who cannot acquire land except by way of hereditary succession." It has been held time and again that "to determine the sufficiency of the cause of action, the respondent court can only consider facts alleged in the complaint — which are deemed hypothetically admitted by defendants — and no other allegations should be considered."

Where the complaint for recovery of ownership and possession of a parcel of land (such as the one at bar) alleges that some of

the defendants bought said land from their co-defendants who had a defective title thereto – but does not allege that the purchasers were purchasers in bad faith or with notice of the defect in the title of their vendors, it is held that the lower court correctly dismissed the complaint against the purchasers for failure to state a cause of action against them.

x x x[16] (Emphasis supplied)

Failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the Rules of Court.[17]

A complaint states a cause of action if it avers the existence of the three essential elements of a cause of action, namely:

(a) The legal right of the plaintiff;
(b) The correlative obligation of the defendant; and
(c) The act or omission of the defendant in violation of said legal right.[18]

If the allegations in the complaint do not aver the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.[19] A perusal of the Amended Complaint in the present case would show that there is, indeed, no allegation of any act or omission on the part of respondents which supposedly violated the legal rights of petitioners. Thus, the CA is correct in dismissing the complaint on the ground of failure to state a cause of action.

Apropos to the foregoing, it bears to note at this stage that the Court likewise agrees with the ruling of the CA that respondents are presumed purchasers in good faith. In holding thus, the CA

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[16] *Rollo*, pp. 20-22.

[17] *Dabuco v. Court of Appeals*, G.R. No. 133775, January 20, 2000, 322 SCRA 853, 857; 379 Phil. 939, 944-945 (2000).

[18] *Macaslang v. Zamora*, G.R. No. 156375, May 30, 2011, 649 SCRA 92, 107.

[19] *Id.*

relied on the settled principle that one who deals with property registered under the Torrens System need not go beyond the same, but only has to rely on the title.[20] In the instant case, there is no dispute that the subject property was already covered by a Torrens title when respondents bought the same. There was no allegation in the Amended Complaint that respondents were not buyers in good faith. More particularly, there was nothing in the said complaint to indicate that respondents were aware of or were participants in the alleged fraud supposedly committed against petitioners' predecessor-in-interest, or that they have notice of any defect in the title of the seller. As the CA correctly noted, from the time that petitioners' predecessor-in-interest was supposedly deprived of ownership of the subject lot through an alleged fraudulent sale, the same had already been sold thrice. Moreover, since the subject property was already covered by a Torrens title at the time that respondents bought the same, the law does not require them to go beyond what appears on the face of the title. The lot has, thus, passed to respondents, who are presumed innocent purchasers for value, in the absence of any allegation to the contrary.

Paragraph 3, Section 53 of Presidential Decree No. 1529 provides:

> In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. x x x

Petitioners' cause of action should, therefore, be directed not against respondents, who are innocent holders for value, but against those whom petitioners alleged to have defrauded them.

Based on the above discussions, the Court no longer finds any need to resolve the other issues raised in the instant petition.

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[20] *Casimiro Development Corporation v. Mateo*, G.R. No. 175485, July 27, 2011, 654 SCRA 676, 689; *Clemente v. Razo*, G.R. No. 151245, March 4, 2005, 452 SCRA 769, 776-777; 493 Phil. 119, 128 (2005).

WHEREFORE, the petition for review on *certiorari* is *DENIED*. The April 27, 2005 Decision and July 12, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 84537 are *AFFIRMED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 178347. February 25, 2013]

SALVACION VILLANUEVA, TEOFILO TREDEZ, DONALD BUNDAC, DANNY CABIGUEN, GREGORIO DELGADO, and BILLY BUNGAR, *petitioners, vs.* **PALAWAN COUNCIL FOR SUSTAINABLE DEVELOPMENT, represented by Executive Director ROMEO DORADO, and PATRICIA LOUISE MINING AND DEVELOPMENT CORPORATION, represented by Engineer FERNANDO ESGUERRA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES; NOT PRESENT IN CASE AT BAR.— The following requisites must concur for a Petition for *Certiorari* to prosper, namely: "(a) The writ is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (b) Such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (c) There is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law." x x x The alleged grounds for the

nullity of the SEP Clearance are its violations of certain provisions of RA 7611 and PCSD Resolution No. 05-250. Clearly, an ordinary action for the nullification of the SEP Clearance is a plain, speedy, and adequate remedy available to the petitioners, which precludes resort to a special civil action. This ordinary action will allow the parties to litigate factual issues, such as petitioners' contention that PLMDC's proposed mining site is in a core zone, it being in a natural forest and a critical watershed, contrary to PCSD's claim that it is in a controlled use zone. *Certiorari* would not have provided the petitioners with such an opportunity because it is limited to questions of jurisdiction and does not resolve factual matters. *Certiorari* does not involve a full-blown trial but is generally restricted to the filing of pleadings (petition, comment, reply, and memoranda), unless the court opts to hear the case. Since an ordinary action is available and in fact appears to be more appropriate, petitioners were wrong to resort to the extraordinary remedy of *certiorari*.

2. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT (RA) NO. 7611 (STRATEGIC ENVIRONMENT PLAN (SEP) FOR PALAWAN ACT); PALAWAN COUNCIL FOR SUSTAINABLE DEVELOPMENT (PCSD); THE ENABLING STATUTE FOR THE CREATION OF PCSD DID NOT CONFER QUASI-JUDICIAL POWERS ON THE SAID ADMINISTRATIVE BODY; SUSTAINED IN CASE AT BAR.— Pursuant to its rule-making authority under RA 7611, the PCSD promulgated the SEP Clearance Guidelines, which require all proposed undertakings in the Palawan province to have an SEP Clearance from PCSD before application for permits, licenses, patents, grants, or concessions with the relevant government agencies. Generally, the PCSD issues the clearance if the ECAN allows the type of proposed activity in the proposed site; it denies the clearance if the ECAN prohibits the type of proposed activity in the proposed site. x x x There must be an enabling statute or legislative act conferring quasi-judicial power upon the administrative body. RA 7611, which created the PCSD, does not confer quasi-judicial powers on the said body: x x x Save possibly for the power to impose penalties under Section 19(8) (which is not involved in PCSD's issuance of an SEP Clearance), the rest of the conferred powers, and the powers necessarily implied from them, do not include

adjudication or a quasi-judicial function. x x x An agency's power to formulate rules for the proper discharge of its functions is always circumscribed by the enabling statute. Otherwise, any agency conferred with rule-making power, may circumvent legislative intent by creating new powers for itself through an administrative order.

3. ID.; ID.; ADJUDICATORY FUNCTIONS OF A GOVERNMENT AGENCY, EXPLAINED; NOT APPLICABLE IN CASE AT BAR.— A government agency performs adjudicatory functions when it renders decisions or awards that determine the rights of adversarial parties, which decisions or awards have the same effect as a judgment of the court. These decisions are binding, such that when they attain finality, they have the effect of *res judicata* that even the courts of justice have to respect. As we have held in one case, "[j]udicial or quasi-judicial function involves the determination of what the law is, and what the legal rights of the contending parties are, with respect to the matter in controversy and, on the basis thereof and the facts obtaining, the adjudication of their respective rights. x x x In issuing an SEP Clearance, the PCSD does not decide the rights and obligations of adverse parties with finality. The SEP Clearance is not even a license or permit. All it does is to allow the project proponent to proceed with its application for permits, licenses, patents, grants, or concessions with the relevant government agencies. The SEP Clearance allows the project proponent to prove the viability of their project, their capacity to prevent environmental damage, and other legal requirements, to the other concerned government agencies. x x x This Court has held that the power to investigate is not the same as adjudication, so long as there is no final determination of the parties' respective rights and obligations. x x x The fact that the PCSD conducts public consultations or hearings does not mean that it is performing quasi-judicial functions. xxx Its purpose is not to adjudicate the rights of contending parties but only to "ascertain the acceptability of the project in the community and to ensure that the interests of all stakeholders are considered," pursuant to RA 7611's policy of "encourag[ing] the involvement of all sectors of society and maximiz[ing] people participation x x x in natural resource management, conservation and protection." On the other hand, the purpose of hearings in judicial bodies is to ascertain the truth of the

parties' claims through an adversarial process. Clearly, the purpose of PCSD's public consultations is not for adversaries to pit their claims against each other.

APPEARANCES OF COUNSEL

Environmental Legal Assistance Center for petitioners.
Zoilo C. Cruzat for PCSD.

D E C I S I O N

DEL CASTILLO, *J.*:

"The writ of *certiorari* is an extraordinary remedy that the Court issues only under closely defined grounds and procedures that litigants and their lawyers must scrupulously observe."[1]

This is a Petition for Review[2] on *Certiorari* of the May 7, 2007 Order[3] of the Regional Trial Court (RTC) of Palawan and Puerto Princesa City, Branch 47, which dismissed petitioners' Petition for *Certiorari* and Mandamus[4] on the ground of lack of jurisdiction. The *fallo* of the assailed Order reads:

> WHEREFORE, premises considered, finding merit in the motion to dismiss, the same is hereby granted. Hence, this case is hereby ordered DISMISSED on the ground of lack of jurisdiction, which dismissal is without prejudice.
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> SO ORDERED.[5]

Background

On June 19, 1992, Republic Act (RA) No. 7611 or the "Strategic Environment Plan (SEP) for Palawan Act" was signed into law.

[1] *Chamber of Real Estate and Builders' Associations, Inc. (CREBA) v. Energy Regulatory Commission (ERC)*, G.R. No. 174697, July 8, 2010, 624 SCRA 556, 574.

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

[3] Records, pp. 493-494; penned by Presiding Judge Jocelyn Sundiang Dilig.

[4] *Id.* at 1-19.

[5] *Id.* at 494.

It called for the establishment of the Environmentally Critical Areas Network (ECAN), which is a "graded system of protection and development control over the whole of Palawan."[6] The ECAN will categorize the terrestrial areas, coastal areas, and tribal lands in Palawan according to the degree of human disruption that these areas can tolerate. *Core zones* (consisting of all types of natural forest, mountain peaks, and habitats of endangered and rare species) are to be strictly protected and maintained free of human disruption,[7] *controlled use areas* allow controlled logging and mining,[8] while *multiple use areas* are open for development.[9] The law vested the task of creating and implementing the ECAN on the Palawan Council for Sustainable Development (PCSD).[10]

Pursuant to its rule-making authority under RA 7611,[11] the PCSD promulgated the SEP Clearance Guidelines,[12] which require all proposed undertakings in the Palawan province to have an SEP Clearance from PCSD before application for permits, licenses, patents, grants, or concessions with the relevant government agencies. Generally, the PCSD issues the clearance if the ECAN allows the type of proposed activity in the proposed site; it denies the clearance if the ECAN prohibits the type of proposed activity in the proposed site.

Factual Antecedents

The controversy in the instant case arose when PCSD issued an SEP Clearance to Patricia Louise Mining and Development Corporation (PLMDC) for its proposed small-scale nickel mining

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[6] REPUBLIC ACT NO. 7611, Sec. 7.

[7] *Id.*, Section 9(1).

[8] *Id.*, Section 9(2)(b).

[9] *Id.*, Section 9(3).

[10] *Id.*, Section 16.

[11] *Id.*, Section 19.

[12] PCSD Administrative Order No. 6, series of 2000.

project to be conducted in a controlled use area in *Barangay* Calategas in the Municipality of Narra, Province of Palawan.

The petitioners, who are farmers and residents of *Barangay* Calategas, sought the recall of the said clearance in their letter[13] to PCSD Chairman, Abraham Kahlil Mitra. The PCSD, through its Executive Director, Romeo B. Dorado, denied their request for lack of basis.[14]

On August 7, 2006, petitioners filed a Petition for *Certiorari* and Mandamus[15] against PCSD and PLMDC with the RTC of Palawan and Puerto Princesa City. They prayed for the nullification of the said SEP Clearance for violating various provisions of RA 7611[16] and PCSD Resolution No. 05-250.[17] They alleged

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[13] Records, pp. 27-30.

[14] *Id.* at 81.

[15] *Id.* at 1-19.

[16] ***SEC. 7. Environmentally Critical Areas Network (ECAN).*** – The SEP shall establish a graded system of protection and development control over the whole of Palawan, including its tribal lands, forest, mines, agricultural areas, settlement areas, small islands mangroves, coral reefs, seagrass beds and the surrounding sea. This shall be known as the Environmentally Critical Areas Network, hereinafter referred to as ECAN, and shall serve as the main strategy of the SEP.

The ECAN shall ensure the following:

x x x x x x x x x

(2) ***Protection of watersheds;*** (Emphasis supplied)

SEC. 9. Terrestrial Component: Management Scheme and Zonation. – The terrestrial component may be further subdivided into smaller management components for a more efficient supervision. These management components, in turn, shall each be further subdivided into the following zones:

(1) **Area of maximum protection or core zone** – This zone shall be fully and strictly protected and maintained free of human disruption. Included here are **all types of natural forest** which include first growth forest, residual forest and edges of intact forest, areas above one thousand (1,000) meters elevation, peaks of mountains or other areas with very steep gradients, and endangered habitats and habitats of endangered and rare species. Exceptions, however, may be granted to traditional uses of tribal communities of these areas for minimal and soft impact gathering of forest species for ceremonial and medicinal purposes.

x x x x (Emphasis supplied)

[17] **Section 10. Allowable Activities.** Activities allowed by R.A. 7611 in the ECAN Terrestrial Zones are the following:

that these provisions prohibit small-scale nickel mining for profit in the proposed site,[18] which, they maintain, is not even a controlled use zone, but actually a core zone.[19]

PLMDC[20] and PCSD sought the dismissal of the Petition on various grounds, including the impropriety of the remedy of *certiorari*. PCSD argued that it did not perform a quasi-judicial function.[21]

The trial court denied the said motions in its Order[22] dated September 20, 2006. It ruled, among others, that *certiorari* is proper to assail PCSD's action. PCSD Administrative Order (AO) No. 6 series of 2000 or the Guidelines in the Implementation of SEP Clearance System states that the PCSD must conduct a public hearing, and study the supporting documents for sufficiency and accuracy, before it decides whether to issue the clearance to the project proponent. The trial court concluded that this procedure is an exercise of a quasi-judicial power.

The trial court denied[23] reconsideration of the above Order.

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(b) Buffer Zone. Certain development endeavors may be subjected to the EIA System and to other laws and rules regulating development projects under this zone, such as but not limited to the following:

x x x x x x x x x

b. **Controlled Use Area:** Strictly controlled mining and logging, **which is not for profit** (i.e. communal forest, CBFM, etc.), almaciga tapping, tourism development, research, grazing and gathering of honey, rattan and other minor forest products may be allowed. (Emphasis supplied) (Resolution Adopting the Revised Guidelines in Implementing the Environmentally Critical Areas Network, The Main Strategy of the Strategic Environment Plan (SEP) for Palawan, Amending PCSD Resolution Nos. 94-44 & 99-144).

[18] Records, p. 14.

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

[20] *Id.* at 295-301.

[21] *Id.* at 277-278.

[22] *Id.* at 400-405.

[23] *Id.* at 459-462.

PLMDC and PCSD again filed Motions to Dismiss but this time on the ground of lack of jurisdiction. They argued that, under Section 4 of Rule 65 of the Rules of Court, only the Court of Appeals [CA] can take cognizance of a Petition for *Certiorari* and Mandamus filed against a quasi-judicial body.[24]

The trial court agreed and issued the assailed Order.[25]

Petitioners appealed directly to this Court.

In their respective memoranda, all the parties submitted that PCSD is exercising quasi-judicial functions.[26] They only diverge on the issue of which court — the CA or the RTC — has the jurisdiction to review the actions of this quasi-judicial body.

Petitioners argue that the RTC has *certiorari* jurisdiction over PCSD because the latter is a quasi-judicial body functioning only within the RTC's territorial jurisdiction.[27] Moreover, the RTC is the proper court following the principle of judicial hierarchy.[28]

On the other hand, respondents argue that, under Section 4 of Rule 65, only the CA can take cognizance of *certiorari* petitions against quasi-judicial bodies.[29]

Our Ruling

The following requisites must concur for a Petition for *Certiorari* to prosper, namely:

"(a) The writ is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions;

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[24] *Id.* at 466-468, 479-480.

[25] *Id.* at 493-494.

[26] *Rollo*, pp. 313, 332-333, 347.

[27] *Id.* at 335.

[28] *Id.* at 330-332.

[29] *Id.* at 297-300, 312, 347-349.

(b) Such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and

(c) There is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law."[30]

In the case at bar, the parties submit that the public respondent PCSD is exercising a quasi-judicial function in its issuance of the SEP clearance based on the procedure it follows under its own AO 6 or Guidelines in the Implementation of SEP Clearance System.[31] This procedure includes reviewing the sufficiency and accuracy of the documents submitted by the project proponent and conducting public hearings or consultations with the affected community.

The Court disagrees with the parties' reasoning and holds that PCSD did not perform a quasi-judicial function that is reviewable by petition for *certiorari*.

There must be an enabling statute or legislative act conferring quasi-judicial power upon the administrative body.[32] RA 7611, which created the PCSD, does not confer quasi-judicial powers on the said body:

SEC. 19. Powers and Functions. — In order to successfully implement the provisions of this Act, the Council is hereby vested with the following powers and functions:

(1) Formulate plans and policies as may be necessary to carry out the provisions of this Act.

(2) Coordinate with the local governments to ensure that the latter's plans, programs and projects are aligned with the plans, programs and policies of the SEP.

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[30] *Yusay v. Court of Appeals,* G.R. No. 156684, April 6, 2011, 647 SCRA 269, 276-277; RULES OF COURT, Rule 65, Section 1.

[31] *Rollo*, pp. 313, 332-333.

[32] *LICOMCEN, Incorporated v. Foundation Specialists, Inc.,* G.R. Nos. 167022 & 169678, April 4, 2011, 647 SCRA 83, 97; *Biraogo v. Philippine Truth Commission of 2010,* G.R. Nos. 192935 & 193036, December 7, 2010, 637 SCRA 78, 161.

(3) Call on any department, bureau, office, agency or instrumentality of the Government, and on private entities and organizations for cooperation and assistance in the performance of its functions.

(4) Arrange, negotiate for, accept donations, grants, gifts, loans, and other fundings from domestic and foreign sources to carry out the activities and purposes of the SEP.

(5) Recommend to the Congress of the Philippines such matters that may require legislation in support of the objectives of the SEP.

(6) Delegate any or all of its powers and functions to its support staff, as hereinafter provided, except those which by provisions of law cannot be delegated;

(7) Establish policies and guidelines for employment on the basis of merit, technical competence and moral character and prescribe a compensation and staffing pattern;

(8) Adopt, amend and rescind such rules and regulations and impose penalties therefor for the effective implementation of the SEP and the other provisions of this Act.

(9) Enforce the provisions of this Act and other existing laws, rules and regulations similar to or complementary with this Act;

(10) Perform related functions which shall promote the development, conservation, management, protection, and utilization of the natural resources of Palawan; and

(11) Perform such other powers and functions as may be necessary in carrying out its functions, powers, and the provisions of this Act.

Save possibly for the power to impose penalties[33] under Section 19(8) (which is not involved in PCSD's issuance of an SEP Clearance), the rest of the conferred powers, and the powers necessarily implied from them, do not include adjudication or a quasi-judicial function.

Instead of reviewing the powers granted by law to PCSD, the trial court found the following procedure outlined in PCSD's AO 6, as supposedly descriptive of an adjudicatory process:

[33] *Pacific Steam Laundry, Inc. v. Laguna Lake Development Authority,* G.R. No. 165299, December 18, 2009, 608 SCRA 442, 458-459.

1. The project proponent submits a brief description of the processes it seeks to undertake and the location and description of the proposed project site.[34]

2. The PCSD staff reviews the sufficiency and accuracy of these documents, and conducts a field validation.[35]

3. The PCSD staff may conduct public consultations or public hearings to determine the acceptability of the project in the community.[36]

4. The evaluation of the project shall be based on the ECAN Zoning of Palawan, ecological sustainability, social acceptability, and economic viability of the project.[37]

5. The staff makes an evaluation report, stating therein his recommended action, for the consideration of the PCSD.[38]

6. The PCSD may issue or deny the SEP clearance.[39]

7. In case of approval, the SEP clearance, together with the evaluation reports, shall be transmitted to the DENR as bases for the latter's subsequent processing of the required permits.[40]

8. In case of denial, the project proponent may seek reconsideration. PCSD's action on the reconsideration is considered final and executory.[41]

9. The DENR will undertake an independent evaluation of the project and shall not in any way be prejudiced by the PCSD's actions.[42]

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[34] PCSD ADMINISTRATIVE ORDER NO. 6, Section 3, series of 2000.

[35] *Id.*, Section 4.

[36] *Id.*, Section 6.

[37] *Id.*, Section 5.

[38] *Id.*, Section 7.

[39] *Id.*, Section 11.

[40] *Id.*

[41] *Id.*

[42] *Id.*, Section 9.

The Court disagrees.

First, PCSD AO 6, cited by the trial court and the parties, cannot confer a quasi-judicial power on PCSD that its enabling statute clearly withheld. An agency's power to formulate rules for the proper discharge of its functions is always circumscribed by the enabling statute.[43] Otherwise, any agency conferred with rule-making power, may circumvent legislative intent by creating new powers for itself through an administrative order.

More importantly, the procedure outlined in PCSD AO 6 does not involve adjudication. A government agency performs adjudicatory functions when it renders decisions or awards that determine the rights of adversarial parties, which decisions or awards have the same effect as a judgment of the court.[44] These decisions are binding, such that when they attain finality, they have the effect of *res judicata* that even the courts of justice have to respect.[45] As we have held in one case,[46] "[j]udicial or quasi-judicial function involves the determination of what the law is, and what the legal rights of the contending parties are, with respect to the matter in controversy and, on the basis thereof and the facts obtaining, the adjudication of their respective rights. In other words, the tribunal, board or officer exercising judicial or quasi-judicial function must be clothed with power and authority to pass judgment or render a decision on the controversy construing and applying the laws to that end."

In issuing an SEP Clearance, the PCSD does not decide the rights and obligations of adverse parties with finality. The SEP Clearance is not even a license or permit. All it does is to allow the project proponent to proceed with its application for permits, licenses, patents, grants, or concessions with the relevant

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[43] *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 155-156 (2003).

[44] *Meralco v. Atilano*, G.R. No. 166758, June 27, 2012.

[45] *Gov. San Luis v. Court of Appeals,* 256 Phil. 1, 14 (1989).

[46] *Doran v. Judge Luczon, Jr.,* 534 Phil. 198, 204-205 (2006).

government agencies. The SEP Clearance allows the project proponent to prove the viability of their project, their capacity to prevent environmental damage, and other legal requirements, to the other concerned government agencies.[47] The SEP Clearance in favor of PLMDC does not declare that the project proponent has an enforceable mining right within the Municipality of Narra; neither does it adjudicate that the concerned citizens of the said municipality have an obligation to respect PLMDC's right to mining. In fact, as seen in Section 5 of AO 6, the PCSD bases its actions, not on the legal rights and obligations of the parties (which is necessary in adjudication), but on policy considerations, such as social acceptability, ecological sustainability, and economic viability of the project.

Further, PCSD's receipt of documents and ascertainment of their sufficiency and accuracy are not indicative of a judicial function. It is, at most, an investigatory function to determine the truth behind the claims of the project proponent. This Court has held that the power to investigate is not the same as adjudication,[48] so long as there is no final determination of the parties' respective rights and obligations.

Lastly, the fact that the PCSD conducts public consultations or hearings does not mean that it is performing quasi-judicial functions. AO 6 defines public hearing/public consultation simply as an "activity undertaken by PCSD to gather facts and thresh out all issues, concerns and apprehensions and at the same time provide the project proponent with the opportunity to present the project to the affected community."[49] Its purpose is not to adjudicate the rights of contending parties but only to "ascertain the acceptability of the project in the community and to ensure

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[47] PCSD ADMINISTRATIVE ORDER NO. 6, Sections 9 and 11, series of 2000.

[48] *Meralco v. Atilano, supra* note 44; *Biraogo v. The Philippine Truth Commission of 2010, supra* note 32 at 161-162; *Cariño v. Commission on Human Rights*, G.R. No. 96681, December 2, 1991, 204 SCRA 483, 492; *Presidential Anti-Dollar Salting Task Force v. Court of Appeals,* 253 Phil. 344, 358-359 (1989).

[49] PCSD ADMINISTRATIVE ORDER NO. 6, Section 2(23), series of 2000.

that the interests of all stakeholders are considered,"[50] pursuant to RA 7611's policy of "encourag[ing] the involvement of all sectors of society and maximiz[ing] people participation x x x in natural resource management, conservation and protection."[51] On the other hand, the purpose of hearings in judicial bodies is to ascertain the truth of the parties' claims through an adversarial process. Clearly, the purpose of PCSD's public consultations is not for adversaries to pit their claims against each other. Since the PCSD's actions cannot be considered quasi-judicial, the same cannot be reviewed via a special civil action for *certiorari*. Where an administrative body or officer does not exercise judicial or quasi-judicial power, *certiorari* does not lie.[52]

A review of the Petition for *Certiorari* reveals another flaw. The alleged grounds for the nullity of the SEP Clearance are its violations of certain provisions of RA 7611 and PCSD Resolution No. 05-250. Clearly, an ordinary action for the nullification of the SEP Clearance is a plain, speedy, and adequate remedy available to the petitioners, which precludes resort to a special civil action.[53] This ordinary action will allow the parties to litigate factual issues, such as petitioners' contention that PLMDC's proposed mining site is in a core zone, it being in a natural forest and a critical watershed, contrary to PCSD's claim that it is in a controlled use zone. *Certiorari* would not have provided the petitioners with such an opportunity because it is limited to questions of jurisdiction and does not resolve factual matters.[54] *Certiorari* does not involve a full-blown trial but is generally restricted to the filing of pleadings (petition, comment, reply, and memoranda), unless the court opts to hear the case.[55]

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[50] *Id.*, Section 6.

[51] REPUBLIC ACT NO. 7611, Sec. 2.

[52] *Doran v. Judge Luczon, Jr., supra* note 46 at 205.

[53] *Chamber of Real Estate and Builders' Associations, Inc. (CREBA) v. Energy Regulatory Commission (ERC)*, *supra* note 1 at 572.

[54] *Ong v. Philippine Deposit Insurance Corporation,* G.R. No. 175116, August 18, 2010, 628 SCRA 415, 430.

[55] RULES OF COURT, Rule 65, Sections 6 and 8.

Since an ordinary action is available and in fact appears to be more appropriate, petitioners were wrong to resort to the extraordinary remedy of *certiorari*.

The same fate befalls the Petition for Mandamus. Petitioners prayed that the PCSD be compelled to comply with the provisions of RA 7611. Clearly, the success of the Petition for Mandamus depends on a prior finding that the PCSD violated RA 7611 in issuing the SEP Clearance. There can be no such finding with the dismissal of the Petition for *Certiorari*.

Given the foregoing, it is no longer necessary to resolve the jurisdictional issue presented by the parties.

WHEREFORE, premises considered, the assailed May 7, 2007 Order of Branch 47 of the Regional Trial Court of Palawan and Puerto Princesa City dismissing the Petition for *Certiorari* and Mandamus, docketed as Civil Case No. 4218, is *AFFIRMED* but for being an *IMPROPER REMEDY*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 182152. February 25, 2013]

PEOPLE OF THE PHILIPPINES and MIRIAM RUTH T. MAGSINO, *petitioners, vs.* **PO1 RICARDO P. EUSEBIO, SPO2 ROMEO ISIDRO, and JOJIT GEORGE CONTRERAS,** *respondents.*

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[*] Per Special Order No. 1421 dated February 20, 2013.

SYLLABUS

CRIMINAL LAW; REVISED PENAL CODE; PRINCIPLE; CONSPIRATORS DISTINGUISHED FROM ACCOMPLICES; IN CASE OF DOUBT AS TO THE ROLE OF THE ACCUSED IN A CRIME, THE COURT SHOULD RESOLVE IT IN HIS FAVOR; APPLICATION IN CASE AT BAR.— Conspirators are persons who, under Article 8 of the Revised Penal Code (RPC), "*come to an agreement concerning the commission of a felony and decide to commit it*." Because witnesses are rarely present when several accused come to an agreement to commit a crime, such agreement is usually inferred from their "concerted actions" while committing it. On the other hand, accomplices, according to Article 18 of the RPC, are the persons who, not being included in Article 17 [which identifies who are principals], "cooperate in the execution of the offense by previous or simultaneous acts." The line that separates a conspirator by concerted action from an accomplice by previous or simultaneous acts is indeed slight. Accomplices do not decide whether the crime should be committed; but they assent to the plan and cooperate in its accomplishment. The solution in case of doubt is that, as the RTC said with ample jurisprudential support, such doubt should be resolved in favor of the accused. It was held that when there is doubt as to whether a guilty participant in a homicide performed the role of principal or accomplice, the Court should favor the "*milder form of responsibility*." He should be given the benefit of the doubt and can be regarded only as an accomplice. x x x Consequently, it cannot be said that the RTC maintained its initial belief that the three accused conspired with Bongon to kill Magsino. The evidence of the shooting changed its mind. The RTC's real error was in stating such initial belief so categorically that it sounded like it regarded such belief as final. Still as demonstrated above, further down its reasoning process, the RTC managed to state clearly the final position it was taking with respect to the role of the three accused in the subject crime.

APPEARANCES OF COUNSEL

The Solicitor General for public petitioner.
Reynaldo M. De Sagun for private petitioner.

Arlene D. Banocnoc for PO1 Ricardo Eusebio.
Miguel Badando for Jojit George Contreras.
Cruz Neria & Carpo Law Office for SPO2 Romeo Isidro.

R E S O L U T I O N

ABAD, *J.*:

On September 27, 2000 the Department of Justice charged the accused PO3 Jesus Bongon, Jr., SPO2 Romeo Isidro, Robert Sy, Jojit George Contreras, Boyet Parilla, and PO1 Ricardo P. Eusebio of murder committed in conspiracy with each other before the Regional Trial Court (RTC) of Pasay City. Since accused Sy and Parilla remained at-large, trial proceeded only with respect to Bongon, Isidro, Contreras, and Eusebio.[1]

The prosecution evidence shows that at around 6:00 p.m. on August 7, 1999 Jaime Magsino received a phone call at home, prompting him to leave on board his motorcycle. He proceeded to the store of accused Bongon on a street in Pasay City, stopping his motorcycle right near where Bongon stood. At this point, accused Eusebio, Isidro, and Contreras, as well as accused Sy and Parilla appeared from a nearby alley and took positions near Magsino.

As Magsino alighted from his motorcycle, Bongon shot him three times, causing him to fall. Eusebio and Isidro, together with Contreras, Sy, and Parilla drew their guns and they, too, fired at the fallen victim. All six shooters, said the witnesses, approached Magsino, turned his body over, and kicked him as they laughed. Bongon then ordered Rommel Gicoso,[2] a tricyle driver, to take Magsino to the Pasay City General Hospital.

Rogelio Amihan, a tricycle driver who parked his vehicle on the same street, testified[3] that shortly before the shooting, he

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[1] *Rollo*, p. 133, RTC Decision.

[2] *Id.* at 109.

[3] *Id.* at 94.

saw the six accused talking in front of Bongon's store. Five of them went into an alley, leaving Bongon behind. Later, Amihan saw Bongon and the other accused shoot Magsino. Renjo Villaraza corroborated Amihan's story. Villaraza said that he was buying cigarettes at the store when he overheard Bongon tell the other accused "*O, handa kayo, darating si Jaime Magsino, kailangan itumba na natin siya ngayon, tandaan nyo huwag natin siyang bibigyan ng pagkakataon na makalaban pa, kailangan biglain natin siya.*"[4]

Bongon admitted shooting Magsino but in self-defense.[5] Bongon claimed that he heard someone shouting and cursing at him in front of his house. When he saw that it was Magsino, he confronted him. Magsino suddenly shot Bongon five times but missed him, prompting Bongon to shoot back.

For his part, Isidro insisted[6] that he was at the Multinational Village in Parañaque City when Magsino was shot dead. Accused Contreras,[7] on the other hand, claimed that he was at his in-laws' residence at Tripa De Gallina in Pasay City.

On January 5, 2006 the RTC rendered judgement,[8] finding the accused Bongon guilty of murder, as principal, meting out to him the penalty of *reclusion perpetua,* and ordering him to pay the heirs of Magsino damages of ₱2,669,661.30[9] and costs of suit.[10] It found accused Eusebio, Isidro, and Contreras, guilty as accomplices and imposed on them the penalty of 8 years

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[4] *Id.* at 102.

[5] *Id.* at 104.

[6] *Id.* at 111.

[7] *Id.* at 112.

[8] Penned by Judge Pedro De Leon Gutierrez.

[9] ₱150,000.00 for funeral expenses, ₱500,000.00 for the memorial lot, ₱20,000.00 for the damaged Yamaha scooter, ₱50,000.00 as indemnity for the death of Magsino, ₱100,000.00 in attorney's fee, ₱200,000.00 as moral damages, and ₱1,649,661.30 as loss of unearned income of Magsino.

[10] *Supra* note 1.

and 1 day of *prision mayor* as minimum to 14 years of *reclusion temporal* as maximum.[11]

While none of the accused appealed the RTC Decision,[12] the prosecution appealed from it to the Court of Appeals (CA), through the Office of the Solicitor General (OSG), in CA-G.R. CR 30187, assailing the milder sentence that the RTC imposed on accused Eusebio, Isidro, and Contreras. The OSG argued that, since the RTC found the three accused to have conspired with Bongon to kill Magsino, Bongon's act was their act as well based on the collective responsibility of all of the accused in a conspiracy.

On November 21, 2007 the CA granted[13] in part the petition, holding accused Eusebio, Isidro, and Contreras jointly and solidarily liable with Bongon to pay damages to Magsino's heirs. The CA ruled, however, that it could not review and increase the criminal liability of the three accused, from mere accomplices to principals, for such will place them in double jeopardy. Assuming that the RTC erred in imposing the proper penalty, said the CA, its error was one of judgment which could not affect the decision's intrinsic validity. The OSG moved for the reconsideration of the decision but the CA denied the motion.[14]

The issue presented in this petition is whether or not the CA erred in failing to impose on the accused Eusebio, Isidro, and Contreras the same penalty that the RTC imposed on Bongon for the murder of Magsino.

The OSG takes the position that it is not right for the RTC to impose unequal penalties to several accused found guilty of conspiracy in the commission of the crime charged since the rule is that, in conspiracy, the act of one is the act of all. [15] In

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[11] *Id.*

[12] *Id.* at 141.

[13] *Id.* at 143.

[14] *Id.* at 156.

[15] See *People v. Vivas*, G.R. No. 100914, May 6, 1994, 232 SCRA 238, 242; *People v. Maranion*, 276 Phil. 457, 470 (1991).

conspiracy to commit murder by shooting, all of the accused are deemed equally guilty as co-principals, even if one or some of them never fired a gun.

But, actually, the RTC did not find the accused Eusebio, Isidro, and Contreras guilty as principals with Bongon. It rather found them guilty as mere accomplices. The trouble is that, in discussing the liability of these three, the RTC first ventured to say that, based on their concerted actions, Eusebio, Isidro, and Contreras appeared to it to have acted in conspiracy with Bongon in killing Magsino. Said the RTC:

> While the Court is convinced that the four accused, Bongon, Jr., Eusebio, Isidro and Contreras were bound by conspiracy or a community of design or purpose to kill the victim, Magsino, and that they committed overt acts to effectively accomplish such design or purpose and hence, their respective acts of shooting Magsino can be attributed to all and each of their co-accused. x x x[16]

This far, the RTC seemed convinced that conspiracy attended the killing. But the above sentence did not stop there. It resumed:

> [I]t is believed however that the accused Eusebio, Isidro and Contreras should not be convicted as principals for the crime of murder but should be deemed to be accomplices. Thus it is only accused Bongon, Jr. who remains as the principal in this heinous crime of murder.[17]

And the RTC offered justifications for dropping its initial conspiracy theory after a closer evaluation of the facts. Thus, it continued:

> The Court made the finding that when Magsino was alighting from his motorcycle, accused Bongon, Jr., without warning, immediately shot Magsino three times at close range (one arm's length away). When Magsino fell from his motorcycle, it was only then that the accused Eusebio, Isidro and Contreras drew their guns and fired, at the direction of Magsino. No direct evidence was shown as to who

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[16] *Rollo*, p.117.

[17] *Id.*

from the accused Eusebio, Isidro and Contreras fired the shots that actually hit Magsino. It was established that the three gunshot wounds of Magsino could have emanated from caused by one or two three times firearms (Testimony of Dr. Rolando C. Victoria). Such conclusion is at most a probability but without clear proof to support it. Thus, since Bongon, Jr. was quite near Magsino, then there is a great possibility that it was Bongon, Jr. who fired the shots that inflicted the three gunshot wounds on Magsino while the gun shots [sic] from the guns of accused Eusebio, Isidro and Contreras merely hit the motorcycle of Magsino, the accordion door of the store, the concrete wall, the cement post and the iron pipe based on the ocular inspection conducted at the scene of the crime. Based on the evidence on record, the Court cannot conclusively say however whether or not the discharge from the firearms of accused Eusebio, Isidro and Contreras actually hit Magsino despite the findings of NBI medico-legal officer (Dr. Rolando C. Victoria) that the three gunshot wounds of Magsino could have been caused by one, two an [sic] or three guns. One thing is certain through which is all the accused are liable for the death of Magsino. x x x[18]

The RTC had ample basis for changing its initial assumption. It noted that Magsino had only three gunshot wounds despite the many shots fired at him. Since Bongon shot Magsino thrice at very close range, causing him to fall, the RTC was convinced that it was only Bongon who inflicted those wounds. And, considering that the prosecution evidence did not show that the shots Eusebio, Isidro and Contreras fired from their guns made their marks, the RTC entertained doubts that the three agreed beforehand with Bongon to kill Magsino. It did not rule out the possibility that they fired their guns merely to scare off outside interference.

At any rate, conspirators are persons who, under Article 8 of the Revised Penal Code (RPC), "*come to an agreement concerning the commission of a felony and decide to commit it*." Because witnesses are rarely present when several accused come to an agreement to commit a crime, such agreement is usually inferred from their "concerted actions" while committing

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[18] *Id.*

it. On the other hand, accomplices, according to Article 18 of the RPC, are the persons who, not being included in Article 17 [which identifies who are principals], "cooperate in the execution of the offense by previous or simultaneous acts."

The line that separates a conspirator by concerted action from an accomplice by previous or simultaneous acts is indeed slight. Accomplices do not decide whether the crime should be committed; but they assent to the plan and cooperate in its accomplishment.[19] The solution in case of doubt is that, as the RTC said with ample jurisprudential support, such doubt should be resolved in favor of the accused.

> It was held that when there is doubt as to whether a guilty participant in a homicide performed the role of principal or accomplice, the Court should favor the "*milder form of responsibility*." He should be given the benefit of the doubt and can be regarded only as an accomplice. (*People vs. Jose Tamayo*, 44 Phil. 38; *People vs. Bantangan*, 54 Phil. 834, 840; *People vs. Lansang*, 82 Phil. 662, 667; *People vs. Ubina*, 97 Phil. 515; *People vs. Raganit*, 88 Phil. 467; *People vs. Pastores*, 40 SCRA 498; *People vs. Tolentino*, 40 SCRA 514). Hence, in the case at bar, the accused Eusebio, Isidro and Contreras should be granted the benefit of doubt and should considered merely as accomplices and should be meted a penalty one degree lower than that to be imposed on accused Jesus Bongon, Jr. who is unequivocally the principal.[20]

Consequently, it cannot be said that the RTC maintained its initial belief that the three accused conspired with Bongon to kill Magsino. The evidence of the shooting changed its mind. The RTC's real error was in stating such initial belief so categorically that it sounded like it regarded such belief as final. Still as demonstrated above, further down its reasoning process, the RTC managed to state clearly the final position it was taking with respect to the role of the three accused in the subject crime.

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[19] *People v. De Vera*, 371 Phil. 563, 585 (1999).

[20] *Supra* note 16.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the Decision of the Court of Appeals dated November 21, 2007 in CA-G.R. CR 30187.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Leonen, JJ.,* concur.

THIRD DIVISION

[G.R. No. 184681. February 25, 2013]

GERRY A. SALAPUDDIN, *petitioner, vs.* **THE COURT OF APPEALS, GOV. JUM AKBAR, and NOR-RHAMA J. INDANAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION, THE DETERMINATION OF PROBABLE CAUSE IS AN EXECUTIVE FUNCTION THAT THE COURTS CANNOT INTERFERE WITH; ELUCIDATED.— The determination of probable cause is, under our criminal justice system, an executive function that the courts cannot interfere with in the absence of grave abuse of discretion. Otherwise, a violation of the basic principle of separation of powers will ensue. The Executive Branch, through its prosecutors, is, thus, given ample latitude to determine the propriety of filing a criminal charge against a person. x x x This broad authority of prosecutors, however, is circumscribed by the requirement of a conscientious conduct of a preliminary investigation for offenses where the penalty prescribed by law is at least 4 years, 2 months and 1 day. This rule is intended to guarantee the right of every person to be free from "the

inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt has been passed upon" and to guard the State against the "burden of unnecessary expense and effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges." x x x The prosecutor's call on the existence or absence of probable cause is further subject to the review of the Secretary of Justice who exercises the power of control over prosecutors. x x x Thus, pursuant to the last paragraph of Section 4, Rule 112 of the Rules of Court, if the Secretary of Justice reverses or modifies the resolution of the investigating prosecutor(s), he or she can direct the prosecutor(s) concerned "to dismiss or move for dismissal of the complaint or information with notice to the parties." This action is not subject to the review of courts unless there is a showing that the Secretary of Justice has committed a grave abuse of his discretion amounting to an excess or lack of jurisdiction in issuing the challenged resolution.

2. ID.; ID.; ID. ; PROBABLE CAUSE DEMANDS MORE THAN BARE SUSPICION AND MUST REST ON COMPETENT RELEVANT EVIDENCE; NOT PRESENT IN CASE AT BAR.— Probable cause requires less proof than necessary for conviction. Nonetheless, it demands more than bare suspicion and must rest on competent relevant evidence. A review of the records, however, show that **the only direct material evidence against Salapuddin, as he had pointed out at every conceivable turn, is the confession made by Ikram**. While the confession is arguably relevant, this is not the evidence competent to establish the probability that Salapuddin participated in the commission of the crime. On the contrary, as pointed out by the Secretary of Justice, **this cannot be considered against Salapuddin on account of the principle of res inter alios acta alteri nocere non debet** expressed in Section 28, Rule 130 of the Rules of Court: x x x The discrepancies in Ikrams' affidavits and the variations in the statements of the other accused do not persuade this Court to find probable cause that Salapuddin, who was indicted primarily because of Ikram's confession, was part of the conspiracy that led to the Batasan bombing. Instead, while We are not pre-empting the findings of the trial court with regard to Ikram,

Aunal, Jamiri and Kusain, the variations and the inconsistencies contained in their affidavits lend credence to their allegations of torture and coercion, especially as these allegations are supported by medical reports prepared by an independent medical practitioner who was assisted by the personnel of the Human Rights Commission. It must not be neglected that strict adherence to the Constitution and full respect of the rights of the accused are essential in the pursuit of justice even in criminal cases. The presumption of innocence, and all rights associated with it, remains even at the stage of preliminary investigation. It is, thus, necessary that in finding probable cause to indict a person for the commission of a felony, only those matters which are constitutionally acceptable, competent, consistent and material are considered. No such evidence was presented to sufficiently establish the probable cause to indict Salapuddin for the non-bailable offenses he is accused of. It, thus, behooves this Court to relieve petitioner from the unnecessary rigors, anxiety, and expenses of trial, and to prevent the needless waste of the courts' time and the government's resources.

3. ID.; EVIDENCE; TESTIMONY OF WITNESSES; ADMISSION BY THIRD-PARTY; AN EXTRAJUDICIAL CONFESSION IS BINDING ONLY ON THE CONFESSANT; EXCEPTION; CASE AT BAR.— [A]n extrajudicial confession is binding only on the confessant. It cannot be admitted against his or her co-accused and is considered as hearsay against them. x x x **The exception** provided under Sec. 30, Rule 130 of the Rules of Court to the rule allowing the admission of a conspirator **requires the prior establishment of the conspiracy by evidence other than the confession**. **In this case, there is a dearth of proof demonstrating the participation of Salapuddin in a conspiracy** to set off a bomb in the Batasan grounds and thereby kill Congressman Akbar. Not one of the other persons arrested and subjected to custodial investigation professed that Salapuddin was involved in the plan to set off a bomb in the Batasan grounds. Instead, the investigating prosecutors did no more than to rely on Salapuddin's association with these persons to conclude that he was a participant in the conspiracy. x x x This Court, however, has previously stressed that mere association with the principals by direct participation, without more, does not suffice. Relationship, association and

companionship do not prove conspiracy. Salapuddin's complicity to the crime, if this be the case, cannot be anchored on his relationship, if any, with the arrested persons or his ownership of the place where they allegedly stayed while in Manila. It must be shown that the person concerned has performed an **overt act** in pursuance or furtherance of the complicity. In fact, mere knowledge, acquiescence or approval of the act, without the cooperation or approval to cooperate, is not sufficient to prove conspiracy. There must be positive and conclusive factual evidence indicating the existence of conspiracy, and not simple inferences, conjectures and speculations speciously sustained because "[i]t cannot be mere coincidence."

APPEARANCES OF COUNSEL

Magsalin Pobre Lapid & Villena Law Office and *Diamante & Diamante Law Offices* for petitioner.
Fortun Narvasa & Salazar for respondents.

R E S O L U T I O N

VELASCO, JR., *J.*:

The instant petition assails the Decision[1] and Resolution[2] dated August 6, 2008 and October 16, 2008, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 103461, which affirmed the inclusion of petitioner Gerry A. Salapuddin (Salapuddin) in the amended information for multiple murder and multiple frustrated murder filed in Criminal Case No. Q-07-149982 of the Regional Trial Court (RTC), Branch 83 in Quezon City.

The present controversy started on November 13, 2007 when, shortly after the adjournment of the day's session in Congress, a bomb exploded near the entrance of the South Wing lobby of

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[1] *Rollo*, pp. 61-85. Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and concurred in by Associate Justices Noel G. Tijam and Arturo R. Tayag.

[2] *Id.* at 87-93.

the House of Representatives (HOR) in the *Batasan* Complex, Quezon City. The blast led to the death of Representative Wahab Akbar (Congressman Akbar),[3] Marcial Taldo,[4] Jul-Asiri Hayudini,[5] Maan Gale Bustaliño[6] and Dennis Manila,[7] and the inflicting of serious injuries on Representatives Henry Teves[8] and Luzviminda Ilagan,[9] Ismael Lim, Vercita Garcia,[10] Kumhar Indanan,[11] Larry Noda[12] and Paula Dunga.

The post-blast investigation revealed that the explosion was caused by an improvised bomb planted on a motorcycle that was parked near the entrance stairs of the South Wing lobby.[13]

Acting on a confidential information that the person who parked the motorcycle near the South Wing lobby of the HOR was staying with members of the Abu Sayyaf Group (ASG) and learning that one ASG member, Abu Jandal *alias* "Bong," has standing warrants of arrest for kidnapping and serious illegal detention,[14] police officers raided an alleged ASG safehouse located at Blk. 4, Lot 23, Anahaw St., Parkwood Hills, Payatas, Quezon City (Parkwood) on November 15, 2007. During the course of the operation, a firefight ensued killing three persons: Bong, Redwan Indama (Redwan) and Saing Indama.[15] Meanwhile,

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[3] *Id.* at 781-782.

[4] *Id.* at 785.

[5] *Id.* at 501-503.

[6] *Id.* at 498-500.

[7] *Id.* at 632-633.

[8] *Id.* at 506.

[9] *Id.* at 504-505.

[10] *Id.* at 509.

[11] *Id.* at 510.

[12] *Id.* at 508.

[13] *Id.* at 482, Final Investigation Report dated November 21, 2007.

[14] Issued by Judge Danilo M. Bucay of the Regional Trial Court of Basilan, Branch 2, 9th Judicial Region at Isabela, Basilan.

[15] *Rollo*, p. 94, Affidavit of Arrest dated November 15, 2007.

Caidar Aunal (Aunal), Ikram Indama (Ikram) and Adham Kusain (Kusain)[16] were arrested and then brought to Camp Crame in Quezon City. Several items were likewise seized from the premises, including two (2) Cal. 45 pistols, one motor vehicle plate number "8," an I.D. of HOR issued to Ikram, and a black wallet with a GSIS ID card issued to Aunal with calling cards of Salapuddin.[17] One of the Cal. 45 pistols found was traced back to Julham S. Kunam, Political Affairs Assistant of Salapuddin.[18]

On November 16, 2007, a day after the raid, Kusain executed a *Sinumpaang Salaysay*. In it, he stated that he is from Tipo-Tipo, Basilan and came to Manila in March 2005, staying when he first arrived in Manila in the house of Salapuddin, his father's friend. Salapuddin paid for one year of his college education and helped him be employed as a building attendant at the Ninoy Aquino International Airport. He explained that he was in the house at Parkwood Hills because Redwan asked him to get the payment for his black XRM Honda motorcycle that Redwan took from his house on November 2, 2007. He claimed that Redwan did not disclose the purpose for which the motorcycle will be used and it was only after the raid that he learned that his motorcycle was the very same motorcycle used during the bombing at the *Batasan* Complex.[19]

On the same day, November 16, 2007, Ikram executed the first of his several affidavits (*Ikram's first affidavit*). He stated that he is a driver working for Salapuddin since July 2002 and was staying in a house at 48-A Greenbucks, Filinvest St., Batasan Hills, Quezon City (Greenbucks), owned by Salapuddin, from June 2004 until he went home to Isabela City, Basilan in June 2007.[20] He maintained that he returned to Manila on October 16,

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[16] *Id.* at 492.

[17] *Id.* at 95-96, Affidavit of Arrest dated November 15, 2007.

[18] *Id.* at 493-497.

[19] *Id.* at 97-102. *Sinumpaang Salaysay ni* Adham Kusain y Jallaman dated November 16, 2007.

[20] *Id.* at 104.

2007. He stressed that before returning to Manila, or on October 9, 2007, his cousin Redwan talked to him about a mission to kill Congressman Akbar of Basilan by means of a bomb to be planted on a motorcycle. **He was not, however, informed of the reason for the mission or the identity of the person who gave the order**. He stated that upon arrival in Manila, he stayed at Greenbucks where the bombing was planned. He stated that those who took part in the planning of the bombing included: Redwan and his wife Saing; Jang, who was a cousin and member of the staff of Congressman Mujiv Hataman; Bong, who made the bomb; Aunal; and Kusain. On October 20, 2007, he and Aunal went home to Basilan and returned to Manila only on November 5, 2007. He also admitted bringing the motorcycle with the bomb to the HOR.[21] He narrated that at 3:30 p.m. of November 13, 2007, he went to the *Batasan* premises on board a black Honda XRM with the bomb and parked it near the entrance of the South Wing lobby, at a spot reserved by Jang.[22] Later that day, he heard the bomb explode and received a text message from Jang confirming that it was the bomb he brought that exploded. He explained that it was Jang who set off the bomb by calling the cellphone attached to the bomb inside the motorcycle.[23]

Jilbert C. Ortega, Chief of the Complaint and Investigation Unit of the HOR, likewise executed an affidavit on the same day, November 16, 2007, stating that in the morning of November 13, 2007, he noticed two men near the South Wing lobby of the HOR roaming around and seemingly surveying the premises. He identified Ikram as one of the two.[24]

On the basis of the sworn statements, a request for the conduct of inquest proceedings relative to the participation or involvement of Aunal, Ikram, Kusain, and Jang was made.[25]

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[21] *Id.* at 105.

[22] *Id.* at 106.

[23] *Id.* at 107.

[24] *Id.* at 845.

[25] *Id.* at 775-780.

On November 17, 2007, Salapuddin went to Camp Crame and voluntarily gave a sworn statement denying any knowledge of the *Batasan* bombing, asserting that his name was being used by the media only because of his relationship with the persons arrested in connection with the incident: Ikram was his former driver;[26] Aunal, his former brother-in-law, being a brother of his ex-wife whom he divorced under Muslim laws; and Kusain who once sought his assistance for employment. He clarified that he knew Redwan and Saing Indama only because they were members of the Moro National Liberation Front but denied knowing Bong. He stated that the individuals thus mentioned rarely visited him, and before the incident, he spoke only to Ikram, who was then working in his water refilling station in Basilan, when the latter asked permission to leave for Manila to look for better employment.[27] He explained that his house at Greenbucks is usually used by his constituents, including Kusain and Ikram, as a temporary residence or shelter whenever they are in Manila.[28]

As the police investigation prospered, Ikram executed several supplemental affidavits augmenting the statement he previously gave to the authorities. At 8:00 in the morning of November 18, 2007, Ikram narrated in his first supplemental affidavit[29] (*Ikram's second affidavit*) that he, together with Aunal, Redwan, and Bong, planned the *Batasan* bombing on the night of October 17, 2007 at Greenbucks. On October 19, 2008, they all proceeded to Raon, Quiapo to shop for materials to make the bomb.[30] He added that on October 25, 2007, he and Aunal went home to Basilan and returned to Greenbucks in Manila only on November 5, 2007. Bong made the bomb and placed it inside the toolbox of a Honda motorcycle in Greenbucks.[31] The following day,

[26] *Id.* at 109.

[27] *Id.* at 110.

[28] *Id.* at 111.

[29] *Id.* at 112-115.

[30] *Id.* at 114.

[31] *Id.* at 114-115.

they all transferred to Parkwood bringing the motorcycle with them.[32] It was in Parkwood where they completed the plan to kill Congressman Akbar.[33]

At 6:00 in the evening of the same day, November 18, 2007, Ikram executed another supplemental affidavit (*Ikram's third affidavit)*.[34] There he stated that on October 13, 2007, when they were about to leave for Manila, he, Bong, Redwan and Aunal passed by Gersal Hardware owned by Salapuddin in Zamboanga City[35] upon the prodding of one Bayan Judda, who handed them a bag. Redwan later informed him that the bag contained ingredients for explosives. They brought the bag with them to Greenbucks in Manila.[36] On October 17, 2007, he, along with Bong, Redwan and Aunal, went to Quiapo to buy the wires needed to make a bomb.[37] Thereafter, Bong made two bombs to be used in killing Congressman Akbar: one intended for the HOR premises and another for either his Valle Verde house or his condo unit in Ortigas. On October 22, 2007, Hajarun Jamiri (Jamiri), the ex-mayor of Tuburan, Basilan arrived at Greenbucks on board a black Suzuki motorcycle where the bomb intended for the Valle Verde house or the Ortigas condo will be placed. After Bong placed the bomb in his motorcycle, Jamiri left on board the same motorcycle.[38] On November 10, 2007, Ikram went to Jamiri's apartment in Malate, Manila to get money. During the said occasion, he saw the Suzuki motorcycle with the bomb parked inside Jamiri's apartment.[39]

Notably, **Ikram, in his first three affidavits, never mentioned Salapuddin's involvement, let alone implicate him, in the**

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[32] *Id.* at 114.

[33] *Id.* at 115.

[34] *Id.* at 116-120.

[35] *Id.* at 648.

[36] *Id.* at 118.

[37] *Id.* at 118.

[38] *Id.* at 119.

[39] *Id.* at 120.

plan to kill Congressman Akbar. Ikram's narration of events altogether changed in his third supplemental affidavit dated November 20, 2007 *(Ikram's fourth affidavit)*.[40] There, Ikram alleged that, after receiving his last salary from the HOR, he worked for Salapuddin's water refilling station in Isabela City as a delivery boy. In September 2007, before the Ramadan, Salapuddin asked him to fetch Redwan.[41] Ikram complied and brought Redwan to Salapuddin's house on the same day.[42] He claimed that he was beside Redwan when Salapuddin ordered: "*Pateyun si Cong. Wahab Akbar*."[43] Ikram saw Redwan again on October 9, 2007 when the latter told him about the mission in Manila to kill Congressman Akbar.[44] Ikram further narrated in his fourth affidavit that on October 13, 2007, he, Bong, Redwan and Aunal left Isabela City for Manila. In Manila, they stayed at Greenbucks owned by Salapuddin. Ikram also alleged in his affidavit that in the third week of October 2007, he and Redwan met with Hadjiman Hataman-Salliman (Jim Hataman) in a Figaro Coffee House in Ever Gotesco, Commonwealth Avenue, Quezon City (Figaro Café). During the said occasion, Ikram heard Jim Hataman tell Redwan of the plan to kill Congressman Akbar using a bomb. A week later, Redwan brought Ikram to the house of Congressman Mujiv Hataman (Congressman Hataman) in Filinvest II, Batasan Hills where Ikram heard Congressman Hataman order Redwan to kill Congressman Akbar. Ikram explained that Redwan was a cousin of the Hatamans.[45]

Ikram would later amend the dates mentioned in his earlier affidavits by executing an affidavit dated January 10, 2008[46]

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[40] *Id.* at 121-130. The contents of this affidavit are similar, if not the same, to a handwritten affidavit executed by Ikram Indama (*id.* at 534-535).

[41] *Id.* at 123.

[42] *Id.* at 124.

[43] *Id.* at 125.

[44] *Id.* at 125.

[45] *Id.* at 128.

[46] *Id.* at 474-477.

(*Ikram's fifth affidavit)*, where he made it appear that after bringing Redwan to Salapuddin's house in Basilan, he and Redwan again saw each other on the night of September 5, 2007, not October 9, 2007.[47] He declared, however, that Redwan talked to him about a mission to kill Congressman Akbar only on September 8, 2007,[48] which was also the date that they started for Manila[49] and dropped by Salapuddin's Gersal Hardware, not October 13, 2007.[50] He added that they returned to Manila on September 11, 2007, not on October 16, 2007.[51] **He declared that Bong made the bomb at Greenbucks on September 13, 2007, not October 18, 2007**.[52] **Inconsistently, however, he stated in the same affidavit that he, together with Aunal, Redwan and Bong, planned the Batasan bombing only on the night of September 17, 2007 at Greenbucks,**[53] **then shopped in Raon for materials to make the bomb only on September 19, 2007**.[54] On September 17, 2007, not October 22, 2007, Jamiri supposedly went to Greenbucks to have his motorcycle fitted with a bomb.[55] Ikram also stated that he last saw Congressman Hataman in September 2007, not October 2007.[56] He further declared that he and Aunal returned to Basilan on October 14, 2007, not October 20, 2007.[57]

Incongruously, however, Joel Maturan, the mayor of Ungkaya Pukan, Basilan, stated in his affidavit that he saw Ikram driving

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[47] *Id.* at 125, 476, 535.

[48] *Id.* at 474.

[49] *Id.* at 125, 476, 535.

[50] *Id.* at 118, 475.

[51] *Id.* at 105, 118, 474-475.

[52] *Id.* at 119, 475.

[53] *Id.* at 114, 475.

[54] *Id.* at 114, 475.

[55] *Id.* at 119, 475.

[56] *Id.* at 127, 476.

[57] *Id.* at 105, 114, 474-475.

Salapuddin's mini-truck in Lamitan, Basilan on September 20, 2007 and delivering water from Salapuddin's water refilling station.[58]

On November 19, 2007, Jamiri was apprehended for illegal possession of firearm. The following day, or on November 20, 2007, he executed an affidavit where he narrated that during Ramadan, in the month of October,[59] he brought a Suzuki motorcycle to Greenbucks on the instruction of Redwan. The latter requested Jamiri to leave the motorcycle behind so that he could place a bomb inside it. Jamiri returned the following day and was given instructions on how to remove the bomb from the motorcycle.[60] In exchange for keeping the bomb, Redwan gave Jamiri PhP 50,000 with the promise of an additional PhP 500,000 should the bomb be actually used to kill Congressman Akbar when he dines at Sulo Hotel.[61] However, the bomb was never used as Jamiri failed to bring the motorcycle to the hotel on October 23, 2007.[62] He admitted hiding the bomb in a house located at Leveriza Street, Pasay City and expressed his willingness to surrender it to the police.[63] Pursuant to the undertaking he made in his affidavit, Jamiri accompanied and guided police authorities in retrieving an improvised explosive device at an apartelle located in Leveriza St., Malate, Manila on the same day he executed his affidavit.[64]

In a supplemental affidavit,[65] Jamiri added that during the last week of October 2007, Redwan called him from Figaro

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[58] *Id.* at 563.

[59] *Id.* at 533.

[60] *Id.* at 956.

[61] *Id.* at 956-957.

[62] *Id.* at 957.

[63] *Id.* at 958.

[64] *Id.* at 894.

[65] *Id.* at 531-533, 536-538, *Karagdagang Sinumpaang Salaysay* dated November 23, 2007.

Café, in Ever Gotesco, Commonwealth Avenue, Quezon City and asked him to go to the same place. When he arrived at the café, Jamiri saw Redwan with Congressman Hataman and his brother Jim Hataman. Congressman Hataman then asked Jamiri to help Redwan in his "project" to kill Congressman Akbar.[66] Jim Hataman thereafter interposed that the death of Congressman Akbar will bring peace to Basilan.[67]

On November 22, 2007, Aunal executed his own affidavit[68] where he stated that he left Isabela City, Basilan for Manila on October 13, 2007 with Ikram, Redwan and Bong.[69] They arrived in Manila on October 16, 2007 and proceeded to stay at Greenbucks.[70] He recalled watching Bong assemble the two improvised bombs. He stated that when he asked about who their target was, Bong answered that it was Congressman Akbar. He explained that it had something to do with the politics in Basilan. Aunal likewise declared that Bong told him that the order to kill Congressman Akbar was made by Jim Hataman who vied for the congressional seat won by Congressman Akbar.[71] Aunal himself heard Jim Hataman order Redwan to kill Congressman Akbar one evening in October 2007 when they were in Figaro Café.[72] He and Ikram then went back to Basilan during the last week of October and came back to Manila in the first week of November.[73] On November 13, 2007, Ikram brought one of the improvised bombs, hidden inside a motorcycle, to the *Batasan* premises where Jang detonated it, killing Congressman Akbar.[74]

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[66] *Id.* at 536.

[67] *Id.* at 537.

[68] *Id.* at 545-551.

[69] *Id.* at 547.

[70] *Id.* at 548.

[71] *Id.* at 549.

[72] *Id.* at 551.

[73] *Id.* at 549.

[74] *Id.* at 550.

Based on the affidavits of Jamiri, Ikram, and Aunal, Police Superintendent Asher Dolina indorsed a letter dated November 29, 2007 to then Chief State Prosecutor Zuño requesting the inclusion of Salapuddin, Congressman Hataman, Jim Hataman and Police Officer 1 (PO1) Bayan Judda in the complaints for murder and multiple frustrated murder.[75] After conducting preliminary investigation, the Chief State Prosecutor approved a Resolution dated December 6, 2007 where he: (1) found probable cause to indict Aunal, Ikram, and Kusain for multiple murder and violation of Presidential Decree No. 1829; (2) recommended the conduct of further investigation for their indictment for multiple frustrated murder; and (3) recommended the conduct of preliminary investigation as to the other respondents who were not under detention.[76]

In the meantime, upon the request of the relatives and counsel of the accused, Dr. Benito Molino (Dr. Molino)[77] conducted in the presence of investigators from the Commission on Human Rights a medical examination of the detained on December 1, 4, and 7, 2007. The results: Kusain, Aunal and Jamiri were subjected to physical and mental torture.[78] In particular, Dr. Molino found that "the injuries found on the skin and private parts of Mr. Jamiri two weeks after his claimed ordeal that he received countless blows all over his body in spite of being sick with diabetes, hit by a blunt object on his head and his shins and that electric current was applied to his private parts while being interrogated as to his knowledge and participation in the Batasan bombing x x x are consistent. In his case, the three elements of torture are present."[79] Similarly, he found that both

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[75] *Id.* at 478-481.

[76] *Id.* at 849-862.

[77] The author of the chapters "Understanding Torture" and "Medical and Professional's Duties and Responsibilities against Torture" in the "Manual on Recognition, Documentation and Reporting of Torture," a 2005 publication of the Commission on Human Rights and Medical Action Group, Inc.

[78] *Rollo*, pp. 136-179.

[79] *Id.* at 171-172.

Aunal and Kusain "underwent severe physical injuries and subjected to deep emotional stress x x x intentionally inflicted by men believed to be officers of the CIDG [Criminal Investigation and Detection Group] x x x to get information from [them]."[80]

On December 10, 2007, Jamiri executed an affidavit withdrawing and disavowing the statements he made in his previous affidavits.[81] He alleged that he was not carrying any weapon, much less an explosive, when arrested. He was merely walking when six men suddenly arrested him, forced him to a van, and blindfolded him.[82] He was thereafter tortured and forced to sign an affidavit on November 20, 2007, not knowing its contents.[83] On the same day, he was forcibly brought to an apartment in Leveriza Street, Manila where the police found a bomb. He was thereafter forced to admit that it was he who placed the bomb in the apartment.[84] He was again prevailed upon by Mayor Tahira Ismael of Sumisip, Basilan to sign another affidavit when the latter told him that the Hatamans and Salapuddin were out to kill his wife and children.[85] He claimed that the contents of the affidavits he was forced to sign were all fabricated by the police.[86]

On December 12, 2007, Kusain and Aunal executed their respective affidavits of recantation.[87] Both stated that they were coerced to sign their confessions after they were subjected to physical and psychological torture. They were also assisted by counsels not of their choice but endorsed by the Philippine National Police-CIDG.[88]

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[80] *Id.* at 144, 154.

[81] *Id.* at 726-731.

[82] *Id.* at 726, 730.

[83] *Id.* at 727.

[84] *Id.* at 730.

[85] *Id.* at 729.

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

[87] *Id.* at 600-606.

[88] *Id.* at 601, 604. They supplemented these affidavits of recantation by a *Pinagsamang* "Supplement" *sa Salaysay* dated January 4, 2008, *id.* at 607-608.

On January 3, 2008, Salapuddin submitted his counter-affidavit where he reiterated the statements he made in his November 17, 2007 affidavit and assailed Ikram's attempt to implicate him as Ikram's desperate act of self-redemption after owning up to the crime.[89]

Nevertheless, on February 22, 2008, Prosecutor Zuño approved the Department of Justice (DOJ) Investigating Panel's Supplemental Resolution. The Resolution recommended the amendment of the Information in Criminal Case No. Q-07-149982, pending before Quezon City RTC, Branch 83, to include respondents Ikram, Aunal, Kusain, Jamiri, PO1 Bayan Judda, Jang Hataman and Salapuddin.[90] Referring to Salapuddin in particular, the DOJ Investigating Panel stated the observation that: "Salapuddin's participation in the [crime] cannot be downplayed just because he did not actively take part in the planning. Rather, despite this, it has his hands written all over it. The circumstances, the people and place used are all, [in] one way or another, associated with him. It cannot be mere coincidence."[91] On the other hand, the resolution dismissed the charge as against Julham Kunam, Congressman Hataman, and Jim Hataman. So the DOJ Investigating Panel found, "their participation as conspirators in the grand scheme is unstable x x x apart from the statements implicating respondents Mujiv Hataman and Hadjiman Hataman-Salliman, no other evidence was presented to sufficiently establish their involvement in the crime."[92]

On March 7, 2008, Salapuddin filed a Petition for Review of the Supplemental Resolution with the Office of the Secretary of Justice.[93] The Investigating Panel, Salapuddin rued, refused

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[89] *Id.* at 570-586.

[90] *Id.* at 216-236, 1104-1105.

[91] *Id.* at 232.

[92] *Id.* at 233.

[93] *Id.* at 388-416.

to give probative weight to the incriminating statements of Ikram with respect to the Hataman brothers, but relied on the very same statements in finding probable cause to indict him. Moreover, he maintained that there is no evidence independent of Ikram's statements that will support the finding of probable cause to indict him for murder and multiple frustrated murder.

On April 23, 2008, the Secretary of Justice issued a Resolution excluding Salapuddin from the Information for the complex crime of murder and frustrated murder, thus modifying the Supplemental Resolution of the Investigating Panel.[94] The Secretary of Justice predicated his modificatory action on the interplay of the following premises: the only material evidence against Salapuddin is the statements of Ikram.[95] However, Ikram's statements are laden with irreconcilable inconsistencies and contradictions that they cannot be considered worthy of belief.[96] What is more, the Secretary added, "there is nothing on record that will indicate that x x x Salapuddin performed the overt acts of the offense charged."[97] The Secretary of Justice observed that the statements of the other accused cannot be given weight as they were obtained through force and intimidation contrary to the Constitution and were in fact later recanted.

In a Petition for Certiorari dated May 13, 2008, herein respondents Jum Akbar and Nor-Rhama Indanan questioned the Secretary of Justice's Resolution[98] before the CA, the recourse docketed as CA-G.R. SP No. 103461. They argued in the main that matters relating to the admissibility of evidence and credibility of witnesses are best determined by the courts during trial, and not at the stage of determining probable cause. There is, so respondents claimed, overwhelming evidence to link Salapuddin in the conspiracy to kill Congressman Akbar.

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[94] *Id.* at 266-283.

[95] *Id.* at 267.

[96] *Id.* at 271.

[97] *Id.* at 280.

[98] *Id.* at 284-307.

The appellate court, by its Decision dated August 6, 2008, set aside the Resolution of the Secretary of Justice. As held, the totality of the evidence "sufficiently indicates the probability that Salapuddin lent moral and material support or assistance to the perpetrators in the commission of the crime,"[99] the CA adding in this regard that "the absence (or presence) of any conspiracy among the accused is evidentiary in nature after a full-blown trial on the merits."[100] And to the CA, the recantation made by Jamiri, Aunal, and Kusain and their claim of torture were of little probative value inasmuch as these were "unsupported by competent proof."[101]

Salapuddin moved for, but was denied, reconsideration per the CA's Resolution dated October 16, 2008.[102]

In the meantime, Ikram filed a *Sinumpaang Salaysay ng Pagbabawi, Pagwalang Bisa ng Naunang Mga Salaysay at Pagpapatotoo* dated October 6, 2008[103] with the Quezon City RTC-Branch 83 claiming that he was forced to sign the affidavits he previously executed and was merely forced to implicate Salapuddin and the Hataman brothers in the alleged conspiracy by respondent Gov. Jum Akbar and several mayors from Basilan because of their political rivalry in the province.[104] On November 11, 2008, Ikram submitted another affidavit of recantation supplying details of his ordeal while under custodial investigation and alleging that he was physically and mentally tortured so that he was forced to write and sign statements regarding the *Batasan* bombing that were in fact supplied by the police officers themselves.[105]

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[99] *Id.* at 83.

[100] *Id.* at 84.

[101] *Id.* at 82.

[102] *Id.* at 88.

[103] *Id.* at 1016-1019.

[104] *Id.* at 1017.

[105] *Id.* at 1020-1027.

On November 24, 2008, Salapuddin filed a Petition for Review before this Court, ascribing on the appellate court the commission of grave error in admitting the extrajudicial admissions of Jamiri, Kusain, and Aunal obtained as they were through torture and physical abuse, without the effective assistance of a competent independent counsel of their choice, and were in fact recanted. The appellate court also grievously erred, so Salapuddin argued, in according full probative value to Ikram's extrajudicial confession implicating Salapuddin even if it was riddled with serious contradictions and inconsistencies.

The Court, in a minute resolution, denied the petition on September 29, 2010. Hence, on December 1, 2010, Salapuddin filed a Motion for Reconsideration[106] specifically inviting attention to the prosecution's admission no less that there is no other direct evidence linking him to the crime charged except Ikram's testimony.[107] Since, as urged, Ikram has recanted his testimony on account of the violations of his constitutionally protected rights, there is no longer any reason or probable cause to maintain the criminal case filed against Salapuddin.

To the motion, respondents interposed an Opposition dated December 17, 2010[108] stating that Salapuddin has not provided this Court any new and substantial matter that would show the serious error attributed to the CA; that the allegations of torture and recantation have already been denied by the investigating prosecutors and should not sway this Court to reverse the Decision of the appellate court;[109] and that Salapuddin's evasion from arrest is evidence of his guilt.[110]

In a Resolution dated November 21, 2012, the Court granted the Motion for Reconsideration filed by petitioner and reinstated the petition.

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[106] *Id.* at 1119-1134.

[107] *Id.* at 1130.

[108] *Id.* at 1144-1153.

[109] *Id.* at 1143-1151.

[110] *Id.* at 1151.

Upon a second hard look and thorough reexamination of the records, the Court finds merit in the instant petition.

The determination of probable cause is, under our criminal justice system, an executive function that the courts cannot interfere with in the absence of grave abuse of discretion.[111] Otherwise, a violation of the basic principle of separation of powers will ensue. The Executive Branch, through its prosecutors, is, thus, given ample latitude to determine the propriety of filing a criminal charge against a person. In the landmark *Crespo v. Mogul*,[112] We ruled, thus:

> It is a cardinal principle that all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. **The institution of a criminal action depends upon the sound discretion of the fiscal**. He may or may not file the complaint or information, follow or not follow that presented by the offended party, according to whether the evidence, in his opinion, is sufficient or not to establish the guilt of the accused beyond reasonable doubt. **The reason for placing the criminal prosecution under the direction and control of the fiscal is to prevent malicious or unfounded prosecutions by private persons** x x x. Prosecuting officers under the power vested in them by the law, not only have the authority but also the duty of prosecuting persons who, according to the evidence received from the complainant, are shown to be guilty of a crime committed within the jurisdiction of their office. **They have equally the duty not to prosecute when the evidence adduced is not sufficient to establish a *prima facie* case.** (Emphasis supplied.)

This broad authority of prosecutors, however, is circumscribed by the requirement of a conscientious conduct of a preliminary investigation for offenses where the penalty prescribed by law is at least 4 years, 2 months and 1 day.[113] This rule is intended

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[111] *Metropolitan Bank & Trust Co. (Metrobank) v. Tobias III*, G.R. No. 177780, January 25, 2012, 664 SCRA 165, 176-177; *Ilusorio v. Ilusorio*, G.R. No. 171659, December 13, 2007, 540 SCRA 182, 189-190; *Dupasquier v. Court of Appeals*, G.R. No. 112737, January 24, 2001, 350 SCRA 146.

[112] No. L-53373, June 30, 1987, 151 SCRA 462, 467-468.

[113] RULES OF COURT, Rule 112, Sec. 1.

to guarantee the right of every person to be free from "the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt has been passed upon"[114] and to guard the State against the "burden of unnecessary expense and effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges."[115]

Hence, even at this stage, the investigating prosecutors are duty-bound to sift through all the documents, objects, and testimonies to determine what may serve as a relevant and competent evidentiary foundation of a possible case against the accused persons. They cannot defer and entirely leave this verification of all the various matters to the courts. Otherwise, the conduct of a preliminary investigation would be rendered worthless; the State would still be forced to prosecute frivolous suits and innocent men would still be unnecessarily dragged to defend themselves in courts against groundless charges. Indeed, while prosecutors are not required to determine the rights and liabilities of the parties, a preliminary investigation still constitutes a realistic judicial appraisal of the merits of the case[116] so that the investigating prosecutor is not excused from the duty to weigh the evidence submitted and ensure that what will be filed in court is only such criminal charge that the evidence and inferences can properly warrant.[117]

The prosecutor's call on the existence or absence of probable cause is further subject to the review of the Secretary of Justice who exercises the power of control over prosecutors.[118] This much is clear in *Ledesma v. Court of Appeals*:[119]

[114] *Ledesma v. Court of Appeals*, G.R. No. 113216, September 5, 1997, 278 SCRA 656, 673-674.

[115] *Id.* at 674.

[116] *Villanueva v. Ople*, G.R. No. 165125, November 18, 2005, 475 SCRA 539, 557.

[117] *Metropolitan Bank & Trust Co. (Metrobank) v. Tobias III*, *supra* note 111, at 179.

[118] *Joaquin, Jr. v. Drilon*, G.R. No. 108946, January 28, 1999, 302 SCRA 225, 231-232.

[119] *Supra* note 114, at 677.

Decisions or resolutions of prosecutors are subject to appeal to the secretary of justice who, under the Revised Administrative Code, exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, nullify, reverse or modify their rulings.

Section 39, Chapter 8, Book IV in relation to Section 5, 8, and 9, Chapter 2, Title III of the Code gives the secretary of justice supervision and control over the Office of the Chief Prosecutor and the Provincial and City Prosecution Offices. The scope of his power of supervision and control is delineated in Section 38, paragraph 1, Chapter 7, Book IV of the Code:

> '(1) *Supervision and Control.*—Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; x x x'

Supplementing the aforequoted provisions are Section 3 of R.A. 3783 and Section 37 of Act 4007, which read:

> 'Section 3. x x x x x x x x x
>
> The Chief State Prosecutor, the Assistant Chief State Prosecutors, the Senior State Prosecutors, and the State Prosecutors shall x x x perform such other duties as may be assigned to them by the Secretary of Justice in the interest of public service.'
>
> x x x x x x x x x
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> 'Section 37. The provisions of the existing law to the contrary notwithstanding, whenever a specific power, authority, duty, function, or activity is entrusted to a chief of bureau, office, division or service, the same shall be understood as also conferred upon the proper Department Head who shall have authority to act directly in pursuance thereof, or to review, modify, or revoke any decision or action of said chief of bureau, office, division or service.'

'Supervision' and 'control' of a department head over his subordinates have been defined in administrative law as follows:

> 'In administrative law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform such duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.'

Thus, pursuant to the last paragraph of Section 4, Rule 112 of the Rules of Court, if the Secretary of Justice reverses or modifies the resolution of the investigating prosecutor(s), he or she can direct the prosecutor(s) concerned "to dismiss or move for dismissal of the complaint or information with notice to the parties."[120] This action is not subject to the review of courts unless there is a showing that the Secretary of Justice has committed a grave abuse of his discretion amounting to an excess or lack of jurisdiction in issuing the challenged resolution.[121]

Not every error in the proceedings, or every erroneous conclusion of law or fact, is grave abuse of discretion.[122] The phrase "grave abuse of discretion" connotes "a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility, and it must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law."[123]

In CA-G.R. SP No. 103461, the appellate court, in reversing the resolution of the Secretary of Justice, has evidently neglected

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[120] RULES OF COURT, Rule 112, Sec. 4.

[121] *Yu v. Lim*, G.R. No. 182291, September 22, 2010, 631 SCRA 172, 181-182.

[122] *Ignacio v. Court of Appeals*, No. L-49541-52164, March 28, 1980, 96 SCRA 648, 654; *Villa-Rey Transit, Inc. v. Bello*, No. L-18957, April 23, 1963, 7 SCRA 735.

[123] *Chua Huat v. Court of Appeals*, G.R. Nos. 53851 & 63863, July 9, 1991, 199 SCRA 1, 18.

this elementary principle. In fact, the CA has assumed, but has not sufficiently explained, how the Secretary of Justice's decision finding the absence of probable cause to indict Salapuddin amounts to a grave abuse of discretion. Instead, the CA glossed over the testimonies presented by the parties and adopted the reversed conclusion of the Investigating Prosecutors that the totality of the evidence presented points to the probability that Salapuddin has participated in a conspiracy that culminated in the *Batasan* bombing.

Indeed, probable cause requires less proof than necessary for conviction. Nonetheless, it demands more than bare suspicion and must rest on competent relevant evidence.[124] A review of the records, however, show that **the *only* direct material evidence against Salapuddin, as he had pointed out at every conceivable turn, is the confession made by Ikram**. While the confession is arguably relevant, this is not the evidence competent to establish the probability that Salapuddin participated in the commission of the crime. On the contrary, as pointed out by the Secretary of Justice, **this cannot be considered against Salapuddin on account of the principle of *res inter alios acta alteri nocere non debet***[125] expressed in Section 28, Rule 130 of the Rules of Court:

> **Sec. 28**. *Admission by third-party.* – The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.

Clearly thus, an extrajudicial confession is binding only on the confessant.[126] It cannot be admitted against his or her co-accused and is considered as hearsay against them.[127] *Tamargo v. Awingan*[128] elaborated on the reason for this rule, *viz*:

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[124] *Ilusorio v. Ilusorio*, *supra* note 111.

[125] See *Tamargo v. Awingan*, G.R. No. 177727, January 19, 2010, 610 SCRA 316, 331.

[126] *Id.*; citing *People v. Vda de Ramos*, 451 Phil. 214, 224 (2003).

[127] *Id.*; citing *People v. Tizon, Jr.*, G.R. Nos. 133228-31, July 30, 2002, 385 SCRA 364, 388.

[128] *Id.*

[O]n a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him.

The exception provided under Sec. 30, Rule 130 of the Rules of Court to the rule allowing the admission of a conspirator[129] **requires the prior establishment of the conspiracy by evidence other than the confession**.[130] **In this case, there is a dearth of proof demonstrating the participation of Salapuddin in a conspiracy** to set off a bomb in the *Batasan* grounds and thereby kill Congressman Akbar. Not one of the other persons arrested and subjected to custodial investigation professed that Salapuddin was involved in the plan to set off a bomb in the *Batasan* grounds. Instead, the investigating prosecutors did no more than to rely on Salapuddin's association with these persons to conclude that he was a participant in the conspiracy, ruling thus:

Respondent Gerry Salapuddin's participation in the forgoing, cannot be downplayed just because he did not actively take part in the planning. Rather, despite this, it has hands written all over it. **The circumstances, the people and place used are all, one way or another, associated with him. It cannot be mere coincidence**.[131] (Emphasis supplied.)

This Court, however, has previously stressed that mere association with the principals by direct participation, without more, does not suffice.[132] Relationship, association and

[129] **Sec. 30.** *Admission by conspirator.* – The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator **after the conspiracy is shown by evidence other than such act or declaration.** (Emphasis supplied.)

[130] *Id.*

[131] *Rollo*, p. 902, Supplemental Resolution.

[132] *People v. Huang Zhen Hua*, G.R. No. 139301, September 29, 2004, 439 SCRA 350, 369-370; citing *U.S. v. Percival*, 756 F.2d 600 (1985).

companionship do not prove conspiracy.[133] Salapuddin's complicity to the crime, if this be the case, cannot be anchored on his relationship, if any, with the arrested persons or his ownership of the place where they allegedly stayed while in Manila.

It must be shown that the person concerned has performed an **overt act** in pursuance or furtherance of the complicity.[134] In fact, mere knowledge, acquiescence or approval of the act, without the cooperation or approval to cooperate, is not sufficient to prove conspiracy.[135] There must be positive and conclusive factual evidence indicating the existence of conspiracy,[136] and not simple inferences, conjectures and speculations[137] speciously sustained because "[i]t cannot be mere coincidence."[138]

The investigating prosecutors themselves were aware of the need for other clear and positive evidence of conspiracy besides the confession made by a supposed co-conspirator in charging a person with a crime committed in conspiracy. In discharging the Hataman brothers, the investigating prosecutors ratiocinated:

> Apart from the statements implicating respondents Mujiv Hataman and Hadjiman Hataman-Salliman, no other evidence was presented to sufficiently establish their involvement in the crime. Certainly, this is not sufficient basis for finding probable cause to indict them for a non-bailable crime. To do so would open the floodgates to numerous possible indictments on the basis alone of name by mere mention of anyone. To establish conspiracy, evidence of actual

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[133] *People v. Manijas*, G.R. No. 148699, November 15, 2002, 391 SCRA 731, 751.

[134] *People v. Elijorde*, G.R. No. 126531, April 21, 1999, 306 SCRA 188, 193-194.

[135] *People v. Huang Zhen Hua*, *supra* note 132.

[136] *People v. Argawanon*, G.R. No. 106538, March 30, 1994, 231 SCRA 614, 618.

[137] *People v. Halili*, G.R. No. 108662, June 27, 1995, 245 SCRA 340, 352.

[138] *Rollo*, p. 902.

cooperation, rather than mere cognizance or approval of an illegal act is required x x x.[139]

Notably, the Hataman brothers were named not just by Ikram[140] but also by Jamiri[141] and Aunal[142] as the persons who ordered the murder of Congressman Akbar. It is with more reason, therefore, that the foregoing rationale applies squarely to Salapuddin who was mentioned only by Ikram, and not by the other persons arrested.

Indeed, the Secretary of Justice has decided in accordance with the dictates of our jurisprudence in overturning the investigating prosecutors and ordering Salapuddin's exclusion from the Information. The Secretary cannot plausibly be found culpable of grave abuse of his discretion. The appellate court has committed a reversible error in holding otherwise. As a matter of fact, the CA has failed to capture the import of Our ruling in *People v. Listerio*[143] in supporting its general declaration that "the totality of evidence"[144] indicates Salapuddin's participation in the conspiracy. The appellate court held:

> [T]he totality of evidence sufficiently indicates the probability that Salapuddin lent moral and material support or assistance to the perpetrators or assistance to the perpetrators in the commission of the crime.
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> Jurisprudence teaches that 'it is necessary that a conspirator should have performed some overt acts as a direct or indirect contribution in the execution of the crime planned to be committed.' However, this overt act may consist of active participation in the actual commission of the crime itself, *or it may consist of moral assistance*

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[139] *Id.* at 233; citation omitted.

[140] *Id.* at 128.

[141] *Id.* at 536-537.

[142] *Id.* at 549, 551.

[143] G.R. No. 122099, July 5, 2000, 335 SCRA 40, 58-59; cited in CA Decision, *rollo*, p. 84.

[144] *Rollo*, p. 83.

to his co-conspirators ***by*** **being present at the commission of the crime** or *by exerting moral ascendancy over the other co-conspirators* x x x. (Emphasis supplied.)

In holding thus, the CA failed to correctly appreciate that even in *Listerio*, the "assistance," which was considered by this Court as an "overt act" of conspiracy, was extended while "**by being present at the commission of the crime**."[145] There We stressed:

> x x x [T]he rule is that conspiracy must be shown to exist by direct or *circumstantial* evidence, as clearly and convincingly as the crime itself. In the absence of direct proof thereof, as in the present case, it may be deduced from the *mode, method, and manner* by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a *joint purpose and design, concerted action and community of interest*. Hence, **it is necessary that a conspirator should have performed some overt acts as a direct or indirect contribution in the execution of the crime planned to be committed.** The overt act may consist of active participation in the actual commission of the crime itself, *or it may consist of* ***moral assistance to his co-conspirators by being present at the commission of the crime*** or by exerting moral ascendancy over the other co-conspirators.
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> **Conspiracy transcends mere companionship,** it denotes an intentional participation in the transaction with a view to the furtherance of the common design and purpose x x x. In this case, **the presence of accused-appellant, all of them armed with deadly weapons at the *locus criminis*, indubitably shows their criminal design to kill the victims**.[146] (Emphasis supplied.)

In this case, on the other hand, no evidence or testimony, not even Ikram's, suggests the presence of Salapuddin during the blast that killed Congressman Akbar and injured several others. He cannot, therefore, be properly accused of exerting

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[145] See *People v. Amodia*, G.R. No. 173791, April 7, 2009, 584 SCRA 518,

[146] *People v. Listerio*, *supra* note 143. See also *People v. Dacibar*, G.R. No. 111286, February 17, 2000, 325 SCRA 725, 13-14.

an "overt act" by extending "assistance" to whoever was responsible for the commission of the felony.

Furthermore, the very cases the appellate court cited provide that while conspiracy can be proven by circumstantial evidence, the series of evidence presented to establish an accused's participation in the conspiracy **must be consistent** and should lead to no other conclusion but his participation in the crime as a conspirator.[147] After all, the conspiracy itself must be proved as positively as the commission of the felony itself, for it is a "facile device by which an accused may be ensnared and kept within the penal fold."[148]

The confession of Ikram relied on by investigating prosecutors and the appellate court does not provide the threshold consistent picture that would justify Salapuddin's complicity in the conspiracy that led to the *Batasan* bombing. Consider: Ikram made the allegation regarding Salapuddin's participation in the conspiracy in his fourth affidavit, after he categorically denied knowing who the mastermind was. In his affidavit dated November 16, 2007, Ikram gave the following answers to the questions thus indicated:

T: Bakit nyo daw papatayin si Wahab Akbar?

S: Hindi po sa amin pinaalam.

x x x x

T: Alam mo ba kung sino ang nagutos sa inyo para patayin si Wahab Akbar?

S: <u>Hindi po</u>.[149] (Emphasis supplied.)

He did not correct this statement in the two affidavits he executed on November 18, 2007. When shown his affidavit of

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[147] *People v. Maluenda*, G.R. No. 115351, March 27, 1998, 288 SCRA 225, 229.

[148] *Quidet v. People*, G.R. No. 170289, April 8, 2010, 618 SCRA 1, 3.

[149] *Rollo*, p. 105.

November 16, 2007, Ikram did not refute his categorical statement denying any knowledge of the person who gave the command to kill Congressman Akbar. Instead, in the morning of November 18, 2007, he simply admitted that the November 16, 2007 affidavit was his own sworn statement:

> T: Mayron akong ipapakitang sinumpaang salaysay ni IKRAM INDAMA Y LAWAMA na may petsa ika-16 ng Nobyembre 2007. Maaari bang suriin mo at sabihin mo kung ito ang sinasabi mong salaysay mo? (For purposes of identification, affiant was allowed to examine the Sinumapaang Salaysay of IKRAM INDAMA Y LAWAMA dated April 16, 2007.
>
> S: Opo sa akin pong sinumpaang salaysay [na] ito.[150]

He repeated this acknowledgment in the evening of November 18, 2007:

> T: Mayron akong ipapakitang sinumpaang salaysay ni IKRAM INDAMA Y LAWAMA na may petsa ika-16 ng Nobyembre 2007. Maari bang suriin mo at sabihin mo kung ito ang sinasabi mong salaysay mo? (For purposes of identification, affiant was allowed to examine the Sinumpaang Salaysay of IKRAM INDAMA Y LAWAMA dated April 16, 2007)
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> S: Opo sa akin pong sinumpaang salaysay [na] ito.[151]

Again, Ikram made the same acknowledgment on November 20, 2007 when he did not say that he lied when he answered "*Hindi po*" to the question "*Alam mo ba kung sino ang nagutos sa inyo para patayin si* Wahab Akbar?" In his November 20, 2007 affidavit, Ikram stated:

> T: Ikaw rin ba si Ikram Indama y Lawama na nagbigay ng Sinumpaang Salaysay kay PO2 Ubaldo Macatangay Jr noong ika-16 ng Nobyemb[re] 2007, Karagdagang Sinumpaang Salaysay kay PO3 Jonathan F Jornadal noong ika – 18 ng Nobyembre 2007 at Karagdagang Sinumpaang Salaysay kay

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[150] *Id.* at 113.

[151] *Id.* at 117.

PO2 Ubaldo Macatangay Jr noong ika-18 ng Nobyembre 2007?

S: Opo.

T: Ma[y]roon akong ipapakita sayong Sinumpaang Salaysay kay PO2 Ubaldo Macatangay Jr noong ika-16 ng Nobyemb[re] 2007, Karagdagang Sinumpaang Salaysay kay PO3 Jonathan F Jornadal noong ika-18 ng Nobyembre 2007 at Karagdagang Sinumpaang Salaysay kay PO2 Ubaldo Macatangay Jr noong ika-18 ng Nobyembre 2007 na iyong ibinigay. Maari mo bang suriin kung ito ang sinasabing salaysay mo? (For purposes of identification, affiant was allowed to examine the Sinumpaang Salaysay kay PO2 Ubaldo Macatangay Jr noong ika-16 ng Nobyemb[re] 2007, Karagdagang Sinumpaang Salaysay kay PO3 Jonathan F Jornadal noong ika – 18 ng Nobyembre 2007 at Karagdagang Sinumpaang Salaysay kay PO2 Ubaldo Macatangay Jr noong ika-18 ng Nobyembre 2007).

S: Opo, ako po ang nagbigay ng mga salaysay na yan.[152]

Ikram's acknowledged denial of the person behind the plan to kill Congressman Akbar is to be sure inconsistent with the claim he made in the very same affidavit dated November 20, 2007 that he heard Salapuddin order Redwan to kill Congressman Akbar.[153] Reference to Salapuddin as the mastermind behind the grand plan to kill Congressman Akbar also varies with Ikram's claim that the Hataman brothers made the order on two separate occasions,[154] which allegation was, as previously stated, corroborated by Jamiri[155] and Aunal[156] in their own affidavits.

Furthermore, if We consider Ikram's last affidavit where he moved back by at least a month the chronology of the alleged

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[152] *Id.* at 122.

[153] *Id.* at 125.

[154] *Id.* at 128.

[155] *Id.* at 536-537.

[156] *Id.* at 549, 551.

events that led to the *Batasan* bombing, the coherence of the arrested persons' narration crumbles. For instance, where Aunal stated that he, Redwan, and Ikram left Basilan for Manila on October 13, 2007,[157] Ikram maintained that they started for Manila way back on September 8, 2007.[158] And while Ikram claims that he witnessed Bong assemble the bomb on September 13, 2007, he himself maintains that the plan to kill Congressman Akbar by means of a bomb was hatched only four days after, or on September 17, 2007, and they shopped for the materials on September 19, 2007 or six days after the bombs were actually assembled.[159] Further, to reinforce Ikram's association with Salapuddin, a witness for the prosecution, Joel Maturan, was presented to make it appear that Ikram was driving Salapuddin's mini-truck on September 20, 2007 in Basilan.[160] Ikram himself, however, claims that he went home to Basilan only on October 14, 2007. It is not necessary to state the impossibility of Ikram being in two places at the same time. Ikram also alleged that Jamiri went to Greenbucks on September 17, 2007,[161] but Jamiri claims that he went to Greenbucks during Ramadan in the month of October.[162] Inconsistently, Ikram further claims that he saw the Hatamans at Figaro Café during the last week of September 2007, but Jamiri and Aunal both stated in their respective affidavits that the meeting with the Hatamans took place in the latter part of October 2007.[163]

The discrepancies in Ikrams' affidavits and the variations in the statements of the other accused do not persuade this Court to find probable cause that Salapuddin, who was indicted primarily

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[157] *Id.* at 547.

[158] *Id.* at 474.

[159] *Id.* at 475.

[160] *Id.* at 563.

[161] *Id.* at 475.

[162] *Id.* at 533.

[163] *Id.* at 536, 551.

because of Ikram's confession, was part of the conspiracy that led to the *Batasan* bombing. Instead, while We are not pre-empting the findings of the trial court with regard to Ikram, Aunal, Jamiri and Kusain, the variations and the inconsistencies contained in their affidavits lend credence to their allegations of torture and coercion, especially as these allegations are supported by medical reports prepared by an independent medical practitioner who was assisted by the personnel of the Human Rights Commission.

It must not be neglected that strict adherence to the Constitution and full respect of the rights of the accused are essential in the pursuit of justice even in criminal cases. The presumption of innocence, and all rights associated with it, remains even at the stage of preliminary investigation. It is, thus, necessary that in finding probable cause to indict a person for the commission of a felony, only those matters which are constitutionally acceptable, competent, consistent and material are considered. No such evidence was presented to sufficiently establish the probable cause to indict Salapuddin for the non-bailable offenses he is accused of. It, thus, behooves this Court to relieve petitioner from the unnecessary rigors, anxiety, and expenses of trial, and to prevent the needless waste of the courts' time and the government's resources.

WHEREFORE, the instant petition is *GRANTED* and the Decision dated August 6, 2008 and Resolution dated October 16, 2008 of the Court of Appeals in CA-G.R. SP No. 103461 are hereby *REVERSED* and *SET ASIDE*. The Resolution of the Secretary of Justice dated April 23, 2008 in I.S. No. 2007-992 is *REINSTATED*.

Accordingly, let the name of Gerry A. Salapuddin be stricken off and excluded from the Information for the complex crime of multiple murder and frustrated murder filed in Criminal Case No. Q-07-149982, Regional Trial Court, Branch 83 in Quezon City.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 196577. February 25, 2013]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **BARBARA SAMPAGA POBLETE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTION; NOT PRESENT IN CASE AT BAR.— A petition for review under Rule 45 of the Rules of Court specifically provides that only questions of law may be raised, subject to exceptional circumstances which are not present in this case. Hence, factual findings of the trial court, especially if affirmed by the CA, are binding on us. In this case, both the RTC and the CA found that the signatures of Poblete and her deceased husband in the Deed dated 11 A ugust 2000 were forged by Maniego. In addition, the evidence is preponderant that Maniego did not pay the consideration for the sale. Since the issue on the genuineness of the Deed dated 11 A ugust 2000 is essentially a question of fact, we are not duty- bound to analyze and weigh the evidence again.

2. CIVIL LAW; CONTRACTS; REAL ESTATE MORTGAGE; IT IS ESSENTIAL THAT THE MORTGAGOR BE THE ABSOLUTE OWNER OF THE PROPERTY TO BE MORTGAGED, OTHERWISE, THE MORTGAGE IS VOID; RATIONALE.— It is a well-entrenched rule, as aptly applied by the CA, that a forged or fraudulent deed is a nullity and conveys no title. Moreover, where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is void ab *initio* for lack of consideration. Since the Deed dated 11 August 2000 is void, the corresponding TCT No. T-20151 issued pursuant to the same deed is likewise void. In *Yu Bun Guan v. Ong,* the Court ruled that there was no legal basis for the issuance of the certificate of title and the CA correctly cancelled the same when the deed of absolute sale was completely simulated, void and without effect. In *Ereña v. Querrer-Kauffman,* the Court held that when the instrument presented for registration is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner

does not thereby lose his title, and neither does the mortgagee acquire any right or title to the property. In such a case, the mortgagee under the forged instrument is not a mortgagee protected by law. The issue on the nullity of Maniego's title had already been foreclosed when this Court denied Maniego's petition for review in the Resolution dated 13 July 2011, which became final and executory on 19 January 2012. It is settled that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. This is without prejudice, however, to the right of Maniego to recover from Poblete what he paid to Kapantay for the account of Poblete, otherwise there will be unjust enrichment by Poblete. Since TCT No. T-20151 has been declared void by final judgment, the Real Estate Mortgage constituted over it is also void. In a real estate mortgage contract, it is essential that the mortgagor be the absolute owner of the property to be mortgaged; otherwise, the mortgage is void.

3. ID.; ID.; ID.; ID.; MORTGAGEE IN GOOD FAITH, AS EXCEPTION, EXPLAINED; NOT APPLICABLE IN CASE AT BAR.— There is indeed a situation where, despite the fact that the mortgagor is not the owner of the mortgaged property, his title being fraudulent, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy. This is the doctrine of "the mortgagee in good faith" based on the rule that buyers or mortgagees dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title. However, it has been consistently held that this rule does not apply to banks, which are required to observe a higher standard of diligence. A bank whose business is impressed with public interest is expected to exercise more care and prudence in its dealings than a private individual, even in cases involving registered lands. A bank cannot assume that, simply because the title offered as security is on its face free of any encumbrances or lien, it is relieved of the responsibility of taking further steps to verify the title and inspect the properties to be mortgaged. x x x Good faith, or the lack of it, is a question of intention. In ascertaining intention, courts are

necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined. x x x We take judicial notice of the standard practice of banks, before approving a loan, to send representatives to the premises of the land offered as collateral to investigate its real owners. In *Prudential Bank v. Kim Hyeun Soon,* the Court held that the bank failed to exercise due diligence although its representative conducted an ocular inspection, because the representative concentrated only on the appraisal of the property and failed to inquire as to who were the then occupants of the property. x x x Since Land Bank is not a mortgagee in good faith, it is not entitled to protection. The injunction against the foreclosure proceeding in the present case should be made permanent. Since Lot No. 29 has not been transferred to a third person who is an innocent purchaser for value, ownership of the lot remains with Poblete. This is without prejudice to the right of either party to proceed against Maniego.

4. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; IN PARI DELICTO RULE, DEFINED; NOT PRESENT IN CASE AT BAR.— On the allegation that Poblete is in *pari delicto* with Maniego, we find the principle inapplicable. The *pari delicto* rule provides that "when two parties are equally at fault, the law leaves them as they are and denies recovery by either one of them." We adopt the factual finding of the RTC and the CA that only Maniego is at fault.

5. ID.; APPEALS; ISSUES WHICH WAS NEITHER ALLEGED IN THE COMPLAINT NOR RAISED DURING THE TRIAL CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— On the issues of estoppel and !aches, such were not raised before the trial court. Hence, we cannot rule upon the same. It is settled that an issue which was neither alleged in the complaint nor raised during the trial cannot be raised for the first time on appeal, as such a recourse would be offensive to the basic rules of fair play, justice and due process, since the opposing party would be deprived of the opportunity to introduce evidence rebutting such new issue.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
R.R. Mendez and Associates Law Offices for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This Petition for Review on *Certiorari*[1] seeks to reverse the Court of Appeals' Decision[2] dated 28 September 2010 and its Resolution[3] dated 19 April 2011 in CA-G.R. CV No. 91666. The Court of Appeals (CA) affirmed *in toto* the Decision[4] of the Regional Trial Court (RTC) of San Jose, Occidental Mindoro, Branch 46, in Civil Case No. R-1331.

The Facts

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

Petitioner Land Bank of the Philippines (Land Bank) is a banking institution organized and existing under Philippine laws. Respondent Barbara Sampaga Poblete (Poblete) is the registered owner of a parcel of land, known as Lot No. 29, with an area of 455 square meters, located in Buenavista, Sablayan, Occidental Mindoro, under Original Certificate of Title (OCT) No. P-12026. In October 1997, Poblete obtained a ₱300,000.00 loan from Kabalikat ng Pamayanan ng Nagnanais Tumulong at Yumaman Multi-Purpose Cooperative (Kapantay). Poblete mortgaged Lot No. 29 to Kapantay to guarantee payment of the loan. Kapantay, in turn, used OCT No. P-12026 as collateral under its Loan Account No. 97-CC-013 with Land Bank-Sablayan Branch.

In November 1998, Poblete decided to sell Lot No. 29 to pay her loan. She instructed her son-in-law Domingo Balen

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

[2] *Rollo*, pp. 38-49. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Stephen C. Cruz and Danton Q. Bueser, concurring.

[3] *Id.* at 72-73.

[4] *Id.* at 50-71. Penned by Judge Ernesto P. Pagayatan.

(Balen) to look for a buyer. Balen referred Angelito Joseph Maniego (Maniego) to Poblete. According to Poblete, Maniego agreed to buy Lot No. 29 for ₱900,000.00, but Maniego suggested that a deed of absolute sale for ₱300,000.00 be executed instead to reduce the taxes. Thus, Poblete executed the Deed of Absolute Sale dated 9 November 1998 (Deed dated 9 November 1998) with ₱300,000.00 as consideration.[5] In the Deed dated 9 November 1998, Poblete described herself as a "widow." Poblete, then, asked Balen to deliver the Deed dated 9 November 1998 to Maniego and to receive the payment in her behalf. Balen testified that he delivered the Deed dated 9 November 1998 to Maniego. However, Balen stated that he did not receive from Maniego the agreed purchase price. Maniego told Balen that he would pay the amount upon his return from the United States. In an Affidavit dated 19 November 1998, Poblete stated that she agreed to have the payment deposited in her Land Bank Savings Account.[6]

Based on a Certification issued by Land Bank-Sablayan Branch Department Manager Marcelino Pulayan on 20 August 1999,[7] Maniego paid Kapantay's Loan Account No. 97-CC-013 for ₱448,202.08. On 8 June 2000, Maniego applied for a loan of ₱1,000,000.00 with Land Bank, using OCT No. P-12026 as collateral. Land Bank alleged that as a condition for the approval of the loan, the title of the collateral should first be transferred to Maniego.

On 14 August 2000, pursuant to a Deed of Absolute Sale dated 11 August 2000 (Deed dated 11 August 2000),[8] the Register of Deeds of Occidental Mindoro issued Transfer Certificate of Title (TCT) No. T-20151 in Maniego's name. On 15 August 2000, Maniego and Land Bank executed a Credit Line Agreement and a Real Estate Mortgage over TCT No. T-20151. On the

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[5] *Id.* at 124.

[6] *Id.* at 125.

[7] *Id.* at 127.

[8] *Id.* at 129.

same day, Land Bank released the ₱1,000,000.00 loan proceeds to Maniego. Subsequently, Maniego failed to pay the loan with Land Bank. On 4 November 2002, Land Bank filed an Application for Extra-judicial Foreclosure of Real Estate Mortgage stating that Maniego's total indebtedness amounted to ₱1,154,388.88.

On 2 December 2002, Poblete filed a Complaint for Nullification of the Deed dated 11 August 2000 and TCT No. T-20151, Reconveyance of Title and Damages with Prayer for Temporary Restraining Order and/or Issuance of Writ of Preliminary Injunction. Named defendants were Maniego, Land Bank, the Register of Deeds of Occidental Mindoro and Elsa Z. Aguirre in her capacity as Acting Clerk of Court of RTC San Jose, Occidental Mindoro. In her Complaint, Poblete alleged that despite her demands on Maniego, she did not receive the consideration of ₱900,000.00 for Lot No. 29. She claimed that without her knowledge, Maniego used the Deed dated 9 November 1998 to acquire OCT No. P-12026 from Kapantay. Upon her verification with the Register of Deeds, the Deed dated 11 August 2000 was used to obtain TCT No. T-20151. Poblete claimed that the Deed dated 11 August 2000 bearing her and her deceased husband's, Primo Poblete, supposed signatures was a forgery as their signatures were forged. As proof of the forgery, Poblete presented the Death Certificate dated 27 April 1996 of her husband and Report No. 294-502 of the Technical Services Department of the National Bureau of Investigation showing that the signatures in the Deed dated 11 August 2000 were forgeries. Accordingly, Poblete also filed a case for estafa through falsification of public document against Maniego and sought injunction of the impending foreclosure proceeding.

On 7 January 2003, Land Bank filed its Answer with Compulsory Counterclaim and Cross-claim. Land Bank claimed that it is a mortgagee in good faith and it observed due diligence prior to approving the loan by verifying Maniego's title with the Office of the Register of Deeds. Land Bank likewise interposed a cross-claim against Maniego for the payment of the loan, with interest, penalties and other charges. Maniego, on the other hand, separately filed his Answer. Maniego denied the allegations

of Poblete and claimed that it was Poblete who forged the Deed dated 11 August 2000. He also alleged that he paid the consideration of the sale to Poblete and even her loans from Kapantay and Land Bank.

The Ruling of the Regional Trial Court

On 28 December 2007, the RTC of San Jose, Occidental Mindoro, Branch 46, rendered a Decision in favor of Poblete, the dispositive portion of which reads:

> WHEREFORE, by preponderance of evidence, judgment is hereby rendered in favor of the plaintiff and against the defendants, as follows:
>
> 1. Declaring the Deed of Sale dated August 11, 2000 over O.C.T. No. P-12026, as null and void;
>
> 2. Declaring Transfer of Certificate of Title No. T-20151 as null and void, it having been issued on the basis of a spurious and forged document;
>
> 3. The preliminary [i]njunction issued directing the defendants to refrain from proceedings [sic] with the auction sale of the plaintiff's properties, dated February 10, 2002, is hereby made permanent;
>
> 4. Ordering defendant Angelito Joseph Maniego to return to the plaintiff O.C.T. No. P-12026; and
>
> 5. Ordering defendant Angelito Joseph Maniego to pay plaintiff the amount of ₱50,000.00, as and for reasonable attorney's fees.
>
> Judgment is furthermore rendered on the cross-claim of defendant Land Bank of the Philippines against defendant Angelito Joseph Maniego, as follows:
>
> A. Ordering defendant Angelito Joseph Maniego to pay his co-defendant [L]and Bank of the Philippines his loan with a principal of ₱1,000,000.00, plus interests, penalties and other charges thereon; and
>
> B. Ordering defendant Angelito Joseph Maniego to pay the costs of this suit.
>
> SO ORDERED.[9]

[9] *Id.* at 70-71.

The RTC ruled that the sale between Poblete and Maniego was a nullity. The RTC found that the agreed consideration was ₱900,000.00 and Maniego failed to pay the consideration. Furthermore, the signatures of Poblete and her deceased husband were proven to be forgeries. The RTC also ruled that Land Bank was not a mortgagee in good faith because it failed to exercise the diligence required of banking institutions. The RTC explained that had Land Bank exercised due diligence, it would have known before approving the loan that the sale between Poblete and Maniego had not been consummated. Nevertheless, the RTC granted Land Bank's cross-claim against Maniego.

In an Order dated 17 March 2008, the RTC denied the Motion for Reconsideration filed by Land Bank for want of merit. Thereafter, Land Bank and Maniego separately challenged the RTC's Decision before the CA.

The Ruling of the Court of Appeals

On 28 September 2010, the CA promulgated its Decision affirming *in toto* the Decision of the RTC.[10] Both Land Bank and Maniego filed their Motions for Reconsideration but the CA denied both motions on 19 April 2011.[11]

In a Resolution dated 13 July 2011,[12] the Second Division of this Court denied the Petition for Review on *Certiorari* filed by Maniego. This Resolution became final and executory on 19 January 2012.

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[10] *Id.* at 48. The dispositive portion of the Decision reads: "WHEREFORE, the 28 December 2007 Decision of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46 in Civil Case No. R-1331 is hereby AFFIRMED *in toto.* Costs against defendant Maniego. SO ORDERED."

[11] *Id.* at 72-73.

[12] CA *rollo*, pp. 574-575. The Entry of Judgment provides:

This is to certify that on July 13, 2011 a resolution rendered in the above-entitled case was filed in this Office, the dispositive part of which reads as follows:

"G.R. No. 196807 (Angelito Joseph Maniego vs. Barbara Sampaga Poblete). - x x x. On the basis thereof, the Court resolves to DENY

On the other hand, Land Bank filed this petition.

The Issues

Land Bank seeks a reversal and raises the following issues for resolution:

1. THE COURT OF APPEALS (FORMER SPECIAL ELEVENTH DIVISION) ERRED IN UPHOLDING THE FINDING OF THE TRIAL COURT DECLARING TCT NO. T-20151 AS NULL AND VOID. THE COURT OF APPEALS MISCONSTRUED AND MISAPPRECIATED THE EVIDENCE AND THE LAW IN NOT FINDING TCT NO. T-20151 REGISTERED IN THE NAME OF ANGELITO JOSEPH MANIEGO AS VALID.
2. THE COURT OF APPEALS (FORMER SPECIAL ELEVENTH DIVISION) MISCONSTRUED THE EVIDENCE AND THE LAW IN NOT FINDING LAND BANK A MORTGAGEE IN GOOD FAITH.
3. THE COURT OF APPEALS (FORMER SPECIAL ELEVENTH DIVISION) MISCONSTRUED THE EVIDENCE AND THE LAW IN NOT FINDING THE RESPONDENT AND ANGELITO JOSEPH MANIEGO AS *IN PARI DELICTO*.
4. THE COURT OF APPEALS (FORMER SPECIAL ELEVENTH DIVISION) ERRED IN NOT APPLYING THE PRINCIPLE OF ESTOPPEL OR LACHES ON

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the petition for review on certiorari assailing the Decision dated 28 September 2010 and Resolution dated 19 April 2011 of the Court of Appeals, Manila, in CA-G.R. CV No. 91666 for late filing, as the petition was filed beyond the fifteen (15) – day reglementary period fixed in Section 2, Rule 45 in relation to Section 5 (a), Rule 56, in view of the denial of the motion for extension to file the petition in the Resolution dated 29 June 2011.

Moreover, counsel for petitioner failed to comply with the En Banc Resolution dated 10 July 2007 in A.M. No. 07-6-5-SC which requires the parties or their counsels to indicate their contact details in all their pleadings filed before the Court. Likewise, counsel's payments for professional tax and IBP membership dues are dated 27 January 2010 and 23 July 2010, respectively. x x x"

and that the same has, on January 19, 2012 become final and executory and is hereby recorded in the Book of Entries of Judgments.

RESPONDENT IN THAT THE PROXIMATE CAUSE OF HER LOSS WAS HER NEGLIGENCE TO SAFEGUARD HER RIGHTS OVER THE SUBJECT PROPERTY, THEREBY ENABLING ANGELITO JOSEPH MANIEGO TO MORTGAGE THE SAME WITH LAND BANK.[13]

The Ruling of the Court

We do not find merit in the petition.

A petition for review under Rule 45 of the Rules of Court specifically provides that only questions of law may be raised, subject to exceptional circumstances[14] which are not present in this case. Hence, factual findings of the trial court, especially if affirmed by the CA, are binding on us.[15] In this case, both the RTC and the CA found that the signatures of Poblete and her deceased husband in the Deed dated 11 August 2000 were forged by Maniego. In addition, the evidence is preponderant that Maniego did not pay the consideration for the sale. Since the issue on the genuineness of the Deed dated 11 August 2000 is essentially a question of fact, we are not duty-bound to analyze and weigh the evidence again.[16]

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[13] *Rollo*, pp. 18-19.

[14] In *Reyes v. Montemayor,* G. R. No. 166516, 3 September 2009, 598 SCRA 61, 74, the Court enumerates the following exceptions: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misappreciation of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the same are 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 are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

[15] *Montecillo v. Reynes,* 434 Phil. 456 (2002), citing *Philippine National Construction Corporation v. Mars Construction Enterprises, Inc.,* 382 Phil. 510 (2000).

[16] *Catindig v. Vda. De Meneses*, G.R. No. 165851, 2 February 2011, 641 SCRA 350.

It is a well-entrenched rule, as aptly applied by the CA, that a forged or fraudulent deed is a nullity and conveys no title.[17] Moreover, where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is void *ab initio* for lack of consideration.[18] Since the Deed dated 11 August 2000 is void, the corresponding TCT No. T-20151 issued pursuant to the same deed is likewise void. In *Yu Bun Guan v. Ong,*[19] the Court ruled that there was no legal basis for the issuance of the certificate of title and the CA correctly cancelled the same when the deed of absolute sale was completely simulated, void and without effect. In *Ereña v. Querrer-Kauffman*,[20] the Court held that when the instrument presented for registration is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the mortgagee acquire any right or title to the property. In such a case, the mortgagee under the forged instrument is not a mortgagee protected by law.[21]

The issue on the nullity of Maniego's title had already been foreclosed when this Court denied Maniego's petition for review in the Resolution dated 13 July 2011, which became final and executory on 19 January 2012.[22] It is settled that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[23] This is without prejudice,

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[17] *Rollo,* p. 45.

[18] *Montecillo v. Reynes, supra* note 15, citing *Vda. De Catindig v. Heirs of Roque*, 165 Phil. 707 (1976); *Mapalo v. Mapalo,* 123 Phil. 979 (1966); *Ocejo Perez & Co. v. Flores,* 40 Phil. 921 (1920).

[19] 419 Phil. 845 (2001).

[20] 525 Phil. 381 (2006).

[21] *Id.*

[22] *Supra* note 12.

[23] *Catindig v. Vda. De Meneses*, *supra* note 16, citing *Peña v. Government Service Insurance System,* 533 Phil. 670 (2006).

however, to the right of Maniego to recover from Poblete what he paid to Kapantay for the account of Poblete, otherwise there will be unjust enrichment by Poblete.

Since TCT No. T-20151 has been declared void by final judgment, the Real Estate Mortgage constituted over it is also void. In a real estate mortgage contract, it is essential that the mortgagor be the absolute owner of the property to be mortgaged; otherwise, the mortgage is void.[24]

Land Bank insists that it is a mortgagee in good faith since it verified Maniego's title, did a credit investigation, and inspected Lot No. 29. The issue of being a mortgagee in good faith is a factual matter, which cannot be raised in this petition.[25] However, to settle the issue, we carefully examined the records to determine whether or not Land Bank is a mortgagee in good faith.

There is indeed a situation where, despite the fact that the mortgagor is not the owner of the mortgaged property, his title being fraudulent, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy.[26] This is the doctrine of "the mortgagee in good faith" based on the rule that buyers or mortgagees dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title.[27] However, it has been

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[24] CIVIL CODE, Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

(1) That they be constituted to secure the fulfillment of a principal obligation;

(2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;

(3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

[25] *Philippine National Bank v. Heirs of Militar, 504 Phil. 634 (2005), citing Sps. Uy v. Court of Appeals*, 411 Phil. 788 (2001).

[26] *Cavite Development Bank v. Lim,* 381 Phil. 355 *(2000).*

[27] *Id.*, citing *Philippine National Bank v. Intermediate Appellate Court*, 257 Phil. 748 (1989).

consistently held that this rule does not apply to banks, which are required to observe a higher standard of diligence.[28] A bank whose business is impressed with public interest is expected to exercise more care and prudence in its dealings than a private individual, even in cases involving registered lands.[29] A bank cannot assume that, simply because the title offered as security is on its face free of any encumbrances or lien, it is relieved of the responsibility of taking further steps to verify the title and inspect the properties to be mortgaged.[30]

Applying the same principles, we do not find Land Bank to be a mortgagee in good faith.

Good faith, or the lack of it, is a question of intention.[31] In ascertaining intention, courts are necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined.[32]

Based on the evidence, Land Bank processed Maniego's loan application upon his presentation of OCT No. P-12026, which was still under the name of Poblete. Land Bank even ignored the fact that Kapantay previously used Poblete's title as collateral in its loan account with Land Bank.[33] In *Bank of Commerce v.*

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[28] *Philippine National Bank v. Jumamoy,* G.R. No. 169901, 3 August 2011, 655 SCRA 54; *Philippine National Bank v. Corpuz,* G.R. No. 180945, 12 February 2010, 612 SCRA 493; *Bank of Commerce v. San Pablo, Jr.,* G.R. No. 167848, 27 April 2007, 522 SCRA 713; *Erasusta, Jr. v. Court of Appeals*, 527 Phil. 639 (2006); *Private Development Corporation of the Philippines v. Court of Appeals,* 512 Phil. 237 (2005); *Premiere Development Bank v. Court of Appeals*, 493 Phil. 752 (2005); *Robles v. Court of Appeals*, 384 Phil. 635 (2000).

[29] *Cruz v. Bancom Finance Corporation*, 429 Phil. 225 (2002), citing *Rural Bank of Compostela v. Court of Appeals,* 337 Phil. 521 (1997).

[30] *United Coconut Planters Bank v. Gillera, G.R. No. 171550, 30 September 2009 (Unsigned Resolution),* citing *Home Bankers Savings & Trust Co. v. Court of Appeals,* 496 Phil. 637 *(2005).*

[31] *Leung Yee v. F.L. Strong Machinery Co. and Williamson,* 37 Phil. 644 (1918).

[32] *Id.*

[33] CA *rollo,* p. 133.

San Pablo, Jr.,[34] we held that when "the person applying for the loan is other than the registered owner of the real property being mortgaged, [such fact] should have already raised a red flag and which should have induced the Bank x x x to make inquiries into and confirm x x x [the] authority to mortgage x x x. A person who deliberately ignores a significant fact that could create suspicion in an otherwise reasonable person is not an innocent purchaser for value."

The records do not even show that Land Bank investigated and inspected the property to ascertain its actual occupants. Land Bank merely mentioned that it inspected Lot No. 29 to appraise the value of the property. We take judicial notice of the standard practice of banks, before approving a loan, to send representatives to the premises of the land offered as collateral to investigate its real owners.[35] In *Prudential Bank v. Kim Hyeun Soon*,[36] the Court held that the bank failed to exercise due diligence although its representative conducted an ocular inspection, because the representative concentrated only on the appraisal of the property and failed to inquire as to who were the then occupants of the property.

Land Bank claims that it conditioned the approval of the loan upon the transfer of title to Maniego, but admits processing the loan based on Maniego's assurances that title would soon be his.[37] Thus, only one day after Maniego obtained TCT No. T-20151 under his name, Land Bank and Maniego executed a Credit Line Agreement and a Real Estate Mortgage. Because of Land Bank's haste in granting the loan, it appears that Maniego's loan was already completely processed while the collateral was still in the name of Poblete. This is also supported

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[34] G.R. No. 167848, 27 April 2007, 522 SCRA 713.

[35] *Development Bank of the Philippines v. Court of Appeals,* 387 Phil. 283 (2000), citing *Spouses Tomas v. Philippine National Bank*, 187 Phil. 183 (1980).

[36] G.R. No. 149481, 24 October 2001 (Unsigned Resolution).

[37] CA *rollo,* p. 77.

by the testimony of Land Bank Customer Assistant Andresito Osano.[38]

Where the mortgagee acted with haste in granting the mortgage loan and did not ascertain the ownership of the land being mortgaged, as well as the authority of the supposed agent executing the mortgage, it cannot be considered an innocent mortgagee.[39]

Since Land Bank is not a mortgagee in good faith, it is not entitled to protection. The injunction against the foreclosure proceeding in the present case should be made permanent. Since Lot No. 29 has not been transferred to a third person who is an innocent purchaser for value, ownership of the lot remains with Poblete. This is without prejudice to the right of either party to proceed against Maniego.

On the allegation that Poblete is *in pari delicto* with Maniego, we find the principle inapplicable. The *pari delicto* rule provides that "when two parties are equally at fault, the law leaves them as they are and denies recovery by either one of them."[40] We adopt the factual finding of the RTC and the CA that only Maniego is at fault.

Finally, on the issues of estoppel and laches, such were not raised before the trial court. Hence, we cannot rule upon the same. It is settled that an issue which was neither alleged in the complaint nor raised during the trial cannot be raised for the first time on appeal, as such a recourse would be offensive to the basic rules of fair play, justice and due process, since the opposing party would be deprived of the opportunity to introduce evidence rebutting such new issue.[41]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 28 September 2010 Decision and the 19 April 2011 Resolution of

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[38] *Rollo,* p. 65.

[39] *San Pedro v. Ong,* G. R. No. 177598, 17 October 2008, 569 SCRA 767; *Instrade, Inc. v. Court of Appeals,* 395 Phil. 791 *(2000).*

[40] *Yu Bun Guan v. Ong, supra* note 19.

[41] *Modina v. Court of Appeals,* 376 Phil. 44 (1999).

the Court of Appeals in CA-G.R. CV No. 91666. The injunction against the foreclosure proceeding, issued by the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, is made permanent. Costs against Land Bank.

SO ORDERED.

Del Castillo, Perez, Mendoza,[*] and *Perlas-Bernabe, JJ.,* concur.

EN BANC

[G.R. No. 168703. February 26, 2013]

RAMON G. NAZARENO, *petitioner, vs.* **MAERSK FILIPINAS CREWING, INC., and ELITE SHIPPING A/S,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; 1996 POEA STANDARD EMPLOYMENT CONTRACT (POEA-SEC); IT IS THE COMPANY- DESIGNATED PHYSICIAN WHO DETERMINES THE FITNESS OR DISABILITY OF A SEAFARER WHO SUFFERED OR IS SUFFERING FROM AN INJURY OR ILLNESS; EXCEPTION; APPLICATION IN CASE AT BAR.— [T]he courts should be vigilant in their time-honored duty to protect labor, especially in cases of disability or ailment. When applied to Filipino seamen, the perilous nature of their work is considered in determining the proper benefits to be awarded. These benefits, at the very least,

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[*] Designated acting member per Special Order No. 1421 dated 20 February 2013.

should approximate the risks they brave on board the vessel every single day. Accordingly, if serious doubt exists on the company-designated physician's declaration of the nature of a seaman's injury and its corresponding impediment grade, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. These pieces of evidence will in turn be used to determine the benefits rightfully accruing to him. x x x The certification of the company-designated physician would defeat petitioner's claim while the opinion of the independent physicians would uphold such claim. In such a situation, the Court adopts the findings favorable to petitioner. The law looks tenderly on the laborer. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice. Anent the question of whether or not petitioner is indeed entitled to disability benefits based on the findings and conclusions, not only of his personal doctors, but also on the findings of the doctors whom he consulted abroad, the Court rules in the affirmative. From the documents presented by the parties, it is apparent that in a message to Elite, it was established that petitioner was already declared "not fit for duty" and was advised to be confined and undergo MRI treatment. x x x To recapitulate, it bears to reiterate the general rule under Department Order No. 33, Series of 1996 and Memorandum Circular No. 55, Series of 1996, that it is the company-designated physician who determines the fitness or disability of a seafarer who suffered or is suffering from an injury or illness. However, considering the unanimity of the findings not only of petitioner's independent physicians here in the Philippines, but also those who were consulted abroad by petitioner's employer, that petitioner is indeed not fit for duty as a seafarer by reason of the injury he sustained during his fall, the instant case should be considered as an exception to the general rule abovestated. The Court has applied the Labor Code concept of disability to Filipino seafarers in keeping with the avowed policy of the State to give maximum aid and full protection to labor, it holding that the notion of disability is intimately related to the worker's capacity to earn, what is compensated being not his injury or illness but his inability to work resulting in the impairment of his earning capacity, hence,

disability should be understood less on its medical significance but more on the loss of earning capacity.

2. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF PROPER IN ACTIONS FOR RECOVERY OF WAGES; CASE AT BAR.— The Court also agrees with the ruling of the labor arbiter that petitioner is entitled to attorney's fees following Article 2208 of the New Civil Code, which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws. Pursuant to prevailing jurisprudence, petitioner is entitled to attorney's fees of ten percent (10%) of the monetary award.

APPEARANCES OF COUNSEL

Romulo P. Valmores for petitioner.
R.C. Carrera Law Office for respondents.

DECISION

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated April 27, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 84811, and the Resolution[2] dated June 28, 2005 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

On February 16, 2001, petitioner Ramon G. Nazareno was hired by Maersk Filipinas Crewing Inc. (MCI) as Chief Officer for and in behalf of its foreign principal Elite Shipping A/S (Elite) on board its vessel M/V Artkis Hope for a period of six (6) months with a basic salary of US$1,129.00.

On March 25, 2001, the vessel was berthed at Port Belem, Brazil to load timber. While petitioner was checking the last

[1] Penned by Associate Justice Arturo D. Brion (now a member of this Court), with Associate Justices Eugenio S. Labitoria and Eliezer R. De los Santos, concurring; *rollo*, pp. 116-133.

[2] *Id.* at 145-148.

bundle of timber to be loaded, he suddenly lost his balance and fell at a height of two (2) meters. He landed on the timber and injured his right shoulder. Due to the pain he felt in his right shoulder, he was later examined at Philadelphia, U.S.A. and was considered not fit for work. It was recommended that petitioner should be confined for thorough evaluation and further tests, such as MRI. Petitioner was also advised to see an Orthopedic Surgeon and/or a Neurologist.[3] However, petitioner was not permitted to disembark as there was no one available to replace him.

On August 8, 2001, at Ulsan, South Korea, petitioner was brought at the Ulsan Hyundai Hospital where he was treated and given medication for his "frozen right shoulder."[4] He was also advised to undergo physical therapy. Consequently, petitioner was declared unfit to work and was recommended to be signed off from duty.

On August 10, 2001, petitioner was repatriated to Manila. He then reported to MCI which referred him to the Medical Center Manila (MCM) where he underwent a physical therapy program under Dr. Antonio O. Periquet (Dr. Periquet) three times a week. On October 31, 2001, Dr. Emmanuel C. Campana (Dr. Campana) issued a Medical Certificate[5] stating that petitioner has been under their medical care since August 13, 2001 and that after treatment and physical therapy, petitioner was fit for work as of October 21, 2001.

However, after almost two (2) months of therapy, petitioner did not notice any improvement. He informed Dr. Periquet that when he was in Philadelphia, U.S.A., he was advised to consult a neurologist and undergo MRI. When Dr. Periquet ignored him, he consulted another doctor. Thus, from October 23, 2001 to December 1, 2001, petitioner underwent a series of treatment

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[3] *Rollo*, p. 25.

[4] *Id.* at 26.

[5] *Id.* at 149.

for his "frozen shoulder of the right arm" from Dr. Johnny G. Tan, Jr. (Dr. Tan) in his Chiropractic Clinic.[6]

On December 27, 2001, petitioner consulted Dr. Cymbeline B. Perez-Santiago (Dr. Santiago), a Neurologist at the Makati Medical Center, and was subjected to neurologic examinations. In her Neurologic Summary[7] dated February 28, 2002, Dr. Santiago concluded that petitioner will no longer be able to function as in his previous disease-free state and that his condition would hamper him from operating as chief officer of a ship.

Meanwhile, petitioner was also examined by Dr. Efren R. Vicaldo who, in a Medical Certificate[8] dated January 29, 2002, diagnosed petitioner to be suffering from Parkinson's disease and a frozen right shoulder (secondary), with an "Impediment Grade VII (41.8%). He concluded that petitioner is unfit to work as a seafarer.

On the basis of the findings of his doctors, petitioner sought payment of his disability benefits and medical allowance from respondents, but was refused. Petitioner therefore instituted the present Complaint[9] against the respondents docketed as NLRC OFW Case No. (M) 02-03-0660-00.

On February 24, 2003, after the parties submitted their respective pleadings, the Labor Arbiter (LA) rendered a Decision[10] in favor of petitioner and ordered respondents to pay the former his disability claims, sickness allowance, and attorney's fees. The dispositive portion of which reads:

WHEREFORE, premises considered, judgement (sic) is hereby rendered ordering the respondents Maersk-Filipinas Crewing, Inc./ Elite Shipping A/S to jointly and severally pay complainant Ramon

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[6] *Id.* at 150.

[7] *Id.* at 28.

[8] *Id.* at 29-30.

[9] CA *rollo*, pp. 34-35.

[10] *Rollo*, pp. 60-67.

D. (sic) Nazareno the amount of **TWENTY-SEVEN THOUSAND NINE HUNDRED FIFTY-SEVEN US DOLLARS & 60/100 (US$27,957.60),** or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability claims, sickness allowance and attorney's fees.

All other claims are **DISMISSED** for lack of merit.

SO ORDERED.[11]

The LA gave credence to the findings and assessments of petitioner's attending physicians who took care and treated him, instead of the conclusion of Dr. Campana that petitioner was already fit for work as of October 21, 2001. The LA held that the medical certificate of Dr. Campana cannot prevail over the findings of the physicians who treated petitioner.

Aggrieved, respondents appealed to the National Labor Relations Commission (NLRC). On April 15, 2004, the NLRC, Third Division, rendered a Decision[12] affirming with modification the decision of the LA. The tribunal concurred with the findings of the LA that petitioner was entitled to disability benefits. It, however, deleted the grant of sickness allowance, considering that petitioner had already received the same. The dispositive portion of the Decision states:

WHEREFORE, premises considered, the Decision of February 24, 2002 is hereby MODIFIED by deleting the award of US$4,516.00 for sick wages, the other awards are AFFIRMED.

SO ORDERED.[13]

Respondents filed a Motion for Reconsideration,[14] but it was denied in the Resolution[15] dated May 31, 2004.

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[11] *Id.* at 66-67. (Emphasis in the original)

[12] *Id.* at 84-89.

[13] *Id.* at 89.

[14] CA *rollo*, pp. 119-125.

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

Respondents then sought recourse before the CA alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in ruling in favor of the petitioner,[16] which case was docketed as CA-G.R. SP No. 84811.

On April 27, 2005, the CA rendered a Decision[17] granting the petition. The CA set aside the decision and resolution of the NLRC and dismissed petitioner's complaint, the decretal portion of which reads:

> WHEREFORE, premises considered, we hereby **GRANT** the petition and accordingly: **SET ASIDE** the assailed Decision and Resolution of the respondent National Labor Relations Commission for being null and void; and **DISMISS** the private respondent's COMPLAINT for lack of merit.
>
> SO ORDERED.[18]

In ruling in favor of the respondents, the CA opined that petitioner is covered by the 1996 POEA Standard Employment Contract (POEA-SEC) and under Section 20 of the said POEA-SEC, the disability of a seafarer can only be assessed by the company-designated physician and not by the seafarer's own doctor.

Hence, the petition assigning the lone error:

> THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR IN REVERSING AND SETTING ASIDE THE DECISIONS OF BOTH THE LABOR ARBITER *A QUO* AND THE NATIONAL LABOR RELATIONS COMMISSION FINDING PETITIONER ALREADY UNFIT TO WORK AS A RESULT OF THE INJURY HE SUSTAINED DURING THE ACCIDENT ON BOARD THE RESPONDENT'S VESSEL AND THEREFORE ENTITLED TO DISABILITY BENEFITS.[19]

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[16] *Rollo*, pp. 90-101.

[17] *Id.* at 116-133.

[18] *Id.* at 132. (Emphasis in the original)

[19] *Id.* at 15.

Petitioner argues that there is enough reason to disregard the assessment of Dr. Campana, the respondents' company-designated physician, that he is already fit for work as of October 21, 2001. Petitioner maintains that despite the said findings, he still found it difficult to walk and move his upper right extremities. Petitioner, thus, sought further treatment from other doctors. The fact that he continued to undergo further examinations and treatments belie the declaration that he was fit for work. Petitioner claims that both the LA and the NLRC cannot be faulted for disregarding the findings of respondents' company-designated physician and in upholding instead the assessment of his independent doctors.

Moreover, petitioner contends that the records of the case would clearly reveal that the present complaint was filed on the basis of his injured right shoulder that he suffered while working on board respondents' vessel and not solely on the basis of his Parkinson's disease, which was diagnosed only at a later time.

Finally, petitioner insists that he is entitled to the payment of attorney's fees.

On their part, respondents argue that the CA acted in accordance with the law when it set aside and annulled the decision of the NLRC and dismissed petitioner's complaint for lack of merit.

The petition is meritorious.

In the case at bar, the CA relied on the provisions of Section 20 (B) of the 1996 POEA-SEC[20] and the ruling of this

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[20] SECTION 20. COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS

The liabilities of the employer when the seafarer suffers injury or illness during the term of his contract are as follows:

x x x x

2. If the injury or illness requires medical attention and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

Court in *German Marine Agencies, Inc. v NLRC*,[21] in concluding that the disability of a seafarer can only be determined by a company-designated physician and not the seafarer's own doctors.

Respecting the findings of the CA that it is the 1996 POEA-SEC which is applicable, nonetheless the case of *Abante v. KJGS Fleet Management Manila*[22] is instructive and worthy of note. In the said case, the CA similarly held that the contract of the parties therein was also governed by Memo Circular No. 55, series of 1996.[23] Thus, the CA ruled that it is the assessment of the company-designated physician which is deemed controlling in the determination of a seafarer's entitlement to disability benefits and not the opinion of another doctor. Nevertheless, that conclusion of the CA was reversed by this Court. Instead, the Court upheld the findings of the independent physician as to the claimant's disability. The Court pronounced:

Respecting the appellate court's ruling that it is POEA Memo Circular No. 55, series of 1996 which is applicable and not Memo

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However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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

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

x x x x.

[21] G.R. No. 142049, January 30, 2001, 350 SCRA 629.

[22] G.R. No. 182430, December 4, 2009, 607 SCRA 734.

[23] Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels.

Circular No. 9, series of 2000, *apropos* is the ruling in *Seagull Maritime Corporation v. Dee* involving employment contract entered into in 1999, before the promulgation of POEA Memo Circular No. 9, series of 2000 or the use of the new POEA Standard Employment Contract, like that involved in the present case. In said case, the Court applied the 2000 Circular in holding that while it is the company-designated physician who must declare that the seaman suffered permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion which can then be used by the labor tribunals in awarding disability claims.[24]

Verily, in the cited case of *Seagull Maritime Corporation v. Dee*,[25] this Court held that nowhere in the case of *German Marine Agencies, Inc. v NLRC*[26] was it held that the company-designated physician's assessment of the nature and extent of a seaman's disability is final and conclusive on the employer company and the seafarer-claimant. While it is the company-designated physician who must declare that the seaman suffered a permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion.[27]

The case of *Maunlad Transport, Inc. v. Manigo, Jr.*[28] is also worthy of note. In the said case, the Court reiterated the prerogative of a seafarer to request for a second opinion with the qualification that the physician's report shall still be evaluated according to its inherent merit for the Court's consideration, to wit:

All told, the rule is that under Section 20-B (3) of the 1996 POEA-SEC, it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a

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[24] *Abante v. KJGS Fleet Management Manila*, *supra* note 22, at 739-740.

[25] G.R. No. 165156, April 2, 2007, 520 SCRA 109.

[26] *Supra* note 21.

[27] *Seagull Maritime Corporation v. Dee, supra* note 25, at 117-118.

[28] G.R. No. 161416, June 13, 2008, 554 SCRA 446.

claim for disability benefits. However, in submitting himself to examination by the company-designated physician, a claimant does not automatically bind himself to the medical report issued by the company-designated physician; neither are the labor tribunals and the courts bound by said medical report. Its inherent merit will be weighed and duly considered. Moreover, the claimant may dispute the medical report issued by the company-designated physician by seasonably consulting another physician. The medical report issued by said physician will also be evaluated by the labor tribunal and the court based on its inherent merits.[29]

In the recent case of *Daniel M. Ison v. Crewserve, Inc., et al.*,[30] although ruling against the claimant therein, the Court upheld the above-cited view and evaluated the findings of the seafarer's doctors *vis-à-vis* the findings of the company-designated physician. A seafarer is, thus, not precluded from consulting a physician of his choice. Consequently, the findings of petitioner's own physician can be the basis in determining whether he is entitled to his disability claims.

Verily, the courts should be vigilant in their time-honored duty to protect labor, especially in cases of disability or ailment. When applied to Filipino seamen, the perilous nature of their work is considered in determining the proper benefits to be awarded. These benefits, at the very least, should approximate the risks they brave on board the vessel every single day.[31]

Accordingly, if serious doubt exists on the company-designated physician's declaration of the nature of a seaman's injury and its corresponding impediment grade, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. These pieces of evidence will in turn be used to determine the benefits rightfully accruing to him.[32]

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[29] *Maunlad Transport, Inc. v. Manigo, Jr., supra*, at 459. (Emphasis in the original).

[30] G.R. No. 173951, April 16, 2012, 669 SCRA 481.

[31] *Seagull Maritime Corp. v. Dee*, *supra* note 25, at 120.

[32] *Id.*

It bears to note, at this juncture, that this Court is aware of its ruling in *Vergara v. Hammonia Maritime Services, Inc.*,[33] wherein it sustained the findings of the company-designated physician *vis-a-vis* the contrary opinion of the doctors consulted by the seafarer. This Court so ruled on two basic grounds. First, the seafarer failed to follow the procedure outlined in the Standard Employment Contract he signed, wherein it was provided that if a doctor appointed by the seafarer disagrees with the assessment of the company-designated physician, a third doctor may be agreed upon jointly between the employer and the seafarer and the third doctor's decision shall be final and binding on both parties. This Court held that, for failure of the seafarer to follow this procedure, the company doctor's determination should prevail, especially in view of the fact that the company exerted real effort to provide the seafarer with medical assistance, through the company-designated physician, which eventually led to the seafarer's full recovery. Second, the seafarer never raised the issue of the company-designated doctor's competence until he filed a petition with this Court. On the contrary, he accepted the company doctor's assessment of his fitness and even executed a certification to this effect.

The above factual circumstances, however, are not on all fours with the facts obtaining in the instant case.

First, the procedure outlined above, which was derived from Department Order No. 4, Series of 2000, is not the same as the procedure outlined in Memorandum Circular No. 55, Series of 1996, which embodies the Standard Employment Contract between petitioner and respondent. Notably, there is nothing in the said circular which provides that in case of conflict between the findings of the company-designated physician and the seafarer's doctor of choice, the parties may agree to consult a third doctor, whose opinion shall bind both parties. The provision authorizing the parties to ask the opinion of a third doctor is an innovation which was added in the subsequent Standard

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

Employment Contract provided for under Department Order No. 4, Series of 2000. Thus, being governed by the 1996 Standard Employment Contract, it cannot be said that petitioner failed to follow the procedure outlined under the 2000 Standard Employment Contract. Moreover, in *Vergara*, the Court relied on the findings of the company-designated physician because the medical attention given by the company to the seafarer led to the seafarer's full recovery. This is not so in the present case. Petitioner remains unfit to perform his job as a ship's chief officer.

Second, unlike in *Vergar*a, petitioner timely questioned the competence of the company-designated physician by immediately consulting two independent doctors. Neither did he sign nor execute any document agreeing with the findings of the company physician that he is already fit for work.

Thus, the doctrine enunciated in *Vergara* is not applicable in the instant case.

In any case, the bottomline is this: the certification of the company-designated physician would defeat petitioner's claim while the opinion of the independent physicians would uphold such claim. In such a situation, the Court adopts the findings favorable to petitioner. The law looks tenderly on the laborer. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice.[34]

Anent the question of whether or not petitioner is indeed entitled to disability benefits based on the findings and conclusions, not only of his personal doctors, but also on the findings of the doctors whom he consulted abroad, the Court rules in the affirmative.

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[34] *Abante v. KJGS Fleet Management Manila*, *supra* note 22, at 741, citing *HFS Philippines, Inc. v. Pilar*, G.R. No. 168716, April 16, 2009, 585 SCRA 315, 327-328.

From the documents presented by the parties, it is apparent that in a message[35] to Elite, it was established that petitioner was already declared "not fit for duty" and was advised to be confined and undergo MRI treatment. Similarly, when petitioner was brought to the Ulsan Hyundai Hospital, South Korea on August 8, 2001 for his frozen right shoulder, he was again declared not fit for duty and was advised to be "signed off" for further physical therapy. Indeed, petitioner was repatriated to Manila and underwent physical therapy session with Dr. Periquet. However, still not feeling well, he underwent a series of treatment with Dr. Tan for his frozen right shoulder until December 1, 2001. Petitioner then consulted Dr. Santiago for neurologic evaluation on December 27, 2001. In Dr. Santiago's Neurologic Summary,[36] it was indicated that petitioner developed right shoulder pains nine months before and that despite repeated physical therapy, it only provided petitioner temporary relief. Dr. Santiago was also of the impression that petitioner was afflicted with Parkinson's disease and concluded that petitioner will no longer function as in his previous disease-free state.

From the findings and prognosis of the rest of petitioner's doctors who attended and treated him, petitioner already established that he is entitled to disability benefits. Indeed, the fact remains that petitioner injured his right shoulder while on board the vessel of Elite; that he received treatment and was repatriated due to the said injury; and was declared unfit for duty several times by the doctors who attended and treated petitioner abroad and in Manila. Clearly, the medical certificate issued by Dr. Campana cannot be given much weight and consideration against the overwhelming findings and diagnoses of different doctors, here and abroad, that petitioner was not fit for work and can no longer perform his duties as a seafarer.

Also, contrary to the findings of the CA, petitioner was claiming disability benefits based on the injury he sustained while employed

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[35] *Rollo*, p. 25.

[36] *Id.* at 28.

by the respondents, the mere inclusion of the findings that he has Parkinson's disease will not negate such fact nor diminish his right to claim the said benefit from the respondents.

The Court finds no cogent reason to depart from the findings of the Labor Arbiter, as affirmed by the NLRC, that petitioner is entitled to disability benefits corresponding to an Impediment Grade of 7 (equivalent to a disability assessment of 41.8%) in the Schedule of Disability Allowances under Section 30-A of the 1996 Standard Employment Contract. Under the said Schedule, petitioner should be awarded the amount of US$20,900.00 or its equivalent in Philippine currency at the time of payment.

The Court also agrees with the ruling of the labor arbiter that petitioner is entitled to attorney's fees following Article 2208 of the New Civil Code, which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws. Pursuant to prevailing jurisprudence, petitioner is entitled to attorney's fees of ten percent (10%) of the monetary award.[37]

To recapitulate, it bears to reiterate the general rule under Department Order No. 33, Series of 1996 and Memorandum Circular No. 55, Series of 1996, that it is the company-designated physician who determines the fitness or disability of a seafarer who suffered or is suffering from an injury or illness. However, considering the unanimity of the findings not only of petitioner's independent physicians here in the Philippines, but also those who were consulted abroad by petitioner's employer, that petitioner is indeed not fit for duty as a seafarer by reason of the injury he sustained during his fall, the instant case should be considered as an exception to the general rule abovestated.

The Court has applied the Labor Code concept of disability to Filipino seafarers in keeping with the avowed policy of the State to give maximum aid and full protection to labor, it holding

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[37] *Abante v. KJGS Fleet Management Manila*, *supra* note 22, at 742.

that the notion of disability is intimately related to the worker's capacity to earn, what is compensated being not his injury or illness but his inability to work resulting in the impairment of his earning capacity, hence, disability should be understood less on its medical significance but more on the loss of earning capacity.[38]

To be sure, the POEA-SEC for Seamen was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Its provisions must be construed and applied fairly, reasonably and liberally in their favor. Only then can its beneficent provisions be fully carried into effect.[39]

WHEREFORE, premises considered, the Decision and Resolution of the Court of Appeals dated April 27, 2005 and June 28, 2005, respectively, in CA-G.R. SP No. 84811 are *REVERSED* and *SET ASIDE*. Respondents MAERSK FILIPINAS CREWING INC., and ELITE SHIPPING A/S are *ORDERED* to pay jointly and severally to petitioner the amount of US$20,900.00, representing his disability benefits, as well as attorney's fees equivalent to ten percent (10%) of the monetary award, both at its peso equivalent at the time of actual payment.

SO ORDERED.

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

Brion, J., on official leave.

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[38] Section 3, Article XIII, 1987 Constitution; *Quitoriano v. Jebsens Maritime, Inc*., G.R. No. 179868, January 21, 2010, 610 SCRA 529, 534.

[39] *Philippine Transmarine Carriers, Inc. v. NLRC,* G.R. No. 123891, February 28, 2001, 353 SCRA 47, 54.

[*] On leave.

EN BANC

[G.R. No. 193314. February 26, 2013]

SVETLANA P. JALOSJOS, *petitioner, vs.* **COMMISSION ON ELECTIONS, EDWIN ELIM TUMPAG and RODOLFO Y. ESTRELLADA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; COMMISSION ON ELECTIONS (COMELEC); COMELEC RESOLUTIONS; FAILURE TO SERVE ADVANCE NOTICE OF THE PROMULGATION OF THE SUBJECT RESOLUTIONS DID NOT MAKE THEM INVALID; SUSTAINED.— As stated by respondent COMELEC, Resolution No. 8696 was suspended through an Order dated 04 May 2010. However, assuming that this Resolution was still in effect, the failure to serve notice of the promulgation under Section 6 thereof did not make the 04 June 2010 and 19 August 2010 COMELEC Resolutions invalid. The Court held thus in *Sabili v. COMELEC* x x x **Rejecting petitioner's argument, we held therein that the additional rule requiring notice to the parties prior to promulgation of a decision is not part of the process of promulgation. Since lack of such notice does not prejudice the rights of the parties, noncompliance with this rule is a procedural lapse that does not vitiate the validity of the decision. x x x** Promulgation is the process by which a decision is published, officially announced, made known to the public or delivered to the clerk of court for filing, coupled with notice to the parties or their counsel. It is the delivery of a court decision to the clerk of court for filing and publication. It is the filing of the signed decision with the clerk of court. The additional requirement imposed by the COMELEC rules of notice in advance of promulgation is not part of the process of promulgation. **The fact that petitioners were not served notice in advance of the promulgation of the decision in the election protest cases, in Our view, does not constitute reversible error or a reason sufficient enough to compel and warrant the setting aside of the judgment rendered by the Comelec. x x x** Thus, even if COMELEC failed to give

advance notice of the promulgation of the 04 June 2010 and 19 August 2010 Resolutions, its failure to do so did not invalidate them.

2. ID.; PUBLIC OFFICERS; QUALIFICATION OF CANDIDATES; RESIDENCE IS SYNONYMOUS WITH DOMICILE; WHEN DOMICILE BY CHOICE IS ACQUIRED, REQUISITES; NOT ESTABLISHED IN CASE AT BAR.—When it comes to the qualifications for running for public office, residence is synonymous with domicile. x x x There are three requisites for a person to acquire a new domicile by choice. *First,* residence or bodily presence in the new locality. *Second,* an intention to remain there. *Third,* an intention to abandon the old domicile. These circumstances must be established by clear and positive proof, x x x Moreover, even if these requisites are established by clear and positive proof, the date of acquisition of the domicile of choice, or the **critical date**, must also be established to be within at least one year prior to the elections using the same standard of evidence. In the instant case, we find that petitioner failed to establish by clear and positive proof that she had resided in Baliangao, Misamis Occidental, one year prior to the 10 May 2010 elections. x x x At most, the Affidavits of all the witnesses only show that petitioner was building and developing a beach resort and a house in *Brgy.* Tugas, and that she only stayed in *Brgy.* Punta Miray whenever she wanted to oversee the construction of the resort and the house. Assuming that the claim of property ownership of petitioner is true, *Fernandez v. COMELEC* has established that the ownership of a house or some other property does not establish domicile. This principle is especially true in this case as petitioner has failed to establish her bodily presence in the locality and her intent to stay there at least a year before the elections, x x x the approval of the application for registration of petitioner as a voter only shows, at most, that she had met the minimum residency requirement as a voter. This minimum requirement is different from that for acquiring a new domicile of choice for the purpose of running for public office. Accordingly, in the CoC of petitioner, her statement of her eligibility to run for office constitutes a material misrepresentation that warrants its cancellation.

APPEARANCES OF COUNSEL

Romulo B. Macalintal and Edgardo Carlo L. Vistan II for petitioner.

Chavez Miranda Aseoche Law Offices for respondents.

D E C I S I O N

SERENO, *CJ*:

Svetlana P. Jalosjos (petitioner) comes before this Court on a Petition for Review under Rule 64 with an extremely urgent application for the issuance of a *status quo* order and for the conduct of a special raffle,[1] assailing the 04 June 2010[2] and 19 August 2010[3] Resolutions in SPA No. 09-161 (DC) of the Commission on Elections (respondent COMELEC). These Resolutions granted the Petition to Deny Due Course to or Cancel the Certificate of Candidacy filed by Edwin Elim Tumpag and Rodolfo Y. Estrellada (private respondents) against petitioner. At the heart of this controversy is whether petitioner complied with the one-year residency requirement for local elective officials.

On 20 November 2009, petitioner filed her Certificate of Candidacy (CoC) for mayor of Baliangao, Misamis Occidental for the 10 May 2010 elections. She indicated therein her place of birth and residence as *Barangay* Tugas, Municipality of Baliangao, Misamis Occidental (*Brgy.* Tugas).

Asserting otherwise, private respondents filed against petitioner a Petition to Deny Due Course to or Cancel the Certificate of Candidacy, in which they argued that she had falsely represented her place of birth and residence, because she was in fact born in San Juan, Metro Manila, and had not totally abandoned her

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[1] *Rollo,* pp. 3-49

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

[3] *Id.* at 55-66.

previous domicile, Dapitan City.[4] To support this claim, they presented the following as evidence:

1. Certification from the Assessor's Office of Baliangao that there was no tax declaration covering any real property in the name of petitioner located at any place in the municipality;[5]
2. Certification from the Civil Registrar of Baliangao that petitioner had no record of birth in the civil registry of the municipality;[6]
3. Joint Affidavit of three residents of Baliangao – incumbent *Barangay* Chairperson Gregorio P. Gayola (Gayola) and incumbent 3rd *Kagawad* Felicisimo T. Pastrano (Pastrano), both officials of *Barangay* Tugas, Baliangao, Misamis Occidental, and former police officer Adolfo L. Alcoran (Alcoran);[7]
4. Affidavit of Patricio D. Andilab (Andilab), official of *Purok* 5, *Brgy.* Tugas, Baliangao.[8]

On the other hand, petitioner averred that she had established her residence in the said *barangay* since December 2008 when she purchased two parcels of land there, and that she had been staying in the house of a certain Mrs. Lourdes Yap (Yap) while the former was overseeing the construction of her house. Furthermore, petitioner asserted that the error in her place of birth was committed by her secretary. Nevertheless, in a CoC, an error in the declaration of the place of birth is not a material misrepresentation that would lead to disqualification, because it is not one of the qualifications provided by law.[9] Petitioner presented the following evidence to sustain her claims:

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[4] *Id.* at 50-51.

[5] *Id.* at 76.

[6] *Id.* at 77.

[7] *Id.* at 125-127.

[8] *Id.* at 129.

[9] *Id.* at 51-52.

1. Certificate of Live Birth;[10]
2. Extrajudicial Partition with Simultaneous Sale executed by the heirs of Agapito Yap, Jr. (Yap, Jr.) pertaining to two parcels of land covered by Transfer Certificate of Title (TCT) Nos. 12410 and P-33289 in favor of petitioner;[11]
3. TCT Nos. 12410 and P-33289 in the name of Yap, Jr.;[12]
4. Two Declarations of Real Property in the name of Yap, Jr.;[13]
5. Two sketch plans of lots covered by TCT Nos. 12410 and P-33289 prepared by the Office of the Provincial Assessor for Yap, Jr.;[14]
6. Photographs of the alleged residence of petitioner in Baliangao, Misamis Occidental;
7. Sketches of structures petitioner constructed in the resort she developed in Baliangao, Misamis Occidental;[15]
8. Petitioner's Application for Voter's Registration and Voter's Certification issued by the Office of the Election Officer of Baliangao, Misamis Occidental;[16]
9. Petitioner's CoC;[17]
10. Joint Affidavit of Rodolio R. Yap III (Yap III), Roger V. Villanueva (Villanueva), Romeo A. Duhaylungsod,

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[10] *Id.* at 187.

[11] *Id.* at 153-154

[12] *Id.* at 155-157, 164-166.

[13] *Id.* at 158-159, 161-162.

[14] *Id.* at 160, 163.

[15] *Id.* at 194-209.

[16] *Id.* at 210-211.

[17] *Id.* at 124.

Jr. (Duhaylungsod) and Dennis M. Estrellada (Estrellada), who undertook the construction and development of petitioner's residential house and resort;[18]

11. Affidavit of incumbent *Barangay* Chairperson Marichu Michel Acas-Yap (Acas-Yap) of *Barangay* Punta Miray, Baliangao, Misamis Occidental (*Brgy.* Punta Miray);[19]

12. Affidavit of Nellie E. Jumawan (Jumawan), the president of the Center for Agriculture and Rural Development, Inc.;[20]

13. Affidavit of Dolores B. Medija (Medija), the president of Women for Children Association;[21]

14. Joint Affidavit of Emily J. Bagundol (Bagundol) and Nelia D. Colaljo (Colaljo), presidents of the Paglaum Multi-purpose Cooperative;[22]

15. Joint Affidavit of Charles C. Tenorio (Tenorio) and Reynold C. Analasan (Analasan), presidents of Tamban Multi-Purpose Cooperative and Balas Diut Brotherhood Association, respectively;[23]

16. Affidavit of Pedro Rio G. Bation (Bation), president of the Del Pilar Lawn Tennis Club of Baliangao;[24]

17. Affidavit of Jessie P. Maghilum (Maghilum), a member of the Phi Omega Sigma Fraternity/Sorority of Baliangao, Misamis Occidental Chapter;[25] and

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[18] *Id.* at 221-224.

[19] *Id.* at 225-226.

[20] *Id.* at 227-228.

[21] *Id.* at 229-230.

[22] *Id.* at 231-232.

[23] *Id.* at 233-234.

[24] *Id.* at 235-236.

[25] *Id.* at 237-238.

18. Affidavit of Ophelia P. Javier (Javier), petitioner's personal secretary.[26]

The Petition to Deny Due Course to or Cancel the Certificate of Candidacy remained pending as of the day of the elections, in which petitioner garnered the highest number of votes. On 10 May 2010, the Municipal Board of Canvassers of Baliangao, Misamis Occidental, proclaimed her as the duly elected municipal mayor.[27]

On 04 June 2010, the COMELEC Second Division rendered a Resolution, the dispositive portion of which reads:

WHEREFORE, premises considered, respondent is **DISQUALIFIED** from running for the position of mayor in the Municipality of Baliangao, Misamis Occidental for this coming May 10, 2010 elections.[28]

The COMELEC *En Banc* promulgated a Resolution on 19 August 2010 denying the Motion for Reconsideration of petitioner for lack of merit and affirming the Resolution of the Second Division denying due course to or cancelling her CoC.

COMELEC Ruling

Respondent COMELEC ruled in its 04 June 2010 Resolution that misrepresentation as to one's place of birth is not a ground for the cancellation of a CoC. Petitioner merely committed an oversight when she declared that she was born in Baliangao when she was actually born in San Juan. However, the COMELEC ruled that based on the evidence presented, petitioner never acquired a new domicile in Baliangao, because she failed to prove her bodily presence at that place, her intention to remain there, and her intention never to return to her domicile of origin. Hence, respondent COMELEC disqualified her from running

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[26] *Id.* at 239-240.

[27] *Id.* at 243.

[28] *Id.* at 54.

for the position of mayor of Baliangao[29] pursuant to Section 78 in relation to Section 74 of the Omnibus Election Code.[30]

In response to this adverse ruling, petitioner elevated her case through a Motion for Reconsideration before the COMELEC *En Banc,* arguing that the evidence she presented proved that she had established her domicile in the said municipality.[31]

Nonetheless, in its 19 August 2010 Resolution, respondent COMELEC affirmed the earlier ruling of the Second Division. In upholding the latter's ruling, COMELEC *En Banc* said that (1) the Extrajudicial Partition with Simultaneous Sale was not sufficient proof that petitioner had purchased two parcels of land, because she was never a party to the agreement, and it was quite unusual that she never acquired a deed of sale or title to protect her interests; (2) the sketch plans were not signed by the corporate engineer who purportedly prepared them, nor was there an affidavit from the engineer to authenticate the plans; (3) the application of petitioner for voter registration only proved that she had met the minimum six-month residency requirement and nothing more; and (4) the affiants of the Sworn Statements were all partial, because they either worked for her or were members of organizations that received financial assistance from her.[32]

Hence, the instant Petition arguing that respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that petitioner was not a resident of Baliangao, Misamis Occidental and in thus justifying the cancellation of her CoC. She also asserts that the 04 June 2010 and 19 August 2010 COMELEC Resolutions are null and void, being violative of her right to due process, because there was no promulgation or prior notice as required by Sec. 6 of

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[29] *Id.*

[30] *Id.* at 53.

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

[32] *Id.* at 61-64.

COMELEC Resolution No. 8696 or by the Rules on Disqualification of Cases Filed in Connection with the 10 May 2010 Automated National and Local Elections.

In a Resolution dated 07 September 2010, we issued a *Status Quo Ante* Order, which required the parties to observe the *status quo* prevailing before the issuance of the assailed COMELEC Resolutions.[33] Thereafter, the parties filed their respective pleadings.

Issues

The issues before us can be summarized as follows:

I. Whether COMELEC committed grave abuse of discretion when it failed to promulgate its 04 June 2010 and 19 August 2010 Resolutions in accordance with its own Rules of Procedure; and

II. Whether COMELEC committed grave abuse of discretion in holding that petitioner had failed to prove compliance with the one-year residency requirement for local elective officials.

Our Ruling

COMELEC's failure to serve advance notice of the promulgation of the 04 June 2010 and 19 August 2010 Resolutions does not invalidate them.

Petitioner assails the validity of the 04 June 2010 and 19 August 2010 Resolutions, because she was not served an advance notice that these Resolutions were going to be promulgated. This failure was allegedly a violation of COMELEC Resolution No. 8696. Hence, she argues that her right to due process was violated. In response, respondent COMELEC asserts that it

[33] *Id.* at 284-285.

suspended COMELEC Resolution No. 8696 through an *En Banc* Order dated 04 May 2010.[34] Furthermore, the suspension was in accordance with its power to promulgate its own rules as provided by the Constitution. Nevertheless, petitioner was afforded the opportunity to be heard and to submit evidence in support of her defense.

We agree with respondent COMELEC.

As stated by respondent COMELEC, Resolution No. 8696 was suspended through an Order dated 04 May 2010. However, assuming that this Resolution was still in effect, the failure to serve notice of the promulgation under Section 6 thereof did not make the 04 June 2010 and 19 August 2010 COMELEC Resolutions invalid. The Court held thus in *Sabili v. COMELEC*:[35]

> In *Lindo v. Commission on Elections*,[49] petitioner claimed that there was no valid promulgation of a Decision in an election protest case when a copy thereof was merely furnished the parties, instead of first notifying the parties of a set date for the promulgation thereof, in accordance with Section 20 of Rule 35 of the COMELEC's own Rules of Procedure, as follows:
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> Sec. 20. Promulgation and Finality of Decision. — The decision of the court shall be promulgated on a date set by it of which due notice must be given the parties. It shall become final five (5) days after promulgation. No motion for reconsideration shall be entertained.
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> **Rejecting petitioner's argument, we held therein that the additional rule requiring notice to the parties prior to promulgation of a decision is not part of the process of promulgation. Since lack of such notice does not prejudice the rights of the parties, noncompliance with this rule is a procedural lapse that does not vitiate the validity of the decision.** Thus:
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> This contention is untenable. Promulgation is the process by which a decision is published, officially announced, made known to the public or delivered to the clerk of court for filing, coupled with

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[34] *Id.* at 59.

[35] *Id.*

notice to the parties or their counsel (*Neria v. Commissioner of Immigration*, L-24800, May 27, 1968, 23 SCRA 812). It is the delivery of a court decision to the clerk of court for filing and publication (*Araneta v. Dinglasan*, 84 Phil. 433). It is the filing of the signed decision with the clerk of court (*Sumbing v. Davide*, G.R. Nos. 86850-51, July 20, 1989, *En Banc* Minute Resolution). The additional requirement imposed by the COMELEC rules of notice in advance of promulgation is not part of the process of promulgation. Hence, We do not agree with petitioner's contention that there was no promulgation of the trial court's decision. The trial court did not deny that it had officially made the decision public. From the recital of facts of both parties, copies of the decision were sent to petitioner's counsel of record and petitioner's [sic] himself. Another copy was sent to private respondent.

What was wanting and what the petitioner apparently objected to was not the promulgation of the decision but the failure of the trial court to serve notice in advance of the promulgation of its decision as required by the COMELEC rules. The failure to serve such notice in advance of the promulgation may be considered a procedural lapse on the part of the trial court which did not prejudice the rights of the parties and did not vitiate the validity of the decision of the trial court nor [sic] of the promulgation of said decision.

Moreover, quoting *Pimping v. COMELEC*,[50] citing *Macabingkil v. Yatco,*[51] we further held in the same case that failure to receive advance notice of the promulgation of a decision is not sufficient to set aside the COMELEC's judgment, as long as the parties have been afforded an opportunity to be heard before judgment is rendered, *viz*:

The fact that petitioners were not served notice in advance of the promulgation of the decision in the election protest cases, in Our view, does not constitute reversible error or a reason sufficient enough to compel and warrant the setting aside of the judgment rendered by the Comelec. Petitioners anchor their argument on an alleged denial to them [sic] due process to the deviation by the Comelec from its own made rules. However, the essence of due process is that, the parties in the case were afforded an opportunity to be heard.

In the present case, we read from the COMELEC Order that the exigencies attendant to the holding of the country's first automated

national elections had necessitated that the COMELEC suspend the rule on notice prior to promulgation, and that it instead direct the delivery of all resolutions to the Clerk of the Commission for immediate promulgation. Notably, we see no prejudice to the parties caused thereby. The COMELEC's Order did not affect the right of the parties to due process. They were still furnished a copy of the COMELEC Decision and were able to reckon the period for perfecting an appeal. In fact, petitioner was able to timely lodge a Petition with this Court.

Clearly, the COMELEC validly exercised its constitutionally granted power to make its own rules of procedure when it issued the 4 May 2010 Order suspending Section 6 of COMELEC Resolution No. 8696. Consequently, the second assailed Resolution of the COMELEC cannot be set aside on the ground of COMELEC's failure to issue to petitioner a notice setting the date of the promulgation thereto. (Emphases supplied)

Thus, even if COMELEC failed to give advance notice of the promulgation of the 04 June 2010 and 19 August 2010 Resolutions, its failure to do so did not invalidate them.

Petitioner failed to comply with the one-year residency requirement for local elective officials.

Petitioner's uncontroverted domicile of origin is Dapitan City. The question is whether she was able to establish, through clear and positive proof, that she had acquired a domicile of choice in Baliangao, Misamis Occidental, prior to the May 2010 elections.

When it comes to the qualifications for running for public office, residence is synonymous with domicile. Accordingly, *Nuval v. Guray*[36] held as follows:

The term 'residence' as so used, is synonymous with 'domicile' which imports not only intention to reside in a fixed place, but also personal presence in that place, coupled with conduct indicative of such intention.[37]

[36] 52 Phil. 645 (1928).

[37] *People v. Bender*, 141 N.Y.S., 45., cited in *Nuval v. Guray*, 52 Phil. 645 (1928).

There are three requisites for a person to acquire a new domicile by choice. *First,* residence or bodily presence in the new locality. *Second,* an intention to remain there. *Third,* an intention to abandon the old domicile.[38]

These circumstances must be established by clear and positive proof, as held in *Romualdez-Marcos v. COMELEC*[39] and subsequently in *Dumpit-Michelena v. Boado:*[40]

> In the absence of clear and positive proof based on these criteria, the residence of origin should be deemed to continue. Only with evidence showing concurrence of all three requirements can the presumption of continuity or residence be rebutted, for a change of residence requires an actual and deliberate abandonment, and one cannot have two legal residences at the same time.[41]

Moreover, even if these requisites are established by clear and positive proof, the date of acquisition of the domicile of choice, or the **critical date**, must also be established to be within at least one year prior to the elections using the same standard of evidence.

In the instant case, we find that petitioner failed to establish by clear and positive proof that she had resided in Baliangao, Misamis Occidental, one year prior to the 10 May 2010 elections.

There were inconsistencies in the Affidavits of Acas-Yap, Yap III, Villanueva, Duhaylungsod, Estrellada, Jumawan, Medija, Bagundol, Colaljo, Tenorio, Analasan, Bation, Maghilum and Javier.

First, they stated that they personally knew petitioner to be an **actual and physical** resident of *Brgy.* Tugas since 2008. However, they declared in the same Affidavits that she stayed in *Brgy.* Punta Miray while her house was being constructed in *Brgy.* Tugas.

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[38] 318 Phil. 329 (1995).

[39] *Id.*

[40] 511 Phil. 720 (2005).

[41] 20 Am Jur 71.

Second, construction workers Yap III, Villanueva, Duhaylungsod and Estrellada asserted that in December 2009, construction was still ongoing. By their assertion, they were implying that six months before the 10 May 2010 elections, petitioner had not yet moved into her house at *Brgy.* Tugas.

Third, the same construction workers admitted that petitioner only visited Baliangao occasionally when they stated that "**at times** when she (petitioner) was in Baliangao, she used to stay at the house of Lourdes Yap while her residential house was being constructed."[42]

These discrepancies bolster the statement of the *Brgy.* Tugas officials that petitioner was **not and never** had been a resident of their *barangay*. At most, the Affidavits of all the witnesses only show that petitioner was building and developing a beach resort and a house in *Brgy.* Tugas, and that she only stayed in *Brgy*. Punta Miray whenever she wanted to oversee the construction of the resort and the house.

Assuming that the claim of property ownership of petitioner is true, *Fernandez v. COMELEC*[43] has established that the ownership of a house or some other property does not establish domicile. This principle is especially true in this case as petitioner has failed to establish her bodily presence in the locality and her intent to stay there at least a year before the elections, to wit:

> To use ownership of property in the district as the determinative indicium of permanence of domicile or residence implies that the landed can establish compliance with the residency requirement. This Court would be, in effect, imposing a property requirement to the right to hold public office, which property requirement would be unconstitutional.

Finally, the approval of the application for registration of petitioner as a voter only shows, at most, that she had met the

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[42] *Rollo,* p. 222.

[43] G.R. No. 187478, 21 December 2009, 608 SCRA 733.

minimum residency requirement as a voter.[44] This minimum requirement is different from that for acquiring a new domicile of choice for the purpose of running for public office.

Accordingly, in the CoC of petitioner, her statement of her eligibility to run for office constitutes a material misrepresentation that warrants its cancellation.[45] She contends that respondent COMELEC never made a finding that she had committed material misrepresentation. Her contention, however, is belied by its factual determination in its 04 June 2010 and 19 August 2010 Resolutions that she had failed to meet the one-year residency requirement.

During the pendency of the case, we deemed it proper to issue an Order dated 07 September 2010 directing the parties to observe the *status quo* before the issuance of these COMELEC Resolutions disqualifying petitioner from the mayoralty race in Baliangao. We issued the Order, considering that petitioner, having garnered the highest number of votes in the 10 May 2010 elections, had assumed office as municipal mayor. However, with this final determination of her ineligibility to run for office, there is now a permanent vacancy in the office of the mayor of Baliangao. Hence, the vice-mayor of Baliangao shall become its mayor in accordance with Section 44 of the Local Government Code.

WHEREFORE, premises considered, the Petition is *DENIED*. The *Status Quo Ante* Order issued by this Court on 07 September 2010 is hereby *LIFTED*.

SO ORDERED.

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

Brion, J., on official leave.

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[44] R.A. 8189 (1996), Sec. 9.

[45] B.P. 881 (1985), Sec. 78 in relation to Sec. 74; R.A. 7160 (1991), Sec. 39.

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ACTIONS

Cause of action — Failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal; three elements: (a) The legal right of the plaintiff; (b) The correlative obligation of the defendant; and (c) The act or omission of the defendant in violation of said legal right. (Mercado *vs*. Sps. Espina, G.R. No. 173987, Feb. 25, 2013) p. 545

In pari delicto rule — Provides that "when two parties are equally at fault, the law leaves them as they are and denies recovery by either one of them." (Land Bank of the Phils. *vs*. Sampaga Poblete, G.R. No. 196577, Feb. 25, 2013) p. 610

ALIBI

Defense of — Deserves little weight in the face of categorical and positive identification; where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit; to prosper, physical impossibility must be proven. (People of the Phils. *vs*. Zapuiz *y* Ramos @ "Jaymart," G.R. No. 199713, Feb. 20, 2013) p. 511

AMPARO, WRIT OF

Nature — An equitable and extraordinary remedy to safeguard the right of the people to life, liberty and security as enshrined in the 1987 Constitution; an exercise of the Supreme Court's power to promulgate rules concerning the protection and enforcement of constitutional rights; aims to address concerns such as extrajudicial killings and enforced disappearances. (Sec. Leila M. De Lima *vs*. Gatdula, G.R. No. 204528, Feb. 19, 2013) p. 235

Privilege of the writ of amparo — Includes availment of the entire procedure outlined in A.M. No. 07-9-12-SC, the Rule on the Writ of *Amparo*; after examining the petition and its attached affidavits, the Return and the evidence presented in the summary hearing, the judgment should detail the required acts from the respondents that will mitigate, if not totally eradicate, the violation of or the threat to the petitioner's life, liberty or security; a judgment which simply grants "the privilege of the writ" cannot be executed. (Sec. De Lima *vs*. Gatdula, G.R. No. 204528, Feb. 19, 2013) p. 235

Procedure — Confusion of the parties arose due to the procedural irregularities in the trial court; it is the Return that serves as the responsive pleading for petitions for the issuance of Writs of *Amparo*; the requirement to file an Answer is contrary to the intention of the Court to provide a speedy remedy to those whose right to life, liberty and security are violated or are threatened to be violated. (Sec. Leila M. De Lima *vs*. Gatdula, G.R. No. 204528, Feb. 19, 2013) p. 235

— It was highly irregular to hold a hearing on the main case prior to the issuance of the writ and filing of the return because without a return, the issues could not have been properly joined; also irregular to require a memorandum in lieu of a responsive pleading, as it is a prohibited pleading under the Rule on the Writ of *Amparo*. *(Id.)*

— Procedural irregularities in the trial court affected the mode of appeal that petitioners used in elevating the matter to this Court; the petition for review is not the proper remedy to assail the interlocutory order; a petition for certiorari is prohibited and undermines the salutary purposes for which the Rule on the Writ of Amparo were promulgated. *(Id.)*

— Respondents are required to file a Return after the issuance of the writ through the clerk of court; if the respondents are public officials or employees, they are also required to state the actions they had taken to: (i) verify the identity of the aggrieved party; (ii) recover and preserve evidence

related to the death or disappearance of the person identified in the petition; (iii) identify witnesses and obtain statements concerning the death or disappearance; (iv) determine the cause, manner, location, and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance; and (v) bring the suspected offenders before a competent court; there will be a summary hearing only after the Return is filed; if the Return is not filed, the hearing will be done *ex parte*. *(Id.)*

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Causing undue injury or giving unwarranted benefits — A public official violates this in two ways: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference; the accused may be charged under either mode or under both. (Braza *vs*. Hon. Sandiganbayan [1st Div.], G.R. No. 195032, Feb. 20, 2013) p. 476

Violations under Section 3 (e) and Section 3 (g); distinguished — Violation of Sec. 3 (g), elements: 1. The offender is a public officer; 2. He entered into a contract or transaction in behalf of the government; and 3. The contract or transaction is manifestly and grossly disadvantageous to the government; elements of violation of Section 3(e) of the same Act: 1. The accused must be a public officer discharging administrative, judicial or official functions; 2. The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and 3. His action caused undue injury to any party, including the government or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. (Braza *vs*. Hon. Sandiganbayan [1st Div.], G.R. No. 195032, Feb. 20, 2013) p. 476

APPEALS

Appeal from the National Labor Relations Commission — Absent any clear showing of abuse, arbitrariness or capriciousness, the findings of fact by the NLRC, especially when affirmed by the Court of Appeals, are binding and conclusive upon the Supreme Court. (Pepsi-Cola Products Phils., Inc. *vs*. Molon, G.R. No. 175002, Feb. 18, 2013) p. 120

Dismissal of — Usage of the word "may" in Section 1 (e) of Rule 50 indicates that the dismissal of the appeal upon failure to file the appellant's brief is not mandatory, but discretionary; the Court of Appeals may allow the appeal to proceed despite the late filing of the appellant's brief, when the circumstances so warrant its liberality. (Diaz *vs*. People of the Phils., G.R. No. 180677, Feb. 18, 2013) p. 146

— While the petitioner's failure to file the appellant's brief on time deserved the outright rejection of his appeal, the Court was impelled to look beyond technicality and delve into the merits of the case in the interest of justice. *(Id.)*

Factual findings of quasi-judicial agencies —Factual findings of the Department of Labor and Employment, when supported by substantial evidence, are entitled to great respect in view of their expertise in their respective fields; such findings cannot be made the subject of judicial review by petition under Rule 45 of the Rules of Court. (Lepanto Consolidated Mining Co. *vs*. Lepanto Capataz Union, G.R. No. 157086, Feb. 18, 2013) p. 10

Factual findings of the labor arbiter and the National Labor Relations Commission — Factual findings of the labor arbiter and the National Labor Relations Commission on the presence of just cause for terminating employment, as affirmed by the Court of Appeals, are binding if not conclusive upon the Court. (De Jesus *vs*. Hon. Aquino, G.R. No. 164662, Feb. 18, 2013) p. 77

Factual findings of the lower courts — The Court is in no position to review and overturn the lower courts' unanimous finding and acceptance without strong and valid reasons because they involved an issue of fact. (Sps. Dela Cruz *vs*. Planters Products, Inc., G.R. No. 158649, Feb. 18, 2013) p. 28

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. (Land Bank of the Phils. *vs*. Sampaga Poblete, G.R. No. 196577, Feb. 25, 2013) p. 610

(Mercado *vs*. Sps. Espina, G.R. No. 173987, Feb. 25, 2013) p. 545

(Bordomeo *vs*. CA, G.R. No. 161596, Feb. 20, 2013) p. 27

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. (Land Bank of the Phils. *vs.* Sampaga Poblete, G.R. No. 196577, Feb. 25, 2013) p. 610

(Mercado *vs.* Sps. Espina, G.R. No. 173987, Feb. 25, 2013) p. 545

Rules on appeal — The party in case at bar has the duty to inform the court of its counsel's demise and have said counsel substituted; upon failure to do so, the service of the Decision at the place or law office designated by its counsel of record as his address, is sufficient notice; the case became final and executory when no motion for reconsideration or appeal was filed within the reglementary period therefor. (O. Ventanilla Enterprises Corp. *vs.* Tan, G.R. No. 180325, Feb. 20, 2013) p. 421

— The Supreme Court is not a trier of facts, and unless the case falls under any of the well-defined exceptions, it will not delve once more into the findings of facts; it is imperative to review the Court of Appeals' factual conclusions since they are entirely contrary to those of the trial court, have no citation of specific supporting evidence, and are premised on the supposed absence of evidence, but are directly contradicted by the evidence on record. (Casilang, Sr. *vs.* Casilang-Dizon, G.R. No. 180269, Feb. 20, 2013) p. 397

ATTORNEYS

Attorney-client relationship — A client should not be made to suffer the dire consequences of his counsel's oversight and negligence; the people whose futures hang in a balance should not be left to suffer from the incompetence, mindlessness or lack of professionalism of any member of the law profession. (Diaz *vs.* People of the Phils., G.R. No. 180677, Feb. 18, 2013) p. 146

ATTORNEY'S FEES

Award of — Article 2208 of the New Civil Code allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws; pursuant to prevailing jurisprudence, petitioner is entitled to attorney's fees of ten percent (10%) of the monetary award. (Nazareno *vs*. Maersk Filipinas Crewing Inc., G.R. No. 168703, Feb. 26, 2013) p. 625

— Must rest on a factual and legal justification stated in the body of the decision; expounded in *Abobon v. Abobon*; the right to collect attorney's fees in the cases mentioned in Article 2208 of the Civil Code came to be recognized only under the present Civil Code; such fees are now included in the concept of actual damages. (Sps. Dela Cruz *vs*. Planters Products, Inc., G.R. No. 158649, Feb. 18, 2013) p. 28

— Not allowed in the absence of stipulation but can be awarded when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest or where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. (Diego *vs*. Diego, G.R. No. 179965, Feb. 20, 2013) p. 373

BILL OF RIGHTS

Due process — Its essence in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of; as long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. (Dept. of Health *vs*. Phil. Pharmawealth, Inc., G.R. No. 182358, Feb. 20, 2013) p. 432

— The Republic as a litigant is entitled to this constitutional right, in the same manner and to the same extent that this right is guaranteed to private litigants; the essence of due process is the opportunity to be heard, logically

preconditioned on prior notice, before judgment is rendered. (Rep. of the Phils. *vs*. Hon. Caguioa, G.R. No. 174385, Feb. 20, 2013) p. 315

Right to speedy disposition of a case — Deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried; factors: 1) the length of the delay; 2) the reasons for the delay; 3) the assertion or failure to assert such right by the accused; and 4) the prejudice caused by the delay. (Braza *vs*. Hon. Sandiganbayan, G.R. No. 195032, Feb. 20, 2013) p. 476

BOUNCING CHECKS LAW (B.P. BLG. 22)

Violation of — Elements: 1) the making, drawing, and issuance of any check to apply for account or for value; 2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and 3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. (Reyes *vs*. Rossi, G.R. No. 159823, Feb. 18, 2013) p. 62

CERTIORARI

Grave abuse of discretion as a ground — A special civil action for certiorari under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist; grave abuse of discretion, as contemplated by the Rules of Court, is "the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power" that is so patent and gross that it "amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law;" such capricious, whimsical and

arbitrary acts must be apparent on the face of the assailed order. (Rep. of the Phils. *vs*. Hon. Caguioa, G.R. No. 174385, Feb. 20, 2013) p. 315

Petition for — Court of Appeals is authorized to make its own factual determination when it finds that the National Labor Relations Commission gravely abused its discretion in overlooking or disregarding evidence which are material to the controversy; in the same manner, the Supreme Court is not precluded from reviewing the factual issues when there are conflicting findings by the Labor Arbiter, the NLRC and the CA. (Pepsi-Cola Products Phils., Inc. *vs*. Molon, G.R. No. 175002, Feb. 18, 2013) p. 120

— Does not involve a full-blown trial but is generally restricted to the filing of pleadings (petition, comment, reply, and memoranda), unless the court opts to hear the case. (Villanueva *vs*. Palawan Council for Sustainable Dev't., G.R. No. 178347, Feb. 25, 2013) p. 555

— Importance of the seasonable filing of a motion for reconsideration prior to filing the certiorari petition; the special civil action of certiorari is the appropriate remedy from the decision of the National Labor Relations Commission; any decision, resolution or ruling of the DOLE Secretary from which the Labor Code affords no remedy to the aggrieved party may be reviewed through a petition for certiorari initiated only in the Court of Appeals. (Lepanto Consolidated Mining Co. *vs*. Lepanto Capataz Union, G.R. No. 157086, Feb. 18, 2013) p. 10

— Requisites for petition for certiorari under Rule 65: 1) the writ of certiorari is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; 2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and 3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law; when proper: a) when it is necessary to prevent irreparable damages and injury to a party; b) where the trial judge capriciously and whimsically

exercised his judgment; c) where there may be danger of a failure of justice; d) where an appeal would be slow, inadequate, and insufficient; e) where the issue raised is one purely of law; f) where public interest is involved; and g) in case of urgency. (Villanueva *vs*. Palawan Council for Sustainable Dev't., G.R. No. 178347, Feb. 25, 2013) p. 555

(Bordomeo *vs*. CA, G.R. No. 161596, Feb. 20, 2013) p. 278

— The petition was filed within the reglementary period and complied with the rules on proof of filing and service of the petition; in case a motion for reconsideration or new trial is timely filed, the sixty (60) day period shall be counted from notice of the denial of said motion. (Rep. of the Phils. *vs*. Hon. Caguioa, G.R. No. 174385, Feb. 20, 2013) p. 315

Writ of — Petitioner carries the burden to prove that the respondent tribunal committed not a merely reversible error but a grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the impugned order; no grave abuse of discretion where the justifications of the court were supported by the history of the dispute and borne out by applicable laws and jurisprudence. (Bordomeo *vs*. CA, G.R. No. 161596, Feb. 20, 2013) p. 278

COMMISSION ON ELECTIONS (COMELEC)

COMELEC Resolutions — Promulgation, defined; the fact that petitioners were not served notice in advance of the promulgation of the decision in the election protest cases, did not invalidate the judgment rendered by the COMELEC; lack of such notice does not prejudice the rights of the parties and noncompliance with this rule is a procedural lapse that does not vitiate the validity of the decision. (Jalosjos *vs*. COMELEC, G.R. No. 193314, Feb. 26, 2013) p. 641

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — The procedure puts into focus the essence of the confiscated articles as the *corpus delicti* that the State must establish during the trial, as a means of avoiding the commission of abuses by the lawmen in their enforcement of the laws against the illegal drug trade. (People of the Phils. *vs*. Tapere *y* Polpol, G.R. No. 178065, Feb. 20, 2013) p. 359

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*. Tapere *y* Polpol, G.R. No. 178065, Feb. 20, 2013) p. 359

— The prosecution must show that the transaction or sale actually took place, and present in court the thing sold as evidence of the *corpus delicti*. *(Id.)*

— The State conclusively established the concurrence of the elements of illegal sale of dangerous drugs: 1) the members of the buy-bust team identified the accused as the person with whom the poseur buyer had contracted on the purchase of the shabu; 2) the subject of the sale was one plastic sachet of shabu that the PNP Crime Laboratory later on confirmed in due course to contain methamphetamine hydrochloride, a dangerous drug; 3) the consideration of the sale and the actual payment covered by the public prosecutor's certification; and 4) the Prosecution's witnesses fully described the details of the consummated sale of shabu between the seller and the buyer. *(Id.)*

CONSPIRACY

Conspirators distinguished from accomplices — Conspirators are persons who come to an agreement concerning the commission of a felony and decide to commit it; such agreement is usually inferred from their concerted actions

while committing it; on the other hand, accomplices, according to Article 18 of the RPC, are the persons who, not being included in Article 17 [which identifies who are principals], cooperate in the execution of the offense by previous or simultaneous acts; accomplices do not decide whether the crime should be committed; but they assent to the plan and cooperate in its accomplishment; when there is doubt as to whether a guilty participant in a homicide performed the role of principal or accomplice, the Court should favor the milder form of responsibility and regard him only as an accomplice. (People of the Phils. *vs*. PO1 Ricardo P. Eusebio, G.R. No. 182152, Feb. 25, 2013) p. 569

Existence of — Direct proof is not essential as it may be inferred from the collective acts of the accused before, during and after the commission of the crime; it can be presumed from and proven by acts of the accused themselves when the said acts point to a joint purpose, design, concerted action, and community of interests. (People of the Phils. *vs*. P/Supt. Lamsen, G.R. No. 198338, Feb. 20, 2013) p. 500

CONTRACTS

Contract of adhesion — This contract, prepared by one party, usually a corporation, is generally not a one-sided document as long as the signatory is not prevented from studying it before signing; unless a contracting party cannot read or does not understand the language in which the agreement is written, he is presumed to know the import of his contract and is bound thereby; factors to consider in determining whether the aggrieved party exercised adequate care and diligence in studying the contract prior to its execution: social stature of the parties; nature of the transaction; and the amount involved. (Sps. Dela Cruz *vs*. Planters Products, Inc., G.R. No. 158649, Feb. 18, 2013) p. 28

Contract for a piece of work — The original contract agreement, which stated a total contract price, was never signed by the parties considering that there were substantial changes in the plan imposed by petitioner in the course of the work on the project; petitioner cannot invoke Article 1724 of the Civil Code to avoid paying its obligation. (Licomcen, Inc. *vs*. Engr. Salvador Abainza, G.R. No. 199781, Feb. 18, 2013) p. 166

— The petitioner ordered the changes in the original plan which entailed additional costs in labor and materials; hence, he should be held liable for the additional costs incurred on the revised project. *(Id.)*

Interpretation of — To determine the intention of the parties, their contemporaneous and subsequent acts shall be principally considered; the written terms of the contract, being clear upon the intention of the contracting parties, should be literally applied. (Sps. Dela Cruz *vs*. Planters Products, Inc., G.R. No. 158649, Feb. 18, 2013) p. 28

Relativity of contracts — Contracts take effect only between the parties, their assigns and heirs; others who are not themselves parties to the contractual documents are not liable; circumstances manifesting the intention of the parties to enter into a creditor-debtor relationship, explained. (Sps. Dela Cruz *vs*. Planters Products, Inc., G.R. No. 158649, Feb. 18, 2013) p. 28

Rescission of contracts — The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him; the injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case; he may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. (Reyes *vs*. Rossi, G.R. No. 159823, Feb. 18, 2013) p. 62

COURTS

Hierarchy of courts — Recourse should be made to the lower courts before they are made to the higher courts; exceptions to the principle: on the ground of special and important reasons clearly stated in the petition; when dictated by public welfare and the advancement of public policy; when demanded by the broader interest of justice; when the challenged orders were patent nullities; or when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case. (Rep. of the Phils. *vs*. Hon. Caguioa, G.R. No. 174385, Feb. 20, 2013) p. 315

DAMAGES

Award of — Interest now imposed on the civil indemnities, moral damages, and exemplary damages awarded, when there has been delay in the recovery; interest imposed is the legal rate of 6% per annum reckoned from the finality of judgment. (People of the Phils. *vs*. Zapuiz *y* Ramos @ "Jaymart," G.R. No. 199713, Feb. 20, 2013) p. 511

DOUBLE JEOPARDY

Rationale — This doctrine is a revered constitutional safeguard against exposing the accused from the risk of being prosecuted twice for the same offense, and not a different one; no double jeopardy when the subsequent information charges another and different offense, although arising from the same act or set of acts. (Braza *vs*. Hon. Sandiganbayan, G.R. No. 195032, Feb. 20, 2013) p. 476

Requisites — The accused has the burden of demonstrating the following requisites: 1) a first jeopardy must have attached prior to the second; 2) the first jeopardy must have been validly terminated; and 3) the second jeopardy must be for the same offense as in the first; as to the first requisite, the first jeopardy attaches only a) after a valid indictment; b) before a competent court; c) after arraignment, d) when a valid plea has been entered; and e) when the

accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent. (Braza *vs*. Hon. Sandiganbayan, G.R. No. 195032, Feb. 20, 2013) p. 476

EMPLOYMENT, TERMINATION OF

Procedural due process — Failure of the employer to observe the requirements of due process in favor of the dismissed employee (that is, the two-written notice rule) should not invalidate or render ineffectual the dismissal for just or authorized cause; an employee who is dismissed for just or authorized cause is entitled to payment of nominal damages where his right to statutory due process has been violated by the employer, fixed at ₱50, 000.00. (De Jesus *vs*. Hon. Aquino, G.R. No. 164662, Feb. 18, 2013) p. 77

— Procedure consists of: (a) a first written notice stating the intended grounds for termination; (b) a hearing or conference where the employee is given the opportunity to explain his side; and (c) a second written notice informing the employee of his termination and the grounds therefor. (Alilem Credit Cooperative, Inc. *vs*. Bandiola, Jr., G.R. No. 173489, Feb. 25, 2013) p. 533

— Requirement of two written notices before dismissing an employee, mandatory; the first notice to inform the employee of the particular acts or omissions for which dismissal was being sought and the second notice to notify the employer's decision to dismiss him; the second notice must not be made until after the employee was given a reasonable period after receiving the first notice within which to answer the charge, and after giving opportunity to be heard and defend himself with the assistance of his representative. (De Jesus *vs*. Hon. Aquino, G.R. No. 164662, Feb. 18, 2013) p. 77

— Written notices must be sufficient; they must specify the grounds for which dismissal would be sought. *(Id.)*

Quitclaims — A waiver or quitclaim is a valid and binding agreement between the parties, provided that it constitutes a credible and reasonable settlement and the one accomplishing it has done so voluntarily and with a full understanding of its import; parties can make an agreement that the signing of the quitclaim documents was without prejudice to the filing of a case with the NLRC. (Pepsi-Cola Products Phils., Inc. *vs.* Molon, G.R. No. 175002, Feb. 18, 2013) p. 120

Reinstatement of the employee — An illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages; reinstatement of the employee without backwages, proper in case the dismissal of the employee would be too harsh a penalty, and the employer was in good faith in terminating the employee; Cruz *vs.* Minister of Labor and Employment, cited. (Pepsi-Cola Products Phils., Inc. *vs.* Molon, G.R. No. 175002, Feb. 18, 2013) p. 120

Reinstatement without back wages — Absent illegal dismissal on the part of employer and abandonment of employment on the part of employees, the latter's reinstatement without backwages is in order; reinstatement is justified by the employer's directive for them to report for work. (Leopard Security and Investigation Agency *vs.* Quitoy, G.R. No. 186344, Feb. 20, 2013) p. 449

Retrenchment — Termination of employment initiated by the employer through no fault of the employee and without prejudice to the latter, resorted by management during periods of business recession, industrial depression or seasonal fluctuations or during lulls over shortage of materials; it must be exercised only as a last resort; requirements: 1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; 2) That the employer served written notices both to the

employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; 3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher; 4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and 5) That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers. (Pepsi-Cola Products Phils., Inc. *vs.* Molon, G.R. No. 175002, Feb. 18, 2013) p. 120

Separation pay — Granted when reinstatement is no longer feasible because of strained relations between the employer and the employee; in cases of illegal dismissal, the accepted doctrine is that separation pay is available in lieu of reinstatement when the latter recourse is no longer practical or in the best interest of the parties. (Leopard Security and Investigation Agency *vs*. Quitoy, G.R. No. 186344, Feb. 20, 2013) p. 449

— May be availed of if reinstatement is no longer practical or in the best interest of the parties or if the employee decides not to be reinstated; the computation of separation pay and backwages should not go beyond the date when they were deemed to have been actually separated from their employment, or beyond the date when their reinstatement was rendered impossible. (Bordomeo *vs*. CA, G.R. No. 161596, Feb. 20, 2013) p. 278

Temporary "off-detail" or "floating status" — The period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one; as long as such temporary inactivity does not continue for

a period exceeding six months, it is not equivalent to dismissal. (Leopard Security and Investigation Agency *vs.* Quitoy, G.R. No. 186344, Feb. 20, 2013) p. 449

Violation of personnel policy, as a ground — Engaging in extra-marital affairs as a ground for termination of employment under the Personnel Policy of petitioner; an employer is free to regulate all aspects of employment; it may make reasonable rules and regulations for the government of its employees which become part of the contract of employment provided they are made known to the employee. (Alilem Credit Cooperative, Inc. *vs.* Bandiola, Jr., G.R. No. 173489, Feb. 25, 2013) p. 533

ESTAFA

Concept — Committed by any person who shall defraud another by, among others, false pretenses or fraudulent acts executed prior to or simultaneous with the commission of fraud, i.e., by using a fictitious name, falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits. (Galvez *vs.* Hon. CA, G.R. No. 187919, Feb. 20, 2013) p. 463

EVIDENCE

Circumstantial evidence — Indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established; when sufficient for conviction: a) there is more than one (1) circumstance; b) the facts from which the inferences are derived are proven; and c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. (People of the Phils. *vs.* P/Supt. Lamsen, G.R. No. 198338, Feb. 20, 2013) p. 500

Documentary evidence — For a private document, authentication pursuant to the Rules on Evidence is a condition for its admissibility; the person who had prepared the document was competent to testify on its due execution and authenticity, in accordance with Section 20 of Rule 132 of

the Rules of Court. (Sps. Dela Cruz *vs*. Planters Products, Inc., G.R. No. 158649, Feb. 18, 2013) p. 28

Newly discovered evidence — Petitioner's narration contradicted the confession of his co-accused; they chose not to tell the truth during trial; whatever their reasons were, the inevitable conclusion is that extrajudicial confession is not newly discovered evidence that can be a ground for a new trial within the contemplation of the rules. (Tadeja *vs*. People of the Phils., G. R. No. 145336, Feb. 20, 2013) p. 260

— Refers to that which (a) is discovered after trial; (b) could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) is material, not merely cumulative, corroborative or impeaching; and (d) is of such weight that it would probably change the judgment if admitted; the most important requisite is that the evidence could not have been discovered and produced at the trial even with reasonable diligence. *(Id.)*

EXECUTIVE DEPARTMENT

Prohibition against holding of any other office or employment — An Acting Solicitor General could not validly hold any other office or employment during his tenure because the Constitution has not otherwise so provided; the prohibition against dual or multiple offices being held by one official must be construed as to apply to all appointments or designations, whether permanent or temporary. (Funa *vs*. Acting Sec. of Justice Alberto C. Agra, G.R. No. 191644, Feb. 19, 2013) p. 205

— Apart from the peril of political pressure, the concurrent holding of two positions, even if they are not entirely incompatible, may affect sound government operations and the proper performance of duties. *(Id.)*

— Assuming that the position of Acting Solicitor General was not covered by the stricter prohibition under Section 13, Article VII of the 1987 Constitution, due to such position being merely vested with a cabinet rank, he still remained

covered by the general prohibition under Section 7 of R.A. No. 9417; test to determine whether incompatibility exists between two offices, laid out. *(Id.)*

— It is not sufficient to show that the holding of the other office was allowed by law or the primary functions of his position; to claim exemption from the coverage of the prohibition, one has to establish that his concurrent designation was expressly allowed by the Constitution; either of the concurrent designations must be in an ex officio capacity in relation to the other. *(Id.)*

— The Office of the Solicitor General, although attached to the Department of Justice, is not a constituent unit of the latter; with the enactment of R.A. No. 9417, the Solicitor General is now vested with a cabinet rank, and has the same qualifications for appointment, rank, prerogatives, salaries, allowances, benefits and privileges as that of the Presiding Justice of the Court of Appeals. *(Id.)*

— The primary functions of the Office of the Solicitor General are not related or necessary to the primary functions of the Department of Justice; an incompatibility between the offices exists; concurrent designations as Acting Secretary of Justice and Acting Solicitor General, void for being in violation of the Constitution. *(Id.)*

FORCIBLE ENTRY AND UNLAWFUL DETAINER

Action for — Governed by summary procedure; they are not processes to determine the actual title to an estate; inferior courts are empowered to rule on the question of ownership, only to resolve the issue of possession and its determination on the ownership issue is not conclusive. (Casilang, Sr. *vs.* Casilang-Dizon, G.R. No. 180269, Feb. 20, 2013) p. 397

GOVERNMENT AGENCY

Adjudicatory functions — A government agency performs adjudicatory functions when it renders decisions or awards that determine the rights of adversarial parties, which decisions or awards have the same effect as a judgment of the court; these decisions are binding, such that when

they attain finality, they have the effect of res judicata that even the courts of justice have to respect; the power to investigate is not the same as adjudication, so long as there is no final determination of the parties' respective rights and obligations. (Villanueva *vs*. Palawan Council for Sustainable Dev't., G.R. No. 178347, Feb. 25, 2013) p. 555

HUMAN RELATIONS

Solidarily liability — For his complicity, bad faith and abuse of authority, the building administrator is solidarily liable with respondent as regards the share of petitioner in the rents; basis. (Diego *vs*. Diego, G.R. No. 179965, Feb. 20, 2013) p. 373

INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR ESTAFA (P.D. NO. 1689)

Syndicated estafa — Elements: (a) estafa or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code is committed; (b) the estafa or swindling is committed by a syndicate of five or more persons; and (c) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "samahang nayon(s)," or farmers' associations or of funds solicited by corporations/ associations from the general public. (Galvez *vs*. Hon. CA, G.R. No. 187919, Feb. 20, 2013) p. 463

INSTIGATION

Concept of — Not present when accused was caught *in flagrante delicto* and was not incited, induced, instigated or lured into committing an offense that he did not have the intention of committing; the decision to peddle the shabu emanated from his own mind and he did not need much prodding from anyone else to engage in the illegal act. (People of the Phils. *vs*. Tapere *y* Polpol, G.R. No. 178065, Feb. 20, 2013) p. 359

Distinguished from entrapment — Instigation takes place when a peace officer induces a person to commit a crime, and it is exempting by reason of public policy; on the other hand, entrapment signifies the ways and means devised by a peace officer to entrap or apprehend a person who has committed a crime, and it is not mitigating; the difference lies in the origin of the criminal intent – in entrapment, the mens originates from the mind of the criminal, but in instigation, the law officer conceives the commission of the crime and suggests it to the accused, who adopts the idea and carries it into execution. (People of the Phils. *vs*. Tapere *y* Polpol, G.R. No. 178065, Feb. 20, 2013) p. 359

INTELLECTUAL PROPERTY CODE (R.A. NO. 8293)

Infringement of trademark — Elements: 1) the trademark being infringed is registered in the Intellectual Property Office; 2) the trademark is reproduced, counterfeited, copied, or colorably imitated by the infringer; 3) the infringing mark is used in connection with the sale, offering for sale, or advertising of any goods, business or services; or the infringing mark is applied to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services; 4) the use or application of the infringing mark is likely to cause confusion or mistake or to deceive purchasers or others as to the goods or services themselves or as to the source or origin of such goods or services or the identity of such business; and the use or application of the infringing mark is without the consent of the trademark owner or the assignee thereof. (Diaz *vs*. People of the Phils., G.R. No. 180677, Feb. 18, 2013) p. 146

— No likelihood of confusion between the two trademarks involved in this case as there are remarkable differences that the consuming public would easily perceive; the Intellectual Property Office would not have allowed the registration had petitioner's trademark been confusingly similar with that of the respondent's. *(Id.)*

— The likelihood of confusion is the gravamen of the offense; two tests to determine likelihood of confusion: the dominancy test and the holistic test; the dominancy test focuses on the similarity of the main, prevalent or essential features of the competing trademarks that might cause confusion while the holistic test considers the entirety of the marks, including labels and packaging, in determining confusing similarity. *(Id.)*

INTEREST

Interest on loans — Usury Law (Act No. 2655), discussed; rendered legally ineffective by the Central Bank; effect; the parties are allowed to agree on the interest that may be charged on the loan, and such imposed rate should be in writing; the interest rate agreed upon should not be "excessive, iniquitous, unconscionable and exorbitant;" otherwise, the court may declare the rate illegal. (Sps. Dela Cruz *vs*. Planters Products, Inc., G.R. No. 158649, Feb. 18, 2013) p. 28

Legal interest — 12% per annum is the legal rate of interest that should apply, to be reckoned from the filing of the action; formula for computation as defined in Eastern Shipping Lines, Inc. *vs*. Court of Appeals, *viz*: TOTAL AMOUNT DUE = [principal - partial payments made] + [interest + interest on interest], where Interest = remaining balance x 12% per annum x no. of years from due date until date of sale to a third party (payment). Interest on interest = interest computed as of the filing of the complaint x no. of years until date of sale to a third party (payment). (Sps. Dela Cruz *vs*. Planters Products, Inc., G.R. No. 158649, Feb. 18, 2013) p. 28

— The interest, however enormous it may be, cannot be inequitable and unconscionable if it resulted directly from the application of law and jurisprudence. *(Id.)*

INTERNAL RULES OF THE COURT OF APPEALS (IRCA)

Authority of Acting Member of a Division of the Court of Appeals — An acting member of a Division, like a regular member, has full authority to act on any and all matters presented to the Division for "final resolution and/or appropriate action;" expressly excepted under the IRCA is the acting member rendering a *ponencia* in a case assigned or raffled for study and report to the absent Division member, whom the acting member is temporarily substituting in the Division; an ancillary or preventive remedy, distinguished from a *ponencia*. (Fernandez *vs*. CA, A.M. OCAIPI No. 12-201-CA-J, Feb. 19, 2013) p. 175

INTERVENTION

Motion for intervention — Absence of prior notice constitutes an irregularity; the motions and complaints-in-intervention cannot but be mere scraps of paper that the respondent judge had no reason to consider. (Rep. of the Phils. *vs*. Hon. Caguioa, G.R. No. 174385, Feb. 20, 2013) p. 315

— Like any other motion, it has to comply with the mandatory requirements of notice and hearing, as well as proof of its service. *(Id.)*

— The matter of intervention is addressed to the sound discretion of the court; the basic precepts of fair play and the protection of all interests involved must always be considered; the original parties to the action must be properly informed to give them a chance to protect their interests. *(Id.)*

JUDGMENTS

Execution pending appeal — Does not bar the continuance of the appeal on the merits, for the Rules of Court precisely provides for restitution according to equity in case the executed judgment is reversed on appeal. (O. Ventanilla Enterprises Corp. *vs*. Tan, G.R. No. 180325, Feb. 20, 2013) p. 421

Immutability of final judgments —Fundamental considerations of public policy and sound practice necessitate that, at the risk of occasional errors, the judgment or orders of courts should attain finality at some definite time fixed by law; Section 1 of Rule 121 of the Rules of Court provides that a new trial may only be granted by the court on motion of the accused, or *motu proprio* with the consent of the accused "at any time before a judgment of conviction becomes final"; since the petitioners' judgment of conviction already became final and executory, pleas for the remand of this case to the trial court for the conduct of a new trial may no longer be entertained. (Tadeja *vs*. People of the Phils., G. R. No. 145336, Feb. 20, 2013) p. 260

Reversal of — The action of the trial court in ordering the issuance of the writ of execution against petitioner for it to return or refund the excess amount respondent has paid in compliance with the execution pending appeal, is in accordance with the Rules; Section 5, Rule 39 of the Rules of Court, provides the effect of reversal of executed judgment. (O. Ventanilla Enterprises Corp. *vs*. Tan, G.R. No. 180325, Feb. 20, 2013) p. 421

JUDICIAL REVIEW

Requisites — Limitations of the power of judicial review: 1) there must be an actual case or controversy calling for the exercise of judicial power; 2) the person challenging the act must have the standing to assail the validity of the subject act or issuance, that is, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; 3) the question of constitutionality must be raised at the earliest opportunity; and 4) the issue of constitutionality must be the very *lis mota* of the case. (Funa *vs*. Acting Sec. of Justice Alberto C. Agra, G.R. No. 191644, Feb. 19, 2013) p. 205

JUSTICES

Discipline of Justices of the Court of Appeals and the Sandiganbayan and Judges of regular and special courts — Administrative proceedings, how instituted: 1) *motu proprio* by the Supreme Court; 2) upon verified complaint with affidavits of persons having personal knowledge of the facts alleged therein or by documents which may substantiate said allegations; or 3) upon an anonymous complaint supported by public records of indubitable integrity. (Fernandez *vs*. CA, A.M. OCAIPI No. 12-201-CA-J, Feb. 19, 2013) p. 175

LABOR UNIONS

Unfair labor practice — Refers to offenses which violate the workers' right to self-organization and to the observance of a Collective Bargaining Agreement. (Pepsi-Cola Products Phil., Inc. *vs*. Molon, G.R. No. 175002, Feb. 18, 2013) p. 120

Union busting — Committed when the existence of the union is threatened by the employer's act of dismissing the former's officers who have been duly-elected in accordance with its constitution and by-laws. (Pepsi-Cola Products Phil., Inc. *vs*. Molon, G.R. No. 175002, Feb. 18, 2013) p. 120

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

Powers of the Vice-Mayor — The vice-mayor automatically assumes the powers and duties in case of the mayor's temporary absence; this includes the legal capacity to file a motion on behalf of the local government unit in case the mayor was on official vacation leave and out of the country. (Velasco *vs*. Hon. Sandiganbayan, G.R. No. 169253, Feb. 20, 2013) p. 302

MOOT AND ACADEMIC CASES

Concept — Defined; the instant petition is not moot and academic due to the intervening appointment and assumption of the Solicitor General during the pendency of the suit; the case comes under the exceptions: 1) there was a grave violation of the Constitution; 2) the case involved a situation

of exceptional character and was of paramount public interest; 3) the constitutional issue raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and 4) the case was capable of repetition, yet evading review. (Funa *vs.* Acting Sec. of Justice Alberto C. Agra, G.R. No.191644, Feb. 19, 2013) p. 205

— The constitutionality of the concurrent holding of two positions in the cabinet, in acting capacities, is an issue that comes under all the exceptions; the ultimate resolution of the constitutional issue posed will bring many important and practical benefits. *(Id.)*

MORTGAGES

Mortgagee in good faith — Despite the fact that the mortgagor is not the owner of the mortgaged property, his title being fraudulent, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy; this is based on the rule that buyers or mortgagees dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title; this rule does not apply to banks, which are required to observe a higher standard of diligence. (Land Bank of the Phils. *vs*. Sampaga Poblete, G.R. No. 196577, Feb. 25, 2013) p. 610

Validity of deed of mortgage — A forged or fraudulent deed is a nullity and conveys no title; where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is void ab initio for lack of consideration; since the transfer certificate of title has been declared void by final judgment, the real estate mortgage constituted over it is also void; in a real estate mortgage contract, it is essential that the mortgagor be the absolute owner of the property to be mortgaged; otherwise, the mortgage is void. (Land Bank of the Phils. *vs*. Sampaga Poblete, G.R. No. 196577, Feb. 25, 2013) p. 610

MOTIONS

Pro hac vice — Petitioners point out that the Court has had occasion to grant a motion for a new trial after the judgment of conviction had become final and executory; the case they cited which was favorable to their predicament was granted *pro hac vice*, a Latin term used by courts to refer to rulings rendered "for this one particular occasion"; a ruling expressly qualified as such cannot be relied upon as a precedent to govern other cases. (Tadeja *vs*. People of the Phils., G. R. No. 145336, Feb. 20, 2013) p. 260

MURDER

Commission of — Elements: 1) a person was killed; 2) the accused killed him; 3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and 4) the killing is neither parricide nor infanticide. (People of the Phils. *vs*. Zapuiz y Ramos @ "Jaymart," G.R. No. 199713, Feb. 20, 2013) p. 511

NOTARIES PUBLIC

Duties — A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein; purpose of the requirement. (Agbulos *vs*. Atty. Viray, A.C. No. 7350, Feb. 18, 2013) p. 1

— Failure of the lawyer commissioned as a notary public to perform his duty undermines the integrity of a notary public and degrades the function of notarization, making him liable for negligence; notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest. *(Id.)*

OMBUDSMAN

Rules of Procedure of the Office of the Ombudsman — Petitioner was not denied the right to file a motion for reconsideration of the order of the Special Prosecutor; Section 7 of the

Rules of Procedure of the Office of the Ombudsman provides: "Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed." (Velasco *vs*. Hon. Sandiganbayan, G.R. No. 169253, Feb. 20, 2013) p. 302

OWNERSHIP

Evidence of — Tax declarations and tax receipts are not conclusive evidence of ownership but are merely indicia of a claim of ownership; when coupled with proof of actual possession of the property, they can be the basis of claim of ownership through prescription; in the absence of actual, public and adverse possession, its declaration for tax purposes does not prove ownership. (Casilang, Sr. *vs*. Casilang-Dizon, G.R. No. 180269, Feb. 20, 2013) p. 397

PARTITION

Verbal partition — An oral agreement for the partition of the property owned in common is valid and enforceable upon the parties and has been ratified by their taking possession of their respective shares; upheld by the Supreme Court in *Maestrado vs. CA*. (Casilang, Sr. *vs*. Casilang-Dizon, G.R. No. 180269, Feb. 20, 2013) p. 397

PLEADINGS

Amended pleadings — An amended complaint supersedes an original one; as a consequence, the original complaint is deemed withdrawn and no longer considered part of the record. (Mercado *vs*. Sps. Espina, G.R. No. 173987, Feb. 25, 2013) p. 545

Service of — Service of the petition on a party, when that party is represented by a counsel of record, is a patent nullity and is not binding upon the party wrongfully served; exceptions; relaxation of the rules, when warranted. (Rep. of the Phils. *vs*. Hon. Caguioa, G.R. No. 174385, Feb. 20, 2013) p. 315

POSSESSION

Actions to judicially recover possession — Three kinds of actions to judicially recover possession: summary action of ejectment, *accion publiciana* or the plenary action to recover the right of possession and *accion reinvindicatoria* or the action to recover ownership which also includes recovery of possession. (Casilang, Sr. vs. Casilang-Dizon, G.R. No. 180269, Feb. 20, 2013) p. 397

PREJUDICIAL QUESTIONS

Concept — A prejudicial question generally comes into play in a situation where a civil action and a criminal action are both pending, and there exists in the former an issue that must first be determined before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case; elements: a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action; and b) the resolution of such issue determines whether or not the criminal action may proceed. (Reyes *vs*. Rossi, G.R. No. 159823, Feb. 18, 2013) p. 62

— As explained in *Sabandal vs. Tongco*, requisites for a civil action to be considered prejudicial to a criminal case: 1) the civil case involves facts intimately related to those upon which the criminal prosecution would be based; 2) in the resolution of the issue or issues raised in the civil action, the guilt or innocence of the accused would necessarily be determined; and 3) jurisdiction to try said question must be lodged in another tribunal. *(Id.)*

— The criminal proceedings for violation of Batas Pambansa Blg. 22, arising from the dishonor of the checks which the buyer issued in connection with the sale, could proceed despite the pendency of the civil action for rescission of the conditional sale; mere issuance of a worthless check was an offense in itself. *(Id.)*

PRELIMINARY INJUNCTION

Presumption of regularity — The issuance of the writ of preliminary injunction in the consolidated Court of Appeals petitions was discretionary, interlocutory and preservative in nature, and a collective and deliberated action of the former Special 14th Division upon an urgent application for writ of preliminary injunction; the resolution of the Division enjoys a presumption of regularity. (Fernandez *vs*. CA, A.M. OCAIPI No. 12-201-CA-J, Feb. 19, 2013) p. 175

Requirement of a hearing — Section 4 of Rule VI of the 2009 Internal Rules of the Court of Appeals (IRCA) provides that "[t]he requirement of a hearing for preliminary injunction is satisfied with the issuance of a resolution served upon the party sought to be enjoined requiring him to comment on the said application within the period of not more than ten (10) days from notice"; the Court of Appeals was justified in dispensing with the requisite hearing on the application for injunctive writ; rationale. (Fernandez *vs*. CA, A.M. OCAIPI No. 12-201-CA-J, Feb. 19, 2013) p. 175

Writ of — Section 1 of Rule 19 of the Rules of Court provides that a person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action; conversely, a person who is not a party in the main suit cannot be bound by an ancillary writ, such as a preliminary injunction. (Fernandez *vs*. CA, A.M. OCAIPI No. 12-201-CA-J, Feb. 19, 2013) p. 175

PRELIMINARY INVESTIGATION

Probable cause — Probable cause demands more than bare suspicion and must rest on competent relevant evidence; the presumption of innocence, and all rights associated with it, remains at this stage; only those matters which are

constitutionally acceptable, competent, consistent and material are considered. (Salapuddin *vs.* CA, G.R. No. 184681, Feb. 25, 2013) p. 577

— The determination of probable cause is an executive function that the courts cannot interfere with in the absence of grave abuse of discretion; the prosecutor's call on the existence or absence of probable cause is further subject to the review of the Secretary of Justice; discussed. *(Id.)*

PRESUMPTIONS

Regularity of entries made in the course of business — If properly authenticated, the entries serve as evidence of the status of the account of the petitioners and are accorded unusual reliability; and that if the entries are financial, the records are routinely balanced and audited; in actual experience, the whole of the business world function in reliance of such kind of records. (Sps. Dela Cruz *vs*. Planters Products, Inc., G.R. No. 158649, Feb. 18, 2013) p. 28

PRE-TRIAL

Delimitation of issues — Pre-trial is primarily intended to insure that the parties properly raise all issues necessary to dispose of a case; although it is not meant to catalogue each issue that the parties may take up during the trial, issues not included in the pre-trial order may be considered only if they are impliedly included in the issues raised or may be inferred from the issues raised by necessary implication; rationale. (Licomcen, Inc. *vs*. Engr. Salvador Abainza, G.R. No. 199781, Feb. 18, 2013) p. 166

Failure to plead — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, exceptions: 1) lack of jurisdiction over the subject matter; 2) *litis pendentia*; 3) *res judicata*; and 4) prescription of the action; petitioner cannot change its defense after the termination of the period of testimony and after the exhibits of both parties have already been admitted by the court; non-inclusion of his belated defense in the pre-trial order

barred its consideration during the trial. (Licomcen, Inc. *vs.* Engr. Salvador Abainza, G.R. No. 199781, Feb. 18, 2013) p. 166

PUBLIC OFFICIALS AND EMPLOYEES

De jure and de facto officers — A *de facto* officer is one who derives his appointment from one having colorable authority to appoint, if the office is an appointive office, and whose appointment is valid on its face; his acts are just as valid for all purposes as those of a *de jure* officer, in so far as the public or third persons who are interested therein are concerned. (Funa *vs.* Acting Sec. of Justice Agra, G.R. No. 191644, Feb. 19, 2013) p. 205

Qualification of candidates — When it comes to the qualifications for running for public office, residence is synonymous with domicile; requisites for a person to acquire a new domicile by choice: 1) residence or bodily presence in the new locality; 2) an intention to remain there; 3) an intention to abandon the old domicile; these circumstances must be established by clear and positive proof; the date of acquisition of the domicile of choice, or the critical date, must also be established to be within at least one year prior to the elections using the same standard of evidence. (Jalosjos *vs.* COMELEC, G.R. No. 193314, Feb. 26, 2013) p. 641

RIGHTS OF THE ACCUSED

Right to due process — Compliance with due process during the preliminary investigation, necessary; satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of; the formulation of the offense depends on the evidence presented, not on the designation in the complaint. (Velasco *vs.* Hon. Sandiganbayan, G.R. No. 169253, Feb. 20, 2013) p. 302

SALES

Contract to sell — A bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price. (Diego *vs*. Diego, G.R. No. 179965, Feb. 20, 2013) p. 373

— Deemed terminated or canceled upon buyer's failure to pay the purchase price; the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and ownership is retained by the seller without further remedies by the buyer; discussed in *Reyes vs. Tupara*. *(Id.)*

— Manifested by the acknowledgment receipt evidencing partial payment signed by petitioner as well as the contemporaneous acts of the parties; absence of a formal deed of conveyance shows that the owner never intended to transfer ownership until full payment of the purchase price. *(Id.)*

— The stipulation to execute a deed of absolute sale upon full payment of the purchase price is a unique and distinguishing characteristic of a contract to sell; this provision is tantamount to a reservation of ownership on the part of the vendor. *(Id.)*

SANDIGANBAYAN

Jurisdiction — Original exclusive jurisdiction over civil and criminal cases instituted pursuant to and in connection with Executive Orders No. 1, No. 2, No. 14 and No. 14-A; E.O. No. 1 refers to cases of recovery and sequestration of ill-gotten wealth amassed by the Marcoses their relatives, subordinates, and close associates, directly or through nominees, by taking undue advantage of their public office and/or by using their powers, authority, influence, connections or relationships; E.O. No. 2 states that the ill-

gotten wealth includes assets and properties in the form of estates and real properties in the Philippines and abroad; E.O. No. 14 and No. 14-A pertain to the Sandiganbayan's jurisdiction over criminal and civil cases relative to the ill-gotten wealth of the Marcoses and their cronies. (Metropolitan Bank and Trust Co. *vs*. Hon. Sandoval, G.R. No. 169677, Feb. 18, 2013) p. 98

SEAFARERS, CONTRACT OF EMPLOYMENT

Disability benefits — It is the company-designated physician who determines the fitness or disability of a seafarer who suffered or is suffering from an injury or illness; if serious doubt exists on the company-designated physician's declaration of the nature of a seaman's injury, resort to prognosis of other competent medical professionals should be made; disability should be understood less on its medical significance but more on the loss of earning capacity. (Nazareno *vs*. Maersk Filipinas Crewing Inc., G.R. No. 168703, Feb. 26, 2013) p. 625

SHERIFFS

Discourtesy in the course of official duties — Committed by the sheriff's failure to properly respond to the complainant's communication or to inform him where the personal effects were temporarily stored and that they were not confiscated but merely stored for safekeeping until the same could be properly turned over to them. (Sasing *vs*. Gelbolingo, A.M. No. P-12-3032, [Formerly A.M. OCAIPI No. 11-3652-P], Feb. 20, 2013) p. 251

— Respondent is given the benefit of the doubt due to a mitigating circumstance and need not be penalized, considering that there was an effort on his part to meet complainant twice, but the latter did not appear on the second scheduled meeting. *(Id.)*

Gross neglect of duty — Refers to negligence that is characterized by glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally; or by acting with a conscious

indifference to consequences with respect to other persons who may be affected. (Sasing *vs*. Gelbolingo, A.M. No. P-12-3032, [Formerly A.M. OCAIPI No. 11-3652-P], Feb. 20, 2013) p. 251

STATE

Immunity from suit — A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends; "the royal prerogative of dishonesty"; discussed in *Department of Agriculture vs. National Labor Relations Commission*. (Dept. of Health *vs.* Phil. Pharmawealth, Inc., G.R. No. 182358, Feb. 20, 2013) p. 432

— The Department of Health, being an unincorporated agency of the government, can validly invoke the defense of immunity from suit because it has not consented, either expressly or impliedly, to be sued; the defense of non-suability may be properly invoked if a Complaint seeks to impose a charge or financial liability against the state. *(Id.)*

STATUTES

Judicial interpretation — A judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of the Court is overruled and the Court adopts a different view, and more so when there is a reversal of the doctrine, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. (De Jesus *vs*. Hon. Aquino, G.R. No. 164662, Feb. 18, 2013) p. 77

STATUTORY RAPE

Carnal knowledge — Does not require full penile penetration of the female; clarified in *People v. Campuhan*; the touching that constitutes rape, explained in *People v. Bali- Balita*. (People of the Phils. *vs*. Teodoro *y* Angeles, G.R. No. 175876, Feb. 20, 2013) p. 335

Commission of — Appellant's own characterization of his deeds is irrelevant, self-serving and will not prevail over the physical evidence establishing carnal knowledge. (People of the Phils. *vs*. Teodoro *y* Angeles, G.R. No. 175876, Feb. 20, 2013) p. 335

— The victim's unbroken and consistent narration of her ordeals given in court when she was only eight years old should be accorded the fullest credence. *(Id.)*

Elements — (a) the victim is a female under 12 years or is demented; and (b) the offender has carnal knowledge of the victim; the essence of statutory rape is carnal knowledge of a female without her consent; expounded. (People of the Phils. *vs*. Teodoro *y* Angeles, G.R. No. 175876, Feb. 20, 2013) p. 335

Recantation — Recantation under insincere circumstances is unacceptable; as a rule, it is viewed with disfavor because it is exceedingly unreliable, and there is always the possibility that such recantation may later be repudiated. (People of the Phils. *vs*. Teodoro *y* Angeles, G.R. No. 175876, Feb. 20, 2013) p. 335

STRATEGIC ENVIRONMENT PLAN (SEP) FOR PALAWAN ACT (R.A. NO. 7611)

Enabling statute — An agency's power to formulate rules for the proper discharge of its functions is always circumscribed by the enabling statute; there must be an enabling statute or legislative act conferring quasi-judicial power upon the administrative body; R.A. No. 7611, which created the Palawan Council for Sustainable Development, does not confer quasi-judicial powers on the said body, save

possibly for the power to impose penalties under Section 19(8). (Villanueva *vs*. Palawan Council for Sustainable Dev't., G.R. No. 178347, Feb. 25, 2013) p. 555

SUMMARY PROCEDURE, REVISED RULES OF

Application — The summary procedure only applies to Municipal Trial Courts/Metropolitan Trial Courts/Municipal Circuit Trial Courts and cannot apply to proceedings in a Regional Trial Court; its application is limited to certain civil and criminal cases, hence, not applicable to a Writ of *Amparo*, which is a special proceeding. (Sec. Leila M. De Lima *vs*. Gatdula, G.R. No. 204528, Feb. 19, 2013) p. 235

TAXES

Documentary stamp tax — An excise tax since it is levied on the exercise by persons of privileges conferred by law; these privileges may cover the creation, modification or termination of contractual relationships; does not apply to the sale of Fort Bonifacio land because it is in compliance with a legislative mandate. (Fort Bonifacio Dev't. Corp. *vs*. Commissioner of Internal Revenue, G.R. Nos. 164155 & 175543, Feb. 25, 2013) p. 524

TREACHERY

As a qualifying circumstance — An offender acts with treachery when he commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. (People of the Phils. *vs*. Zapuiz *y* Ramos @ "Jaymart," G.R. No. 199713, Feb. 20, 2013) p. 511

TRIALS

Consolidation or severance of trials — Exceptions to the general rule are permitted only when there are extraordinary grounds for conducting separate trials on different issues raised in the same case; when separate trials of the issues will avoid prejudice; when separate trials of the issues will further convenience; when separate trials of the issues

will promote justice, or when separate trials of the issues will give a fair trial to all parties. (Metropolitan Bank and Trust Co. *vs*. Hon. Sandoval, G.R. No. 169677, Feb. 18, 2013) p. 98

— Rule on separate trials in civil actions, found in Section 2, Rule 31 of the Rules of Court; the trial court has discretion to determine if a separate trial of any claims, cross-claim, counterclaim, or third-party complaint, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party complaints or issues should be held, provided that the exercise of such discretion is in furtherance of convenience or to avoid prejudice to any party. *(Id.)*

— The Court has randomly accepted the practices in the US courts in the elucidation and application of our own rules of procedure; in *Corrigan vs. Methodist Hospital*, the US District Court for the Eastern District of Pennsylvania stated that Courts order separate trials only when "clearly necessary"; the general rule is to have all the issues in every case tried at one time. *(Id.)*

— The grant by the Sandiganbayan of the motion for separate trial, not being in furtherance of convenience or would not avoid prejudice to a party, and being even contrary to the Constitution, the law and jurisprudence, was arbitrary and a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Sandiganbayan. *(Id.)*

TRUST RECEIPTS LAW

Trust receipts transaction — Covers two obligations: the first is covered by the provision that refers to money under the obligation to deliver it *(entregarla)* to the owner of the merchandise sold; and the second is covered by the provision referring to merchandise received under the obligation to return it *(devolverla)* to the owner; intent to defraud, when presumed; in all trust receipt transactions, both obligations of the trustee exist in the alternative. (Sps. Dela Cruz *vs*. Planters Products, Inc., G.R. No. 158649, Feb. 18, 2013) p. 28

— The trust receipts were only collaterals for the credit line as agreed upon by the parties; the term recourse as thus used means "resort to a person who is secondarily liable after the default of the person who is primarily liable;" it confirms the obligation of a general indorser, who has the same liability as the original obligor. *(Id.)*

UNIONS

Formation of — The capatazes or foremen differed from the rank-and-file employees and could by themselves constitute a separate bargaining unit; they are an extension of the management, and as such they may influence the rank-and-file workers under them to engage in slowdowns or similar activities detrimental to the policies, interests or business objectives of the employers. (Lepanto Consolidated Mining Co. *vs*. Lepanto Capataz Union, G.R. No. 157086, Feb. 18, 2013) p. 10

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.* Zapuiz *y* Ramos @ "Jaymart," G.R. No. 199713, Feb. 20, 2013) p. 511

Testimony of — Extrajudicial confession is binding only on the confessor and cannot be admitted against his or her co-accused and is considered as hearsay against them; exception under Sec. 30, Rule 130 of the Rules of Court allowing the admission of a conspirator requires the prior establishment of the conspiracy by evidence other than the confession. (Salapuddin *vs*. CA, G.R. No. 184681, Feb. 25, 2013) p. 577

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