PHILIPPINE REPORTS

VOL. 705

FEBRUARY 27, 2013 TO MARCH 6, 2013

VOLUME 705

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

FEBRUARY 27, 2013 TO MARCH 6, 2013

SUPREME COURT
MANILA
2015

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2015

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 9310. February 27, 2013]

VERLEEN TRINIDAD, FLORENTINA LANDER, WALLY CASUBUAN, MINERVA MENDOZA, CELEDONIO ALOJADO, ROSENDO VILLAMIN and AUREA TOLENTINO, *complainants, vs.* **ATTY. ANGELITO VILLARIN,** *respondent.*

SYLLABUS

LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS SHALL EMPLOY ONLY FAIR AND HONEST MEANS TO ATTAIN LAWFUL OBJECTIVES; VIOLATION IN CASE AT BAR; IMPOSABLE PENALTY.— As the lawyer of Purence Realty, respondent is expected to champion the cause of his client with wholehearted fidelity, care, and devotion. This simply means that his client is entitled to the benefit of any and every remedy and defense – including the institution of an ejectment case – that is recognized by our property laws. In *Legarda v. Court of Appeals*, we held that in the full discharge of their duties to the client, lawyers shall not be afraid of the possibility that they may displease the general public. Nevertheless, the Code of Professional Responsibility provides the limitation that lawyers shall perform their duty to the client within the bounds of law. They should only make such defense only when they believe it to be honestly debatable under the law. In this case, respondent's act of issuing demand letters, moved by the

understanding of a void HLURB Decision, is legally sanctioned. If his theory holds water, the notice to vacate becomes necessary in order to file an action for ejectment. Hence, he did not resort to any fraud or chicanery prohibited by the Code, just to maintain his client's disputed ownership over the subdivision lots. Even so, respondent cannot be considered free of error. The factual findings of the IBP board of governors reveal that in his demand letter, he brazenly typified one of the complainants, Florentina Lander, as an illegal occupant. However, this description is the exact opposite of the truth, since the final and executory HLURB Decision had already recognized her as a subdivision lot buyer who had a right to complete her payments in order to occupy her property. Respondent is very much aware of this ruling when he filed an Omnibus Motion to set aside the HLURB Decision and the appurtenant Writ of Execution. Given that respondent knew that the aforementioned falsity totally disregarded the HLURB Decision, he thus advances the interest of his client through means that are not in keeping with fairness and honesty. What he does is clearly proscribed by Rule 19.01 of the Code of Professional Responsibility, which requires that a lawyer shall employ **only fair and honest means to attain lawful objectives**. Lawyers must not present and offer in evidence any document that they know is false. Considering the present circumstances, we agree with the 14 May 2011 Resolution of the IBP board of governors that the penalty of reprimand with a stern warning is appropriate. Notably, no motion for reconsideration was filed by either of the parties. Thus, by virtue of the rules for disbarment of attorneys, the case is deemed terminated.

APPEARANCES OF COUNSEL

Bernabe Law Office for complainants.

R E S O L U T I O N

SERENO, *C.J.*:

Before this Court is a consolidated administrative complaint against herein respondent, Angelito Villarin, for allegedly harassing complainants through the demand letters he sent to them.

The facts are as follows:

The instant case stemmed from a Complaint for specific performance filed with the Housing and Land Use Regulatory Board (HLURB) by the buyers of the lots in Don Jose Zavalla Subdivision against the subdivision's owner and developer — Purence Realty Corporation and Roberto Bassig.

In the final adjudication of that case on 11 October 2000, the HLURB ordered the respondents therein to accept the payments of the buyers under the old purchase price. These buyers included some of the complainants in the instant case, to wit: Florentina Lander, Celedonio Alojado, Aurea Tolentino and Rosendo Villamin.

The HLURB ordered the owner and the developer to deliver the Deeds of Sale and the Transfer Certificates of Title to the winning litigants. The Decision **did not evince any directive for the buyers to vacate the property**.

Purence Realty and Roberto Bassig did not appeal the Decision, thus making it final and executory. Thereafter, the HLURB issued a Writ of Execution.[1] It was at this point that respondent Villarin entered his special appearance to represent Purence Realty.[2] Specifically, he filed an Omnibus Motion to set aside the Decision and to quash the Writ of Execution[3] for being null and void on the ground of lack of jurisdiction due to the improper service of summons on his client. This motion was not acted upon by the HLURB.[4]

On 4 December 2003, respondent sent **demand letters** to herein complainants.[5] In all of these letters, he demanded that they immediately vacate the property and surrender it to Purence

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[1] *Rollo*, pp. 21-26.

[2] *Id.* at 27, Special Appearance dated 3 December 2003.

[3] *Id.* at 29-35.

[4] *Id.* at 147, Report and Recommendation dated 16 February 2009.

[5] *Id.* at 8-11; Letters addressed to Verleen Trinidad, Wally Casubuan, Minerva Mendoza, and Florentina Lander.

Realty within five days from receipt. Otherwise, he would file the necessary action against them.

True enough, Purence Realty, as represented by respondent, filed a Complaint for forcible entry before the Municipal Trial Court (MTC) against Trinidad,[6] Lander,[7] Casubuan[8] and Mendoza.[9] Aggrieved, the four complainants filed an administrative case against respondent.[10] A month after, Alojado, Villamin and Tolentino filed a disbarment case against respondent.[11]

As found by the Integrated Bar of the Philippines (IBP)[12] and affirmed by its Board of Governors,[13] complainants asserted in their respective verified Complaints that the demand letters sent by Villarin had been issued with malice and intent to harass them. They insisted that the letters also contravened the HLURB Decision ordering his client to permit the buyers to pay the balance of the purchase price of the subdivision lots.

Considering that these two actions were related, Villarin moved for the consolidation of the administrative cases, and his motion was granted by the IBP commissioner.[14]

In his Position Paper,[15] Villarin denied the allegations of harassment and claimed that no malice attended the sending of the demand letters. He narrated that when he inquired at the HLURB, he was informed that his client did not receive a summons pertinent to the Complaint for specific damages. With this information, he formed the conclusion that the HLURB

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[6] *Id.* at 37.

[7] *Id.* at 49.

[8] *Id.* at 41.

[9] *Id.* at 45.

[10] *Id.* at 98, docketed as CBD Case No. 04-1203.

[11] *Id.*, docketed as CBD Case No. 04-1218.

[12] *Id.* at 148, Report and Recommendation dated 16 February 2009.

[13] *Id.* at 143-144, Notice of Resolution.

[14] *Id.* at 98, Order dated 22 June 2004.

[15] *Id.* at 99-105.

Decision was void and not binding on Purence Realty. Since his client was the lawful owner of the property, respondent issued the ejectment letters, which were indispensable in an action for unlawful detainer. Moreover, he insisted that the addressees of the letters were different from the complainants who had filed the case with the HLURB.

Hence, the pertinent issue in this consolidated case is whether respondent should be administratively sanctioned for sending the demand letters despite a final and executory HLURB Decision directing, not the ejectment of complainants, but the payment of the purchase price of the lots by the subdivision buyers.

Prefatorily, this Court affirms the factual finding of the IBP[16] that of complainants herein, only Florentina Lander, Celedonio Alojado, Aurea Tolentino and Rosendo Villamin were listed as the subdivision lot buyers who were parties to the HLURB case; and that Verleen Trinidad, Wally Casubuan and Minerva Mendoza were non-parties who could not claim any right pursuant to the Decision in that case.

Proceeding to the contested demand letters, we adopt the recommendation of the IBP board of governors that the issuance thereof was not malicious.[17] According to its Report,[18] respondent counsel merely acted on his legal theory that the HLURB Decision was not binding on his client, since it had not received the summons. Espousing the belief that the proceedings in the HLURB were void, Villarin pursued the issuance of demand letters as a prelude to the ejectment case he would later on file to protect the property rights of his client.

As the lawyer of Purence Realty, respondent is expected to champion the cause of his client with wholehearted fidelity, care, and devotion.[19] This simply means that his client is entitled

[16] *Id.* at 149, Report and Recommendation dated 16 February 2009.

[17] *Id.*

[18] *Id.*

[19] *Pangasinan Electric Cooperative v. Montemayor,* A.C. No. 5739, 12 September 2007, 533 SCRA 1, citing *Natino v. Intermediate Appellate Court,* 247 Phil. 602 (1991).

to the benefit of any and every remedy and defense[20] — including the institution of an ejectment case — that is recognized by our property laws. In *Legarda v. Court of Appeals*, we held that in the full discharge of their duties to the client, lawyers shall not be afraid of the possibility that they may displease the general public.[21]

Nevertheless, the Code of Professional Responsibility provides the limitation that lawyers shall perform their duty to the client within the bounds of law.[22] They should only make such defense only when they believe it to be honestly debatable under the law.[23] In this case, respondent's act of issuing demand letters, moved by the understanding of a void HLURB Decision, is legally sanctioned. If his theory holds water, the notice to vacate becomes necessary in order to file an action for ejectment.[24] Hence, he did not resort to any fraud or chicanery prohibited by the Code,[25] just to maintain his client's disputed ownership over the subdivision lots.

Even so, respondent cannot be considered free of error. The factual findings of the IBP board of governors reveal that in his demand letter, he brazenly typified one of the complainants, Florentina Lander, as an illegal occupant. However, this description is the exact opposite of the truth, since the final and executory HLURB Decision had already recognized her as a subdivision lot buyer who had a right to complete her payments in order to occupy her property. Respondent is very much aware of this ruling when he filed an Omnibus Motion to set aside the HLURB Decision and the appurtenant Writ of Execution.

Given that respondent knew that the aforementioned falsity totally disregarded the HLURB Decision, he thus advances the

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[20] *Id.*

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

[22] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 19.

[23] RULES OF COURT, Rule 138, Sec. 20(c).

[24] RULES OF COURT, Rule 70, Sec. 2.

[25] CODE OF PROFESSIONAL ETHICS, Canon 10.

interest of his client through means that are not in keeping with fairness and honesty. What he does is clearly proscribed by Rule 19.01 of the Code of Professional Responsibility, which requires that a lawyer shall employ **only fair and honest means to attain lawful objectives**. Lawyers must not present and offer in evidence any document that they know is false.[26]

Considering the present circumstances, we agree with the 14 May 2011 Resolution of the IBP board of governors that the penalty of reprimand with a stern warning is appropriate. Notably, no motion for reconsideration[27] was filed by either of the parties. Thus, by virtue of the rules for disbarment of attorneys, the case is deemed terminated.[28]

WHEREFORE, in view of the foregoing, respondent Atty. Angelito Villarin is **REPRIMANDED** with a warning that a repetition of the same or a similar act shall be dealt with more severely.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[26] ERNESTO L. PINEDA, LEGAL ETHICS, 306 (2009) citing *Lacsamana v. Dela Peña*, 156 Phil. 13 (1974).

[27] *Rollo*, p. 150, Report and Recommendation dated 16 February 2009.

[28] RULES OF COURT, Rule 139-B, Sec. 12 (c).

SECOND DIVISION

[A.M. No. 10-2-41-RTC. February 27, 2013]

RE: MISSING EXHIBITS AND COURT PROPERTIES IN REGIONAL TRIAL COURT, BRANCH 4, PANABO CITY, DAVAO DEL NORTE

SYLLABUS

1. **REMEDIAL LAW; DISCIPLINE OF JUDGES; THE OFFICE OF THE COURT ADMINISTRATOR (OCA) IS DIVESTED OF ITS RIGHT TO INSTITUTE A NEW ADMINISTRATIVE CASE AGAINST A JUDGE AFTER HIS COMPULSORY RETIREMENT; PRESENT IN CASE AT BAR.—** The Court notes that the OCA submitted its memorandum to then Acting Chief Justice Antonio T. Carpio on 10 July 2012 — more than two years and seven months after Judge Grageda compulsorily retired. During his incumbency, Judge Grageda was never given the chance to explain the alleged violation of Supreme Court rules, directives and circulars. Up to the present, the OCA has not commenced any formal investigation or asked Judge Grageda to comment on the matter. Thus, the complaint against Judge Grageda must be dismissed. In *Office of the Court Administrator v. Mantua,* the Court dismissed the complaint against a judge because the OCA submitted its memorandum to then Chief Justice Reynato S. Puno more than four months after the judge's retirement and because the judge was never given a chance to explain. x x x In order for the Court to acquire jurisdiction over an administrative case, the complaint must be filed during the incumbency of the respondent. Once jurisdiction is acquired, it is not lost by reason of respondent's cessation from office. In the present case, Judge Grageda's compulsory retirement divested the OCA of its right to institute a new administrative case against him after his compulsory retirement. The Court can no longer acquire administrative jurisdiction over Judge Grageda by filing a new administrative case against him after he has ceased to be a public official. The remedy, if necessary, is to file the appropriate civil or criminal case against Judge Grageda for the alleged transgression.

2. **ID.; ID.; IN ORDER TO HOLD A JUDGE LIABLE, THERE MUST BE SUBSTANTIAL EVIDENCE THAT HE HAD COMMITTED AN OFFENSE; SUSTAINED.—** In order to hold Judge Grageda liable, there must be substantial evidence that he committed an offense. Otherwise, the presumption is that he regularly performed his duties. *In Concerned Lawyers of Bulacan v. Villalon-Pornillos,* the Court held that: The burden of substantiating the charges in an administrative proceeding against court officials and employees falls on the complainant, who must be able to prove the allegations in the complaint with substantial evidence. x x x The Court does not thus give credence to charges based on mere suspicion and speculation. In *Go v. Judge Achas*, the Court held that, "In the absence of evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail. Even in administrative cases, if a court employee or magistrate is to be disciplined for a grave offense, the evidence against him should be competent."

R E S O L U T I O N

CARPIO, *J.*:

This administrative case arose from a letter[1] dated 7 May 2009 and sent by Atty. Jacquelyn A. Labustro-Garcia (Atty. Labustro-Garcia), Clerk of Court V, Regional Trial Court (RTC), Judicial Region 11, Branch 4, Panabo City, to the Office of the Court Administrator (OCA).

On 16 February 2009, Atty. Labustro-Garcia assumed her position as clerk of court in the RTC. She conducted an inventory using, among others, the acknowledgment receipt[2] for equipment issued by Mr. Gil T. Tribiana, Jr. (Mr. Tribiana, Jr.), Chief Judicial Staff Officer, Property Division, OCA, and discovered some missing items. In a letter[3] dated 27 February 2009, she required Attys. Mariecris B. Colon-Reyes and Mary Francis Manug-Daquipil (Attys. Colon-Reyes and Manug-Daquipil),

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[1] *Rollo*, pp. 11-12.

[2] *Id.* at 93-101.

[3] *Id.* at 103.

Court Stenographer Arden O. Ferolino, Legal Researchers Boyd James Bacaltos and Edgar Casalem, Court Interpreter Helen Basa, and Clerk III Marianne G. Baylon to attend an investigation scheduled on 27 March 2009.

Atty. Labustro-Garcia sent a letter[4] dated 18 March 2009 to Mr. Tribiana, Jr., together with the signed acknowledgment receipt and a report on the missing and unserviceable items. She also sent a letter[5] dated 13 April 2009 to Atty. Giselle Talion of the Office of the Clerk of Court to inquire whether Attys. Colon-Reyes and Manug-Daquipil deposited any money submitted to the RTC.

In the 7 May 2009 letter which she sent to the OCA and which gave rise to this administrative case, Atty. Labustro-Garcia asked for advice on the proper action to take regarding the missing items. She stated that:

I am writing directly to you because I need your advice as to what steps should I undertake to address the problem of our sala. This is in relation to the court exhibits and to the properties issued in [sic] our sala.

I assumed my duties as Clerk of Court V of the Regional Trial Court, Branch 4, Panabo City only on 16 February 2009. I made an inventory as to the only exhibits and property bonds (titles) existing at the time I assumed my duties as Clerk of Court. I found these exhibits and property bonds (titles) inside the four steel cabinets at [sic] our stockroom. I also conducted physical inventory on [sic] the properties issued by the Supreme Court based on the 9-page Acknowledgment Receipt sent by Ms. Herminia B. Advincula (Chief, Records Section, Property Division, OCA). After inventory, I discovered that there were missing exhibits and properties. I reported the matter to the presiding judge and I sent a letter-reply together with the list of the missing and unserviceable properties to Ms. Herminia S. Advincula. The presiding judge merely told me that I am not liable for those lost items.[6]

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

[5] *Id.* at 104.

[6] *Id.* at 11.

In a memorandum[7] dated 29 June 2009, Deputy Court Administrator Nimfa C. Vilches (DCA Vilches) directed Presiding Judge Jesus L. Grageda (Judge Grageda) of the RTC and Atty. Labustro-Garcia to (1) furnish the OCA with a list of the missing exhibits and properties; (2) conduct an audit and inventory of criminal cases; (3) conduct an inventory of court properties; (4) investigate the circumstances of the missing exhibits and properties; and (5) take necessary measures to prevent a similar occurrence. Atty. Labustro-Garcia and Judge Grageda replied to DCA Vilches' memorandum through their 31 July[8] and 30 September[9] 2009 letters, respectively.

On 25 November 2009, Judge Grageda compulsorily retired. In her 9 February 2012 letter,[10] Marina B. Ching, Chief of Office, Court Management Office, recommended the release of Judge Grageda's terminal leave benefits.

In a memorandum[11] dated 18 April 2012, the OCA found that there is no sufficient proof of missing items in the RTC. However, it found Judge Grageda liable for a different offense. The OCA stated that:

> x x x The inventories submitted by both parties present conflicting findings on the alleged missing exhibits and court properties. While Atty. Garcia claimed that there were missing exhibits and court properties, Judge Grageda reported that based on the inventory conducted by the court staff, there were no missing court furniture and equipment, books or publications, or lost exhibits in the RTC, Branch 4, Panabo City. The court properties allegedly unaccounted for were reported as either extant/existing, or unserviceable, or with the Office of the Clerk of Court, or returned to the Supreme Court for replacement, while the listed court exhibits were likewise reported

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[7] *Id.* at 133-134.

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

[9] *Id.* at 214-215.

[10] *Id.* at 289.

[11] *Id.* at 290-300. Signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Antonio M. Eugenio, Jr.

as either attached to the records, or in the custody of the prosecution/ defense, or confiscated by the government.

It is noted that before the retirement of Judge Grageda on 25 November 2009, a judicial audit was conducted on 17 to 26 November 2009 in the RTC, Branch 4, Panabo City. Based on the Report dated 08 March 2010, the audit team significantly found/reported no missing or lost exhibits and/or court property thereat.

Nevertheless, the Report of the Clerk of Court on the alleged missing exhibits and court properties should have prompted Judge Grageda to conduct an investigation on the matter, or at the very least, to report to the Court any action taken to verify or of any measures adopted to prevent loss of exhibits and court properties. The veracity of the reported missing exhibits and court properties should not have been taken lightly or ignored by Judge Grageda. As then Presiding Judge of the RTC, Branch 4, Panabo City, he had direct supervision and control over his personnel. The importance of a prompt investigation on the alleged loss was in fact conveyed to Judge Grageda in the OCA Memorandum dated 29 June 2009. As Presiding Judge, Judge Grageda should have initiated an immediate investigation on the allegations without waiting for a directive from the Court. In this regard, Judge Grageda was remiss in his duties.[12]

The OCA recommended that Judge Grageda be held liable for violation of Supreme Court rules, directives and circulars, and be fined ₱20,000.

The Court disagrees with the OCA's recommendations.

The Court notes that the OCA submitted its memorandum to then Acting Chief Justice Antonio T. Carpio on 10 July 2012 — more than two years and seven months after Judge Grageda compulsorily retired. During his incumbency, Judge Grageda was never given the chance to explain the alleged violation of Supreme Court rules, directives and circulars. Up to the present, the OCA has not commenced any formal investigation or asked Judge Grageda to comment on the matter. Thus, the complaint against Judge Grageda must be dismissed.

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[12] *Id.* at 296-297.

In *Office of the Court Administrator v. Mantua*,[13] the Court dismissed the complaint against a judge because the OCA submitted its memorandum to then Chief Justice Reynato S. Puno more than four months after the judge's retirement and because the judge was never given a chance to explain. The Court held that:

It should be noted that the judicial audit team submitted their report to DCA Vilches five days after Judge Mantua's retirement. **The OCA, in turn, submitted their Memorandum to CJ Puno on 12 May 2009, or a little over four months after Judge Mantua's retirement. During his incumbency, Judge Mantua was never given a chance to explain the results of the judicial audit report**. With the knowledge that the judicial audit report will be submitted only after Judge Mantua's retirement, the judicial audit team's recommendations were directed only to Atty. Mape, the Acting Clerk of Court and Legal Researcher II of Branch 17, and Judge Maraya, Acting Presiding Judge of Branch 17 at the time of the report's submission. In its Memorandum, the OCA recommended that Judge Mantua be fined for gross incompetency and inefficiency.

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This Court concedes that there are no promulgated rules on the conduct of judicial audit. However, the absence of such rules should not serve as license to recommend the imposition of penalties to retired judges who, during their incumbency, were never given a chance to explain the circumstances behind the results of the judicial audit. Judicial audit reports and the memoranda which follow them should state not only recommended penalties and plans of action for the violations of audited courts, but also give commendations when they are due. To avoid similar scenarios, manual judicial audits may be conducted at least six months before a judge's compulsory retirement. **We recognize that effective monitoring of a judge's observance of the time limits required in the disposition of cases is hampered by limited resources. These limitations, however, should not be used to violate Judge Mantua's right to due process**.[14] (Boldfacing supplied)

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[13] A.M. No. RTJ-11-2291, 8 February 2012, 665 SCRA 253.

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

In order for the Court to acquire jurisdiction over an administrative case, the complaint must be filed during the incumbency of the respondent. Once jurisdiction is acquired, it is not lost by reason of respondent's cessation from office. In *Office of the Court Administrator v. Judge Hamoy*,[15] the Court held that:

Respondent's cessation from office x x x does not warrant the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. The Court's jurisdiction at the time of the filing of the administrative complaint is not lost by the mere fact that the respondent had ceased in office during the pendency of the case.[16]

In the present case, Judge Grageda's compulsory retirement divested the OCA of its right to institute a new administrative case against him **after** his compulsory retirement. The Court can no longer acquire administrative jurisdiction over Judge Grageda by filing a new administrative case against him after he has ceased to be a public official. The remedy, if necessary, is to file the appropriate civil or criminal case against Judge Grageda for the alleged transgression. In *Office of the Ombudsman v. Andutan, Jr.*,[17] the Court held that:

Although the Ombudsman is not precluded by Section 20(5) of R.A. 6770 from conducting the investigation, **the Ombudsman can no longer institute an administrative case against Andutan because the latter was not a public servant at the time the case was filed**.

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x x x We disagree with the Ombudsman's interpretation that 'as long as the breach of conduct was committed while the public official or employee was still in service a public servant's resignation is not a bar to his administrative investigation, prosecution and adjudication.' If we agree with this interpretation, any official —

[15] 489 Phil. 296 (2005).

[16] *Id.* at 301.

[17] G.R. No. 164679, 27 July 2011, 654 SCRA 539.

even if he has been separated from the service for a long time — may still be subject to the disciplinary authority of his superiors, *ad infinitum*. We believe that this interpretation is inconsistent with the principal motivation of the law — which is to improve public service and to preserve the public's faith and confidence in the government, and not the punishment of the public official concerned. Likewise, **if the act committed by the public official is indeed inimical to the interests of the State, other legal mechanisms are available to redress the same**.

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Lastly, **the State is not without remedy against Andutan or any public official who committed violations while in office, but had already resigned or retired therefrom. Under the 'threefold liability rule,' the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. Even if the Ombudsman may no longer file an administrative case against a public official who has already resigned or retired, the Ombudsman may still file criminal and civil cases to vindicate Andutan's alleged transgressions**.[18] (Boldfacing supplied)

Moreover, aside from the bare allegation in Atty. Labustro-Garcia's 7 May 2009 letter that, "The presiding judge merely told me that I am not liable for those lost items," there is no other proof that Judge Grageda violated any Supreme Court rule, directive, or circular. In fact, in its 18 April 2012 memorandum, the OCA found that, contrary to Atty. Labustro-Garcia's allegation, there is actually no missing item. The OCA stated that, "Based on the Report dated 08 March 2010, the audit team significantly found/reported no missing or lost exhibits and/or court property thereat."

In order to hold Judge Grageda liable, there must be substantial evidence that he committed an offense. Otherwise, the presumption is that he regularly performed his duties. In *Concerned Lawyers of Bulacan v. Villalon-Pornillos*,[19] the Court held that:

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[18] *Id.* at 549-557.

[19] A.M. No. RTJ-09-2183, 7 July 2009, 592 SCRA 36.

The burden of substantiating the charges in an administrative proceeding against court officials and employees falls on the complainant, who must be able to prove the allegations in the complaint with substantial evidence. In the absence of evidence to the contrary, the presumption that respondent regularly performed her duties will prevail. Moreover, in the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions. In fact, an administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent stands to face the sanction of dismissal and/or disbarment. The Court does not thus give credence to charges based on mere suspicion and speculation.[20]

In *Go v. Judge Achas*,[21] the Court held that, "In the absence of evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail. Even in administrative cases, if a court employee or magistrate is to be disciplined for a grave offense, the evidence against him should be competent."[22]

WHEREFORE, the complaint against Judge Jesus L. Grageda is **DISMISSED.** The Financial Management Office of the Office of the Court Administrator is **DIRECTED** to release the retirement pay and other benefits due Judge Grageda unless withheld for some other lawful cause.

SO ORDERED.

Del Castillo, Perez, Mendoza,[*] and *Perlas-Bernabe, JJ.*, concur.

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[20] *Id.* at 50-51.

[21] 493 Phil. 343 (2005).

[22] *Id.* at 349.

[*] Designated acting member per Special Order No. 1421 dated 20 February 2013.

THIRD DIVISION

[A.M. No. MTJ-11-1801. February 27, 2013]
(Formerly OCA I.P.I. No. 11-2438 MTJ)

ANONYMOUS, *complainant, vs.* **JUDGE RIO C. ACHAS, Municipal Trial Court in Cities, Branch 2, Ozamis City, Misamis Occidental,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; DISCIPLINE OF JUDGES; ANONYMOUS COMPLAINTS FILED AGAINST JUDGES MUST BE SUPPORTED BY PUBLIC RECORDS OF INDUBITABLE INTEGRITY; EFFECT OF FAILURE; CASE AT BAR.—** Under Section 1 of Rule 140 of the Rules of Court, anonymous complaints may be filed against judges, but they must be supported by public records of indubitable integrity. Courts have acted in such instances needing no corroboration by evidence to be offered by the complainant. Thus, for anonymous complaints, the burden of proof in administrative proceedings which usually rests with the complainant, must be buttressed by indubitable public records and by what is sufficiently proven during the investigation. If the burden of proof is not overcome, the respondent is under no obligation to prove his defense. In the present case, no evidence was attached to the letter-complaint. The complainant never appeared, and no public records were brought forth during the investigation. Respondent Judge Achas denied all the charges made against him, only admitting that he was separated *de facto* from his wife and that he reared fighting cocks. The charges that he (1) lives beyond his means, (2) is involved with illegal activities through his connection with the *kuratongs*, (3) comes to court very untidy and dirty, and (4) decides his cases unfairly in exchange for material and monetary consideration were, therefore, properly recommended dismissed by the OCA for lack of evidence.

2. **LEGAL ETHICS; NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY; INTEGRITY AND PROPRIETY; JUDGES' PERSONAL BEHAVIOR OUTSIDE THE COURT, AND NOT ONLY WHILE IN**

THE PERFORMANCE OF OFFICIAL DUTIES, MUST BE BEYOND REPROACH; VIOLATION IN CASE AT BAR.— Judge Angot's discreet investigation revealed that the respondent judge found "for himself a suitable young lass whom he occasionally goes out with in public and such a fact is not a secret around town." Judge Achas denied this and no evidence was presented to prove the contrary. He did admit, however, that he had been estranged from his wife for the last 26 years. Notwithstanding his admission, the fact remains that he is still legally married to his wife. The Court, therefore, agrees with Judge Dungog in finding that it is not commendable, proper or moral for a judge to be perceived as going out with a woman not his wife. Such is a blemish to his integrity and propriety, as well as to that of the Judiciary. For going out in public with a woman not his wife, Judge Achas has clearly failed to abide by Canon 2 (Integrity) and Canon 4 (Propriety) of the New Code of Judicial Conduct for Philippine Judiciary. Regarding his involvement in cockfighting, however, there is no clear evidence. Judge Achas denied engaging in cockfighting and betting. He admitted, however, that he reared fighting cocks for leisure, having inherited the practice from his forefathers. While gamecocks are bred and kept primarily for gambling, there is no proof that he goes to cockpits and gambles. While rearing fighting cocks is not illegal, Judge Achas should avoid mingling with a crowd of cockfighting enthusiasts and bettors as it undoubtedly impairs the respect due him. As a judge, he must impose upon himself personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. x x x Considering that his immoral behaviour is not a secret around town, it is apparent that respondent judge has failed to ensure that his conduct is *perceived* to be above reproach by the reasonable observer, and has failed to *avoid the appearance* of impropriety in his activities, to the detriment of the judiciary as a whole. No position demands greater moral righteousness and uprightness from its occupant than does the judicial office. Judges in particular must be individuals of competence, honesty and probity, charged as they are with safeguarding the integrity of the court and its proceedings. He should behave at all times so as to promote public confidence in the integrity and impartiality of the judiciary, and avoid impropriety and the appearance of impropriety in all his activities. His personal

behaviour outside the court, and not only while in the performance of his official duties, must be beyond reproach, for he is perceived to be the personification of law and justice. Thus, any demeaning act of a judge degrades the institution he represents.

3. ID.; ID.; WHEN VIOLATED; IMPOSABLE PENALTY.— Under Section 10 in relation to Section 11C (1) of Rule 140 of the Rules of Court, as amended, "unbecoming conduct" is classified as a light charge, punishable by any of the following sanctions: (1) a fine of not less than ₱1,000.00 but not exceeding ₱10,000.00; and/or (2) censure; (3) reprimand; (4) admonition with warning. The Court, thus, finds that the penalty of a fine in the amount of ₱5,000.00 and reprimand are proper under the circumstances. **WHEREFORE**, for violation of the New Code of Judicial Conduct, respondent Judge Rio Concepcion Achas is **REPRIMANDED** and **FINED** in the amount of FIVE THOUSAND PESOS (₱5,000.00), **ADMONISHED** not to socially mingle with cockfighting enthusiasts and bettors, and **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely.

R E S O L U T I O N

MENDOZA, *J.*:

Before the Court is an anonymous letter-complaint,[1] dated August 2, 2010, alleging immorality and conduct unbecoming of a judge against respondent Judge Rio C. Achas *(Judge Achas),* Presiding Judge, Municipal Trial Court in Cities, Branch 2, Ozamiz City, Misamis Occidental.

The letter calls on the Court to look into the morality of respondent Judge Achas and alleges that: (1) it is of public knowledge in the city that Judge Achas is living scandalously with a woman who is not his wife; (2) he lives beyond his means; (3) he is involved with illegal activities through his connection with bad elements, the *kuratongs*; (4) he comes to court very untidy and dirty; (5) he decides his cases unfairly in exchange

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[1] *Rollo*, p. 6.

for material and monetary consideration; and (6) he is involved with cockfighting/gambling.

In the Indorsement,[2] dated September 30, 2010, the Office of the Court Administrator *(OCA)* referred the matter to Executive Judge Miriam Orquieza-Angot *(Judge Angot)* for Discreet Investigation and Report.

In her Report,[3] dated November 26, 2010, Judge Angot found that Judge Achas had been separated from his legal wife for quite some time and they are living apart; and that he found for himself a young woman with whom he would occasionally go out with in public and it was not a secret around town. Anent the allegations that Judge Achas was living beyond his means and was involved in illegal activities, Judge Angot reported that she could not be certain whether such were true, and only ascertained that he had established friendships or alliances with people of different social standings from around the city. Judge Angot opined that the allegation that Judge Achas would come to court untidy and dirty was a matter of personal hygiene and in the eye of the beholder. Lastly, she found the charge that Judge Achas decided cases unfairly in exchange for consideration to be vague and unsubstantiated.

In his Comment,[4] dated February 4, 2011, Judge Achas denied all the allegations against him and claimed that they were hatched to harass him, pointing to disgruntled professionals, supporters and local candidates who lost during the May 2010 elections. He asserted that after 28 years in the government service, he had remained loyal to his work and conducted himself in a righteous manner.

In the Resolution, dated December 14, 2011, the Court resolved to re-docket the case as a regular administrative matter and to refer the same to the Executive Judge of the Regional Trial

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[2] *Id*. at 8.

[3] *Id*. at 10.

[4] *Id*. at 15-16.

Court of Ozamiz City for investigation, report and recommendation.

In her Report,[5] dated April 4, 2012, Executive Judge Salome P. Dungog *(Judge Dungog)* stated that an investigation was conducted. Judge Achas and his two witnesses testified in his defense, namely, his Branch Clerk of Court, Renato Zapatos; and his Process Server, Michael Del Rosario. The anonymous complainant never appeared to testify. During the investigation, Judge Achas again denied all the charges but admitted that he was married and only separated *de facto* from his legal wife for 26 years, and that he reared game cocks for leisure and extra income, having inherited such from his forefathers. Judge Dungog found that "it is not commendable, proper or moral per Canons of Judicial Ethics to be perceived as going out with a woman not his wife,"[6] and for him to be involved in rearing game cocks.

In its Memorandum, dated December 17, 2012, the OCA recommended that Judge Achas be reprimanded as to the charge of immorality. It was further recommended that he be ordered to refrain from going to cockpits or avoid such places altogether, with a warning that the same or similar complaint in the future shall be dealt with more severely. The other charges were recommended to be dismissed for lack of merit.

The Court agrees, with modification.

Under Section 1 of Rule 140 of the Rules of Court, anonymous complaints may be filed against judges, but they must be supported by public records of indubitable integrity. Courts have acted in such instances needing no corroboration by evidence to be offered by the complainant. Thus, for anonymous complaints, the burden of proof in administrative proceedings which usually rests with the complainant, must be buttressed by indubitable public records and by what is sufficiently proven during the investigation. If

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[5] *Id.* at 98-99.

[6] *Id.* at 99.

the burden of proof is not overcome, the respondent is under no obligation to prove his defense.[7]

In the present case, no evidence was attached to the letter-complaint. The complainant never appeared, and no public records were brought forth during the investigation. Respondent Judge Achas denied all the charges made against him, only admitting that he was separated *de facto* from his wife and that he reared fighting cocks.

The charges that he (1) lives beyond his means, (2) is involved with illegal activities through his connection with the *kuratongs*, (3) comes to court very untidy and dirty, and (4) decides his cases unfairly in exchange for material and monetary consideration were, therefore, properly recommended dismissed by the OCA for lack of evidence.

The charges that (1) it is of public knowledge that he is living scandalously with a woman not his wife and that (2) he is involved with cockfighting/gambling are, however, another matter.

The New Code of Judicial Conduct for the Philippine Judiciary pertinently provides:

CANON 2
INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SEC. 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

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[7] *Go v. Judge Achas*, 493 Phil. 343, 349 (2005).

CANON 4
PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SEC. 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SEC. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

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Judge Angot's discreet investigation revealed that the respondent judge found "for himself a suitable young lass whom he occasionally goes out with in public and such a fact is not a secret around town."[8] Judge Achas denied this and no evidence was presented to prove the contrary. He did admit, however, that he had been estranged from his wife for the last 26 years. Notwithstanding his admission, the fact remains that he is still legally married to his wife. The Court, therefore, agrees with Judge Dungog in finding that it is not commendable, proper or moral for a judge to be perceived as going out with a woman not his wife. Such is a blemish to his integrity and propriety, as well as to that of the Judiciary.

For going out in public with a woman not his wife, Judge Achas has clearly failed to abide by the above-cited Canons of the New Code of Judicial Conduct for Philippine Judiciary.

Regarding his involvement in cockfighting, however, there is no clear evidence. Judge Achas denied engaging in cockfighting and betting. He admitted, however, that he reared fighting cocks for leisure, having inherited the practice from his forefathers. While gamecocks are bred and kept primarily for gambling, there is no proof that he goes to cockpits and gambles. While rearing fighting cocks is not illegal, Judge Achas should avoid

[8] *Rollo,* p. 10.

mingling with a crowd of cockfighting enthusiasts and bettors as it undoubtedly impairs the respect due him. As a judge, he must impose upon himself personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The Court further notes that in A.M. No. MTJ-04-1564,[9] Judge Achas was charged with immorality for cohabiting with a woman not his wife, and with gross misconduct and dishonesty for personally accepting a cash bond in relation to a case and not depositing it with the clerk of court, and for maintaining a flock of fighting cocks and actively participating in cockfights. The Court, in 2005, found him guilty of gross misconduct for personally receiving the cash bond and fined him in the amount of ₱15,000.00 with a stern warning. The charge of immorality was dismissed for lack of evidence. Although the Court, at the same time, noted that the charge of maintaining a flock of fighting cocks and participating in cockfights was denied by the respondent judge, it made no ruling on the charge.

Seven years later, similar charges of immoral cohabitation and cockfighting have again been levelled against Judge Achas. Considering that his immoral behaviour is not a secret around town, it is apparent that respondent judge has failed to ensure that his conduct is *perceived* to be above reproach by the reasonable observer, and has failed to *avoid the appearance* of impropriety in his activities, to the detriment of the judiciary as a whole.

No position demands greater moral righteousness and uprightness from its occupant than does the judicial office. Judges in particular must be individuals of competence, honesty and probity, charged as they are with safeguarding the integrity of the court and its proceedings. He should behave at all times so as to promote public confidence in the integrity and impartiality of the judiciary, and avoid impropriety and the appearance of impropriety in all his activities. His personal behaviour outside the court, and not only while in the performance of his official

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[9] *Go v. Judge Achas*, *supra* note 7.

duties, must be beyond reproach, for he is perceived to be the personification of law and justice. Thus, any demeaning act of a judge degrades the institution he represents.[10]

Under Section 10 in relation to Section 11C (1) of Rule 140 of the Rules of Court, as amended, "unbecoming conduct" is classified as a light charge, punishable by any of the following sanctions: (1) a fine of not less than ₱1,000.00 but not exceeding ₱10,000.00; and/or (2) censure; (3) reprimand; (4) admonition with warning. The Court, thus, finds that the penalty of a fine in the amount of ₱5,000.00 and reprimand are proper under the circumstances.

WHEREFORE, for violation of the New Code of Judicial Conduct, respondent Judge Rio Concepcion Achas is **REPRIMANDED** and **FINED** in the amount of FIVE THOUSAND PESOS (₱5,000.00), **ADMONISHED** not to socially mingle with cockfighting enthusiasts and bettors, and **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

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

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[10] *City of Tagbiliran v. Judge Hontanosas, Jr.*, 425 Phil. 592, 601 (2002).

FIRST DIVISION

[G.R. No. 154083. February 27, 2013]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **SAMSON DE LEON,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; GROSS NEGLECT OF DUTY AS DISTINGUISHED FROM SIMPLE NEGLECT OF DUTY.—** Gross neglect of duty or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable. In contrast, simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."

2. **ID.; ID.; ID.; GROSS NEGLECT IN NOT PERFORMING THE ACT EXPECTED OF A PUBLIC OFFICIAL UNDER THE CIRCUMSTANCES OBTAINING; CASE AT BAR.—** A Provincial Environment and Natural Resources Officer (PENRO), who is appointed by the Secretary of the DENR, has the responsibility to implement DENR policies, programs and projects in the province of his assignment. De Leon was appointed as the PENRO of Rizal and concurrently the Chairman of the PMRB of Rizal. x x x Based on the Civil Service Position Description Form, De Leon as the PENRO of Rizal was the highest executive officer of the DENR at

the provincial level. He had the authority to coordinate all the DENR agencies within his jurisdiction, including the PMRB. In his concurrent positions as the PENRO and Chairman of the PMRB, therefore, his paramount function was to ensure that the laws enforced by the DENR as well as the rules and regulations promulgated by the DENR in implementation of such laws were complied with and effectively implemented and enforced. Verily, he was the primary implementor and enforcer within his area of responsibility of all the laws and administrative orders concerning the environment, and because of such character of his concurrent offices should have made sure that he efficiently and effectively discharged his functions and responsibilities. In the matter that is now before us, De Leon evidently neglected to efficiently and effectively discharge his functions and responsibilities. Except for issuing the investigation order and for denying having granted any permit to quarry, he did nothing affirmative to put a stop to the illegal quarrying complained of, or to do any other action that was entirely within his power to do as the PENRO that the complaint demanded to be done. x x x De Leon, given his rank and level of responsibility, was guilty of gross neglect in not performing the act expected of him as the PENRO under the circumstances obtaining.

3. **ID.; OFFICE OF THE OMBUDSMAN; DISCIPLINARY AUTHORITY OVER GOVERNMENT OFFICIALS, DISCUSSED.—** There is no issue about the disciplinary authority of the Office of the Ombudsman over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries. The only officials not under its disciplinary authority are those who may be removed only by impeachment, the Members of Congress, and the Justices and Judges of the Judiciary. As to this, Republic Act No. 6770 (The Ombudsman Act of 1989) clearly provides. x x x De Leon was subject to the disciplinary authority of the Office of the Ombudsman because he was an appointive public official. Indeed, the power of the Office of the Ombudsman to investigate

extends to all kinds of malfeasance, misfeasance, and non-feasance that have been committed during his tenure of office by any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations. The Office of the Ombudsman also has the power to act on all complaints relating, but not limited, to acts or omissions that (1) are contrary to law or regulation; (2) are unreasonable, unfair, oppressive or discriminatory; (3) are inconsistent with the general course of an agency's functions, though in accordance with law; (4) proceed from a mistake of law or an arbitrary ascertainment of facts; (5) are in the exercise of discretionary powers but for an improper purpose; or (6) are otherwise irregular, immoral or devoid of justification. At the same time, the Office of the Ombudsman, in the exercise of its administrative disciplinary authority, can impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault. The exercise of all such powers is well founded on the Constitution and on Republic Act No. 6770. In *Office of the Ombudsman v. Masing*, x x x [it characterized] such imposition of sanctions to be not merely advisory or recommendatory but actually mandatory.

4. **ID.; ID.; ID.; DECISION OF THE OFFICE OF THE OMBUDSMAN IS IMMEDIATELY EXECUTORY EVEN IF THE SAME IS ON APPEAL.—** To resolve whether or not the decision of the Office of the Ombudsman was immediately executory, we hereby hold that the decision is immediately executory, and that an appeal does not stop the decision from being executory. This was clearly pronounced by the Court in *Ombudsman v. Court of Appeals*.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Angara Zara Allaga & Amor Law Offices for respondent.

DECISION

BERSAMIN, *J.*:

A public official is guilty of grave misconduct when he neglects to act upon a complaint about a violation of the law he is enforcing. He may be suspended or dismissed from office for his first offense.

The Office of the Ombudsman seeks the review and reversal of the decision promulgated on January 30, 2002, whereby the Court of Appeals (CA) reduced to suspension for three months without pay for simple neglect of duty the penalty of suspension for one year without pay the Office of the Ombudsman had imposed on respondent Samson De Leon (De Leon) upon finding him guilty of neglect of duty.[1]

Antecedents

Acting on a report of illegal quarrying being committed in the Municipality of Baras, Rizal, Graft Investigation Officer Dante D. Tornilla of the Fact Finding Investigation Bureau (FFIB) of the Office of the Ombudsman conducted an investigation pursuant to a mission order dated April 17, 1998.

On June 8, 1998, Tornilla filed his report to Ombudsman Aniano Desierto, through Assistant Ombudsman Abelardo L. Aportadera, Jr. and Director Agapito B. Rosales,[2] confirming the illegal quarrying, to wit:

> From the Municipal Hall, we proceeded to the quarrying area. Along our way, we have noticed a dump truck loaded with quarrying materials coming from the quarrying site. At this juncture, we signaled the truck driver to stop and then checked the driver's license, the truck registration while my other companions took pictures of the truck.

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[1] *Rollo,* pp. 34-38; penned by Associate Justice Ma. Alicia Austria-Martinez (later Presiding Justice of the CA and Member of this Court, now retired), with Associate Justice Hilarion L. Aquino (retired) and Associate Justice Mercedes Gozo-Dadole (retired) concurring.

[2] *Id.* at 56-60.

Verification of the above hauler truck with Plate No. TKU-121 (Isuzu) is owned and operated by Mayor Lito Tanjuatco of Tanay, Rizal. The truck driver, a certain Alfredo Casamayor Payot informed this Investigator that he is paying One hundred (₱100.00) Pesos per truckload of quarrying materials to the quarry operator, a certain Mr. Javier.

x x x x x x x x x

Jonathan Llagas, Municipal Planning and Development Coordinator denied knowing Mr. Javier nor any quarrying activities going on in Baras, Rizal. When we informed him of our findings, he insisted that the quarrying operations is within the jurisdictional area of Tanay, Rizal. To cut short our discussion, we requested him to look and see the quarrying operations to determine the territorial boundaries, whether it is a part of Baras or Tanay and to submit his findings and action taken on our request. However, up to this writing, Jonathan Llagas failed to comply.

Per report received by the Office of the Assistant Ombudsman, EIO, stated that the quarrying activities in Baras, Rizal is still going on the following day, Saturday, April 18, 1998, after our visit on Friday, April 17, 1998, (p. 21, Records). With this information, this investigator proceeded back to the Baras, Rizal and conducted ocular inspection on May 8, 1998, before proceeding to the Laguna Lake Development Authority in Calauan, Laguna, in compliance with a Mission Order.

True enough, we were able to see for ourselves the continuing quarry operations and the quarried stones, soil and materials were dumped to a portion of the Laguna de Bay thereby reclaiming said portion allegedly to be developed as Resort and restaurant establishments.[3]

Tornilla recommended that a preliminary investigation be conducted against Baras Municipal Mayor Roberto Ferrera, Baras Municipal Planning and Coordinator Jonathan Llagas, and property owner Venancio Javier for the probable violation of Section 3(e) of Republic Act No. 3019 (*Anti-Graft and Corrupt Practices Act*); and that administrative proceedings for violations of the Civil Service Rules be also undertaken.

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[3] *Id.* at 57-58.

In his report and recommendation dated July 13, 1998,[4] DILG Resident Ombudsman Rudiger G. Falcis II sought the inclusion in the investigation of De Leon as the Provincial Environment and Natural Resources Officer (PENRO) and as concurrently the Chairman of the Provincial Mining Regulatory Board (PMRB) of Rizal.

After the preliminary investigation, Graft Investigation Officer II Edgardo V. Geraldez of the FFIB, Office of the Ombudsman, issued a decision dated April 29, 1999,[5] dismissing the complaint against all the respondents for lack of substantial evidence. However, Assistant Ombudsman Aportadera, Jr. recommended the disapproval of the said decision. Ombudsman Desierto approved the recommendation of Assistant Ombudsman Aportadera, Jr.

The case was then referred to Atty. Sabino M. Cruz, Resident Ombudsman for the Department of Environment and Natural Resources (DENR), who ultimately submitted a memorandum on October 20, 1999,[6] duly approved by the Ombudsman, finding De Leon liable for gross neglect of duty, as follows:

> WHEREFORE , it is respectfully recommended that:
>
> x x x x x x x x x
>
> 3) Respondent SAMSON G. DE LEON, Provincial Environment and Natural Resources Officer, be penalized with one (1) year suspension without pay, for Gross Neglect of Duty.[7]
>
> x x x x x x x x x

On December 2, 1999, De Leon moved for Reconsideration,[8] praying that the memorandum dated October 20, 1999 be set aside.

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[4] *Id.* at 61-65.

[5] *Id.* at 66-74.

[6] *Id.* at 75-79.

[7] *Id.* at 79.

[8] *Id.* at 80-91.

On January 31, 2000, the Ombudsman denied De Leon's motion for reconsideration.[9]

On November 17, 1999, the DENR directed the Regional Executive Director of Region IV to effect De Leon's suspension. [10]

Ruling of the CA

Aggrieved, De Leon appealed to the CA *via* a petition for review,[11] seeking the reversal of the memorandum dated October 20, 1999 and the order dated January 31, 2000 of the Ombudsman. He averred as grounds of his appeal the following, namely:

I. PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN DISREGARDING THE FINDINGS AND CONCLUSIONS EMBODIED IN THE DECISION DATED 29 APRIL 1999.

II. PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN FINDING THE PETITIONER LIABLE FOR GROSS NEGLECT OF DUTY.

III. PUBLIC RESPONDENTS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN EFFECTING THE IMMEDIATE EXECUTION OF THE PENALTY OF SUSPENSION FOR A PERIOD OF ONE YEAR, ON THE PETITIONER.[12]

The Office of the Solicitor General (OSG), representing the Office of the Ombudsman, submitted its comment on July 14,

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[9] *Id.* at 92-97.

[10] *Id.* at 98.

[11] *Id.* at 99-112.

[12] *Id.* at 104.

2000,[13] praying that De Leon's petition for review be dismissed for its lack of merit.

On January 30, 2002, the CA promulgated its assailed decision, *viz*:

WHEREFORE, premises considered, the Memorandum dated October 20, 1999 issued by the Office of the Ombudsman in OMB-ADM-0-98-0414 is hereby **MODIFIED** in that petitioner SAMSON DE LEON is hereby penalized with THREE (3) MONTHS SUSPENSION without pay for SIMPLE NEGLECT OF DUTY. Furthermore, it appearing that he has already served such penalty, petitioner is hereby ordered **REINSTATED** to his former position.

SO ORDERED.[14]

The Office of the Ombudsman sought reconsideration,[15] but the CA denied its motion on June 21, 2002.

Issues

Dissatisfied, the Office of the Ombudsman appeals, contending that:

THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT CONSIDERING THAT:

I.

IT DECREED PRIVATE RESPONDENT LIABLE FOR SIMPLE NEGLECT OF DUTY NOTWITHSTANDING THE UNDENIABLE FACT THAT HE FAILED TO PERFORM A TASK WHICH IS CLEARLY REPOSED ON HIM ON A REGULAR BASIS AND WHICH BREACH OF DUTY APPEARS FLAGRANT AND PALPABLE.

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[13] *Id.* at 113-122.

[14] *Id.* at 37.

[15] *Id.* at 41-55.

II.

IT SUBSTITUTED ITS FINDING TO THAT OF THE OMBUDSMAN WHEN NO COGENT REASON EXISTS THEREFOR.

III.

IT HELD THAT THE DECISION OF THE OMBUDSMAN IS NOT IMMEDIATELY EXECUTORY.[16]

The pivotal issue is whether or not the CA committed reversible error in modifying the findings and reducing the penalty imposed by the Office of the Ombudsman.

Ruling

The petition for review on *certiorari* is meritorious.

In its assailed decision, the CA justified its modification of the decision of the Office of the Ombudsman in the following manner, to wit:

> In the case at bench, petitioner, although guilty of neglect in the performance of his official duties, may only be held liable for Simple Neglect of Duty. Petitioner's offense is not of such nature to be considered brazen, flagrant and palpable as would amount to a Gross Neglect of Duty. As pointed out by petitioner, as early as May 1997, upon the complaint of one Teresita G. Fabian, he ordered the inspection of the subject property located in Baras, Rizal. Relying on the report of Forrester Ferrer and Engineer Aide Velasquez, petitioner indorsed to the Provincial Mining Regulatory Board the former's findings that there were "extraction" in the area. The same findings were likewise forwarded to the Regional Executive Director of the DENR. A reinvestigation of the area was again conducted in July 1997 upon petitioner's instruction with the findings that there were no illegal quarrying activities being undertaken in the premises although a payloader and a back hoe can be seen in the area. Nonetheless, petitioner should not have merely relied on the reports and instead confirmed such findings by personally proceeding to the premises and verifying the findings, specially since the report

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

cited the presence of large machineries, and that there was visible extraction in the area. While the Court is not inclined to conclude that there were indeed illegal quarrying activities in the area, nevertheless, prudence dictates that petitioner should have brought it upon himself to confirm the findings of the investigation. Moreover, in this day and age where environmental concerns are not to be trifled with, it devolves upon petitioner, as the Provincial Environment and Natural Resource Officer, to oversee the protection and preservation of the environment within his province. The Court cannot accept petitioner's passing the buck, so to speak, to the Regional Director of the DENR for to do so would be tolerating bureaucracy and inefficiency in government service.

Be that as it may, as the Court previously stated, petitioner's negligence does not amount to a gross neglect of duty. Given that his neglect is not that odious, petitioner should only be liable for Simple Neglect of Duty and should accordingly be meted out the penalty of three (3) months suspension without pay.[17]

We disagree with the CA that De Leon was liable only for simple misconduct. An examination of the records persuasively shows that the Office of the Ombudsman correctly held De Leon guilty of gross neglect of duty, a grave offense punishable by dismissal even for the first offense.[18]

A PENRO, who is appointed by the Secretary of the DENR, has the responsibility to implement DENR policies, programs and projects in the province of his assignment. De Leon was appointed as the PENRO of Rizal and concurrently the Chairman of the PMRB of Rizal. As such, his duties and responsibilities included the following:

1. Plans, organizes, directs and coordinates the overall office and field activities and operation of the province concerning environmental and natural resources programs/projects;

2. Supervises and enforces discipline to personnel pertaining to norm and conduct in the effective performance of tasks pursuant to manual operation guidelines and establish[ed] practices;

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[17] *Id.* at 36-37.

[18] Rule IV, Section 52 (A) of the *Uniform Rules of Administrative Cases in the Civil Service*.

3. Makes final review and correction of administrative and technical report submitted by subordinates;

4. Coordinates with local government units, national office officials and other concern (sic) parties related to the conduct and operation of the office;

5. Execute[s] and implement[s] policy, rules and regulations work programs and plans laid down by the Regional Office;

6. Approves routine and non-policy determining papers and renders administrative and technical decision(s) within the limit(s) of delegated authorities;

7. Occasionally conduct[s] field inspection to obtain on the spot information about the needs and problems of the provincial office; and

8. Perform[s] such other duties as maybe (sic) assigned.[19]

Based on the Civil Service Position Description Form,[20] De Leon as the PENRO of Rizal was the highest executive officer of the DENR at the provincial level. He had the authority to coordinate all the DENR agencies within his jurisdiction, including the PMRB. In his concurrent positions as the PENRO and Chairman of the PMRB, therefore, his paramount function was to ensure that the laws enforced by the DENR as well as the rules and regulations promulgated by the DENR in implementation of such laws were complied with and effectively implemented and enforced. Verily, he was the primary implementor and enforcer within his area of responsibility of all the laws and administrative orders concerning the environment, and because of such character of his concurrent offices should have made sure that he efficiently and effectively discharged his functions and responsibilities.

In the matter that is now before us, De Leon evidently neglected to efficiently and effectively discharge his functions and responsibilities. Except for issuing the investigation order and for denying having granted any permit to quarry, he did nothing affirmative to put a stop to the illegal quarrying complained

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[19] *Rollo,* p. 123.

[20] *Id.*

of, or to do any other action that was entirely within his power to do as the PENRO that the complaint demanded to be done.

Relevantly, the CA itself also observed in its decision under review that De Leon had not done enough as the circumstances obtaining in the case properly called for, to wit:

> x x x Nonetheless, petitioner should not have merely relied on the reports and instead confirmed such findings by personally proceeding to the premises and verifying the findings, specially since the report cited the presence of large machineries, and that there was visible extraction in the area. While the court is not inclined to conclude that there were indeed illegal quarrying activities in the area, nevertheless, prudence dictates that petitioner should have brought it upon himself to confirm the findings of the investigation. Moreover, in this day and age where environmental concerns are not to be trifled with, it devolves upon petitioner, as the Provincial Environment and Natural Resource Officer to oversee the protection and preservation of the environment with his province. The Court cannot accept petitioner's passing the buck so to speak. x x x.[21]

Its foregoing observations notwithstanding, the CA still held De Leon guilty only of simple neglect of duty.

The CA thereby erred.

Gross neglect of duty or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property."[22] It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty.[23] In cases involving public officials,

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[21] *Id.* at 36-37.

[22] *Fernandez v. Office of the Ombudsman*, G.R. No. 193983. March 14, 2012, 668 SCRA 351, 364.

[23] *Philippine Retirement Authority v. Rupa,* G.R. No. 140519, August 21, 2001, 363 SCRA 480, 487.

gross negligence occurs when a breach of duty is flagrant and palpable.[24]

In contrast, simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."[25]

Conformably with these concepts, De Leon, given his rank and level of responsibility, was guilty of gross neglect in not performing the act expected of him as the PENRO under the circumstances obtaining. He was precisely assigned to perform tasks that imposed on him the obligation to do everything reasonably necessarily and permissible under the law in order to achieve the objectives of environmental protection. He could not feign ignorance of the Government's current efforts to control or prevent environmental deterioration from all hazards, including uncontrolled mining and unregulated illegal quarrying, but he chose to be passive despite clear indications of the illegal quarrying activities that had been first brought to his official attention as early as in 1997 by Teresita Fabian of the Provincial Tourism Office of Rizal. The most that he did on the complaint was to dispatch two of his subordinates to verify the report of quarrying. After the subordinates returned with the information that there were no quarrying activities at the site, he was apparently content with their report. He was not even spurred into further action by the subordinates' simultaneous report on having observed at the site the presence of earthmoving equipment (specifically, a backhoe and a payloader). Had he been conscientious, the presence of the earthmoving equipment would have quickly alerted him to the high probability of their being used in quarrying activities at the site. We presume that he was not too obtuse to sense such high probability. The seriousness of the matter should have prodded him to take further actions, including personally inspecting the site himself either to confirm the findings of the

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[24] *Fernandez v. Office of the Ombudsman*, *supra* note 22.

[25] *Republic v. Canastillo*, G.R. No. 172729, June 8, 2007, 524 SCRA 546, 555.

subordinates or to satisfy himself that the earthmoving equipment was not being used for quarrying. By merely denying having granted any permit or unwarranted benefit to any quarry operator, he seemingly considered the report of his subordinates satisfactory.

Curiously, De Leon contended that the responsibility to monitor any reported mining and quarrying activities belonged to the Regional Director of the Mines and Geo-Sciences Bureau. His contention was insincere, if not also ridiculous, however, considering that he was then the concurrent Chairman of the Provincial Mining Regulatory Board, the office directly tasked with the implementation of all environmental laws, rules and regulations.

The flagrant and culpable refusal or unwillingness of De Leon to perform his official duties denoted gross neglect of duty also because the illegal quarrying had been going for a period of time. The actions he took were inadequate, and could even be probably seen as a conscious way to mask a deliberate and intentional refusal to perform the duties that his position required. He had no justification for accepting the reports of his subordinates at face value despite indications to the contrary. Making it worse for him was that the place where the quarrying was then taking place was a mere stone's throw away from the main road, being only about 400 meters away from the main road.

In this connection, the Court observes that gross neglect of duty includes want of even slight care. De Leon's omission and indifference were definitely more than want of slight care, but were tantamount to a wilful intent to violate the law or to disregard the established rules, which only strengthened and confirmed his guilt of gross negligence.

The remaining question is whether or not the decision of the Office of the Ombudsman was immediately executory. The question crops up from the insistence by De Leon that his penalty of suspension for one year was not immediately executory.

The CA held that the one-year suspension meted on De Leon was not immediately executory, *viz*:

x x x. Book 5, Title 1, Chapter 6 of the Administrative Code of 1987 cited by the OSG is not applicable as said rule governs administrative cases decided by the Civil Service Commission. In this case, petitioner was adjudged liable by the Office of the Ombudsman, hence RA 6670 of the Ombudsman Act of 1989 shall govern. In this regard, Section 27 of RA 6670 provides that '(A)ny order, directive, or decision, imposing the penalty of public censure or reprimand, a suspension of not more than a month's salary shall be final and unappealable." Logically, therefore, suspension of more than one (1) month is not deemed final and executory. (Underscoring in the original)

There is no issue about the disciplinary authority of the Office of the Ombudsman over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries. The only officials not under its disciplinary authority are those who may be removed only by impeachment, the Members of Congress, and the Justices and Judges of the Judiciary. As to this, Republic Act No. 6770 (*The Ombudsman Act of 1989*) clearly provides, *viz*:

Section 21. *Official Subject to Disciplinary Authority; Exceptions*. — The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.

De Leon was subject to the disciplinary authority of the Office of the Ombudsman because he was an appointive public official.[26]

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[26] Republic Act No. 6770 also provides:

Section 13. *Mandate*. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

Indeed, the power of the Office of the Ombudsman to investigate extends to all kinds of malfeasance, misfeasance, and non-feasance that have been committed during his tenure of office by any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations.[27] The Office of the Ombudsman also has the power to act on all complaints relating, but not limited, to acts or omissions that (1) are contrary to law or regulation; (2) are unreasonable, unfair, oppressive or discriminatory; (3) are inconsistent with the general course of an agency's functions, though in accordance with law; (4) proceed from a mistake of law or an arbitrary ascertainment of facts; (5) are in the exercise of discretionary powers but for an improper purpose; or (6) are otherwise irregular, immoral or devoid of justification.[28] At the same time, the Office of the Ombudsman, in the exercise of its administrative disciplinary authority, can impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault. The exercise of all such powers is well founded on the Constitution and on Republic Act No. 6770.

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[27] Section 16, Republic Act No. 6770, states:

Section 16. *Applicability*. — The provisions of this Act shall apply to all kinds of malfeasance, misfeasance, and non-feasance that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure of office.

[28] Section 19, Republic Act No. 6770, says:

Section 19. *Administrative Complaints*. — The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

(1) Are contrary to law or regulation;
(2) Are unreasonable, unfair, oppressive or discriminatory;
(3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
(4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
(5) Are in the exercise of discretionary powers but for an improper purpose; or
(6) Are otherwise irregular, immoral or devoid of justification.

In *Office of the Ombudsman v. Masing*, and related cases,[29] the Court, speaking through Chief Justice Puno, has definitively recognized the full administrative disciplinary authority of the Office of the Ombudsman, declaring that its authority does not end with a recommendation to punish, but goes farther as to directly impose the appropriate sanctions on the erring public officials and employees, like removal, suspension, demotion, fine, censure, or criminal prosecution; and characterizing such imposition of sanctions to be not merely advisory or recommendatory but actually mandatory, to wit:

> In fine, the manifest intent of the lawmakers was to bestow on the Office of the Ombudsman full administrative disciplinary authority in accord with the constitutional deliberations. Unlike the Ombudsman-like agencies of the past the powers of which extend to no more than making findings of fact and recommendations, and the Ombudsman or *Tanodbayan* under the 1973 Constitution who may file and prosecute criminal, civil or administrative cases against public officials and employees only in cases of failure of justice, the Ombudsman under the 1987 Constitution and R.A. No. 6770 is intended to play a more active role in the enforcement of laws on anti-graft and corrupt practices and other offenses committed by public officers and employees. The Ombudsman is to be an "activist watchman," not merely a passive one. He is vested with broad powers to enable him to implement his own actions.[30]

To resolve whether or not the decision of the Office of the Ombudsman was immediately executory, we hereby hold that the decision is immediately executory, and that an appeal does not stop the decision from being executory. This was clearly pronounced by the Court in *Ombudsman v. Court of Appeals*,[31] to wit:

> The Court of Appeals held that the order of the Ombudsman imposing the penalty of dismissal is not immediately executory.

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[29] G.R. No. 165416, G.R. No. 165584, and G.R. No. 165731, January 22, 2008, 542 SCRA 253.

[30] *Id.* at 270.

[31] G.R. No. 159395, May 7, 2008, 554 SCRA 75.

The Court of Appeals applied the ruling in *Lapid v. Court of Appeals*, that all other decisions of the Ombudsman which impose penalties that are not enumerated in Section 27 of RA 6770 are neither final nor immediately executory.

In *Lapid v. Court of Appeals*, the Court anchored its ruling mainly on Section 27 of RA 6770 , as supported by Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman. The pertinent provisions read:

Section 27 of RA 6770

SEC. *27. Effectivity and Finality of Decisions*. — (1) All provisionary orders at the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

(1) New evidence has been discovered which materially affects the order, directive or decision;

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: *Provided*, That only one motion for reconsideration shall be entertained.

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. **Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary shall be final and unappealable.**

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

> **The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.** (Emphasis supplied)

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (AO 07):

> Sec. 7. *Finality of decision*. — Where the respondent is absolved of the charge, and **in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari*, shall have been filed by him as prescribed in** Section 27 of RA 6770**.** (Emphasis supplied)

The Court held in *Lapid v. Court of Appeals* that the Rules of Procedure of the Office of the Ombudsman "mandate that decisions of the Office of the Ombudsman where the penalty imposed is other than public censure or reprimand, suspension of not more than one month salary are still appealable and hence, not final and executory."

Subsequently, on 17 August 2000, the Ombudsman issued Administrative Order No. 14-A (AO 14-A), amending Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman. The amendment aims to provide uniformity with other disciplining authorities in the execution or implementation of judgments and penalties in administrative disciplinary cases involving public officials and employees. Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by AO 14-A, reads:

> Section 7. *Finality and execution of decision*. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision may be appealed within ten (10) days from receipt of the written notice of the decision or order denying the motion for reconsideration.
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> **An appeal shall not stop the decision from being executory**. In case the penalty is suspension or removal and the respondent

> wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.(Emphasis supplied)

On 15 September 2003, AO 17 was issued, amending Rule III of the Rules of Procedure of the Office of the Ombudsman. Thus, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was further amended and now reads:

> Section 7. *Finality and execution of decision*. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from the receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.
>
> **An appeal shall not stop the decision from being executory**. **In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.**
>
> **A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course.** The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be ground for disciplinary action against said officer. (Emphasis supplied)

Hence, in the case of ***In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*****, the Court noted that Section 7 of AO 17 provides for execution of the decisions pending appeal, which provision is similar to Section 47 of the Uniform Rules on Administrative Cases in the Civil Service.**

More recently, in the 2007 case of ***Buencamino v. Court of Appeals,*** the primary issue was whether the decision of the Ombudsman suspending petitioner therein from office for six months without pay was immediately executory even pending appeal in the Court of Appeals. **The Court held that the pertinent ruling in *Lapid v. Court of Appeals* has already been superseded by the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*, which clearly held that decisions of the Ombudsman are immediately executory even pending appeal."**[32] (Emphasis supplied)

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on January 30, 2002; **HOLDS** respondent **SAMSON DE LEON** guilty of **GROSS NEGLECT OF DUTY,** and **IMPOSES** on him the penalty of **SUSPENSION FROM OFFICE FOR ONE YEAR WITHOUT PAY**; and **DIRECTS** him to pay the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 175108. February 27, 2013]

CHINA BANKING CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

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[32] *Id.* at 91-95.

SYLLABUS

TAXATION; GROSS RECEIPTS TAX (GRT); THE 20% FINAL TAX WITHHELD ON A BANK'S PASSIVE INCOME SHOULD BE INCLUDED IN THE COMPUTATION OF THE GRT.— In a catena of cases, this Court has already resolved the issue of whether the 20% final withholding tax should form part of the total gross receipts for purposes of computing the GRT. x x x They are one in saying that "gross receipts" comprise "the entire receipts without any deduction." Clearly, then, the 20% final withholding tax should form part of petitioner's total gross receipts for purposes of computing the GRT. x x x (Further,) **Section 7 (c) of Revenue Regulations No. 17-84 includes all interest income in computing the GRT.** x x x Besides, the exclusion sought by petitioner of the 20% final tax on its passive income from the taxpayer's tax base constitutes a tax exemption, which is highly disfavored. A governing principle in taxation states that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority and should be granted only by clear and unmistakable terms.

APPEARANCES OF COUNSEL

Lim Vigilia Alcala Dumlao Alameda & Casiding for petitioner.
The Solicitor General for 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 which seeks the review and reversal of the Decision[1] dated June 16, 2006 and Resolution[2] dated October 17, 2006 of the former Fifth Division of the Court of Appeals (*CA*).

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[1] Penned by Associate Justice Roberto A. Barrios, with Associate Justices Mario L. Guariña III and Arcangelita M. Romilla-Lontok, concurring. *rollo*, pp. 154-158.

[2] *Id.* at 167-168.

The factual antecedents follow.

For the four quarters of 1996, petitioner paid ₱93,119,433.50 as gross receipts tax (*GRT*) on its income from the interests on loan investments, commissions, service and collection charges, foreign exchange profit and other operating earnings.

In computing its taxable gross receipts, petitioner included the 20% final withholding tax on its passive interest income,[3] hereunder summarized as follows:

1996	Exhs.	Date of Filing Return/Payment of Tax to the BIR	Taxable Gross Receipts	Gross Receipts Tax Paid
1st qtr.	A	22-Apr-96	₱ 534,500,491.61	₱ 24,055,944.08
2nd qtr.	A-1	22-Jul-96	582,985,457.89	26,394,956.47
3rd qtr.	A-2	21-Oct-96	427,801,196.81	18,427,999.31
4th qtr.	A-3	20-Jan-97	552,378,276.18	24,240,533.64
		Total:	₱ 2,097,665,422.49	₱ 93,119,433.50

On January 30, 1996, the Court of Tax Appeals (*CTA*) rendered a Decision entitled *Asian Bank Corporation v. Commissioner of Internal Revenue*,[4] wherein it ruled that the 20% final withholding tax on a bank's passive interest income should not form part of its taxable gross receipts.

On the strength of the aforementioned decision, petitioner filed with respondent a claim for refund on April 20, 1998, of the alleged overpaid GRT for the four (4) quarters of 1996 in the aggregate amount of ₱6,646,829.67, detailed as follows:

1996	Gross Receipts Tax Paid	Corrected Gross Receipts Tax	Excess GRT Payment
1st qtr.	₱ 24,055,944.08	₱ 22,114,548.10	₱ 1,941,395.99
2nd qtr.	26,394,956.45	25,050,429.40	1,344,527.06
3rd qtr.	18,427,999.33	17,087,138.98	1,340,860.34
4th qtr.	24,240,533.64	22,219,487.36	2,021,046.28
Total:	₱ 93,119,433.50	₱ 86,471,603.84	₱ 6,646,829.67

[3] *Id.* at 155.

[4] CTA Case No. 4720, January 30, 1996.

On even date, petitioner filed its Petition for Review with the CTA.

The CTA, on November 8, 2000, rendered a Decision[5] agreeing with petitioner that the 20% final withholding tax on interest income does not form part of its taxable gross receipts. However, the CTA dismissed petitioner's claim for its failure to prove that the 20% final withholding tax forms part of its 1996 taxable gross receipts. The Decision states in part:

> Moreover, the Court of Appeals in the case of *Commissioner of Internal Revenue vs. Citytrust Investment Philippines, Inc., CA G.R. Sp No. 52707, August 17, 1999*, affirmed our stand that the 20% final withholding tax on interest income should not form part of the taxable gross receipts. Hence, we find no cogent reason nor justification to depart from the wisdom of our decision in the Asian Bank case, *supra*.
>
> x x x x x x x x x
>
> Lastly, since Petitioner failed to prove the inclusion of the 20% final withholding taxes as part of its 1996 taxable gross receipts (passive income) or gross receipts (passive income) that were subjected to 5% GRT, it follows that proof was wanting that it paid the claimed excess GRT, subject of this petition.
>
> x x x x x x x x x
>
> IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is DISMISSED for insufficiency of evidence.
>
> SO ORDERED.[6]

Not in conformity with the CTA's ruling, petitioner interposed an appeal before the CA.

In its appeal, petitioner insists that it erroneously included the 20% final withholding tax on the bank's passive interest income in computing the taxable gross receipts. Therefore, it argues that it is entitled, as a matter of right, to a refund or tax credit.

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[5] *Rollo*, pp. 36-45.

[6] *Id.* at 41-44. (Italics in the original).

In a Decision[7] dated June 16, 2006, the CA denied petitioner's appeal. It ruled in this wise:

x x x Unfortunately for China Bank, it is flogging a dead horse as this argument has already been shot down in *China Banking Corporation vs. Court of Appeals* (G.R. No. 146749 & No. 147983, June 10, 2003) where it was ruled the Tax Court, which decided *Asia Bank* on June 30, 1996 not only erroneously interpreted Section 4(e) of Revenue Regulations No. 12-80, it also cited Section 4(e) when it was no longer the applicable revenue regulation. The revenue regulations applicable at the time the tax court decided *Asia Bank* was Revenue Regulations No. 17-84, not Revenue Regulation 12-80.

x x x x x x x x x

WHEREFORE, the instant petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.[8]

Petitioner sought reconsideration of the aforementioned decision arguing that Section 4 (e) of Revenue Regulations (*RR*) No. 12-80 remains applicable as the basis of GRT for banks in taxable year 1996.

On October 17, 2006, the CA issued a Resolution[9] denying petitioner's motion for reconsideration on the ground that no new or compelling reason was presented by petitioner to warrant the reversal or modification of its decision.

Hence, this petition wherein petitioner contends that:

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER HAS FAILED TO POINT TO THE LEGAL BASIS FOR THE EXCLUSION OF THE AMOUNT OF TAX WITHHELD ON PASSIVE INCOME FROM ITS GROSS RECEIPTS FOR PURPOSES OF TAXATION.[10]

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[7] *Id.* at 154-158.

[8] *Id.* at 156-157. (Italics in the original).

[9] *Id.* at 167-168.

[10] *Id.* at 25.

In essence, the issue to be resolved is whether the 20% final tax withheld on a bank's passive income should be included in the computation of the GRT.

Petitioner avers that the 20% final tax withheld on its passive income should not be included in the computation of its taxable gross receipts. It insists that the CA erred in ruling that it failed to show the legal basis for its claimed tax refund or credit, since Section 4 (e) of RR No. 12-80 categorically provides for the exclusion of the amount of taxes withheld from the computation of gross receipts for GRT purposes.

We do not agree.

In a catena of cases, this Court has already resolved the issue of whether the 20% final withholding tax should form part of the total gross receipts for purposes of computing the GRT.

In *China Banking Corporation v. Court of Appeals*,[11] we ruled that the amount of interest income withheld, in payment of the 20% final withholding tax, forms part of the bank's gross receipts in computing the GRT on banks. The discussion in this case is instructive on this score:

> The gross receipts tax on banks was first imposed on 1 October 1946 by Republic Act No. 39 ("RA No. 39") which amended Section 249 of the Tax Code of 1939. Interest income on banks, without any deduction, formed part of their taxable gross receipts. From October 1946 to June 1977, there was no withholding tax on interest income from bank deposits.
>
> On 3 June 1977, Presidential Decree No. 1156 required the withholding at source of a 15% tax on interest on bank deposits. This tax was a creditable, not a final withholding tax. Despite the withholding of the 15% tax, the entire interest income, without any deduction, formed part of the bank's taxable gross receipts. On 17 September 1980, Presidential Decree No. 1739 made the withholding tax on interest a final tax at the rate of 15% on savings account, and 20% on time deposits. Still, from 1980 until the Court of Tax

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[11] G.R. Nos. 146749 and 147938, June 10, 2003, 403 SCRA 634; 451 Phil. 772 (2003).

Appeals decision in *Asia Bank* on 30 January 1996, banks included the entire interest income, without any deduction, in their taxable gross receipts.

In *Asia Bank*, the Court of Tax Appeals held that the final withholding tax is not part of the bank's taxable gross receipts. The tax court anchored its ruling on Section 4(e) of Revenue Regulations No. 12-80, which stated that the gross receipts "shall be based on all items actually received" by the bank. The tax court ruled that the bank does not actually receive the final withholding tax. As authority, the tax court cited *Collector of Internal Revenue v. Manila Jockey Club*, which held that "gross receipts of the proprietor should not include any money which although delivered to the amusement place had been especially earmarked by law or regulation for some person other than the proprietor. x x x

Subsequently, the Court of Tax Appeals reversed its ruling in *Asia Bank*. In *Far East Bank & Trust Co. v. Commissioner* and *Standard Chartered Bank v. Commissioner*, both promulgated on 16 November 2001, the tax court ruled that **the final withholding tax forms part of the bank's gross receipts in computing the gross receipts tax**. The tax court held that Section 4(e) of Revenue Regulations 12-80 did not prescribe the computation of the gross receipts but merely authorized "the determination of the amount of gross receipts on the basis of the method of accounting being used by the taxpayer.

The tax court also held in *Far East Bank* and *Standard Chartered Bank* that **the exclusion of the final withholding tax from gross receipts operates as a tax exemption which the law must expressly grant. No law provides for such exemption. In addition, the tax court pointed out that Section 7(c) of Revenue Regulations No. 17-84 had already superseded Section 4(e) of Revenue Regulations No. 12-80**. x x x[12] (Emphasis supplied)

Notably, this Court, in the same case, held that under RR Nos. 12-80 and 17-84, the Bureau of Internal Revenue (*BIR*) has consistently ruled that the term gross receipts do not admit of any deduction. It emphasized that interest earned by banks, even if subject to the final tax and excluded from taxable gross income, forms part of its gross receipt for GRT purposes. The

[12] *Id.* at 643-645; at 786-788.

interest earned refers to the gross interest without deduction, since the regulations do not provide for any deduction.[13]

Further, in *Commissioner of Internal Revenue v. Solidbank Corporation*,[14] this Court held that "gross receipts" refer to the total, as opposed to the net, income. These are, therefore, the total receipts before any deduction for the expenses of management.[15]

In *Commissioner of Internal Revenue v. Bank of Commerce*,[16] we again adhered to the ruling that the term "gross receipts" must be understood in its plain and ordinary meaning. In this case, we ruled that gross receipts should be interpreted as the whole amount received as interest, without deductions; otherwise, if deductions were to be made from gross receipts, it would be considered as "net receipts." The Court ratiocinated as follows:

> The word "gross" must be used in its plain and ordinary meaning. It is defined as "whole, entire, total, without deduction." A common definition is "without deduction." x x x Gross is the antithesis of net. Indeed, in *China Banking Corporation v. Court of Appeals*, the Court defined the term in this wise:
>
> > As commonly understood, the term "gross receipts" means the entire receipts without any deduction. Deducting any amount from the gross receipts changes the result, and the meaning, to net receipts. Any deduction from gross receipts is inconsistent with a law that mandates a tax on gross receipts, unless the law itself makes an exception. As explained by the *Supreme Court of Pennsylvania in Commonwealth of Pennsylvania v. Koppers Company, Inc.* —
> >
> > > Highly refined and technical tax concepts have been developed by the accountant and legal technician primarily because of the impact of federal income tax legislation.

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[13] *Id.* at 651-659; at 793-803.

[14] G.R. No. 148191, November 25, 2003, 416 SCRA 436; 462 Phil. 96 (2003).

[15] *Id.* at 454; at 124.

[16] G.R. No. 149636, June 8, 2005, 459 SCRA 638; 498 Phil. 673 (2005).

> However, this in no way should affect or control the normal usage of words in the construction of our statutes; x x x *Under the ordinary basic methods of handling accounts, the term gross receipts, in the absence of any statutory definition of the term, must be taken to include the whole total gross receipts without any deductions,* x x x.[17]

Again, in *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,[18] this Court ruled that "the legislative intent to apply the term in its ordinary meaning may also be surmised from a historical perspective of the levy on gross receipts. From the time the gross receipts tax on banks was first imposed in 1946 under R.A. No. 39 and throughout its successive reenactments, the legislature has not established a definition of the term 'gross receipts.' Absent a statutory definition of the term, the BIR had consistently applied it in its ordinary meaning, *i.e.*, without deduction. On the presumption that the legislature is familiar with the contemporaneous interpretation of a statute given by the administrative agency tasked to enforce the statute, subsequent legislative reenactments of the subject levy *sans* a definition of the term 'gross receipts' reflect that the BIR's application of the term carries out the legislative purpose."[19]

In sum, all the aforementioned cases are one in saying that "gross receipts" comprise "the entire receipts without any deduction." Clearly, then, the 20% final withholding tax should form part of petitioner's total gross receipts for purposes of computing the GRT.

Also worth noting is the fact that petitioner's reliance on Section 4 (e) of RR 12-80 is misplaced as the same was already superseded by a more recent issuance, RR No. 17-84.

This fact was elucidated on by the Court in the case of *Commissioner of Internal Revenue v. Citytrust Investment Phils.*

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[17] *Id.* at 649-650; at 685-686.

[18] G.R. No. 147375, June 26, 2006, 492 SCRA 551; 525 Phil. 624 (2006).

[19] *Id.* at 564; at 634-635.

Inc.,[20] where it held that RR No. 12-80 had already been superseded by RR No. 17-84, *viz.*:

x x x **Revenue Regulations No. 12-80, issued on November 7, 1980, had been superseded by Revenue Regulations No. 17-84 issued on October 12, 1984**. Section 4 (e) of Revenue Regulations No. 12-80 provides that only items of income actually received shall be included in the tax base for computing the GRT. On the other hand, **Section 7 (c) of Revenue Regulations No. 17-84 includes all interest income in computing the GRT**, thus:

Section 7. *Nature and Treatment of Interest on Deposits and Yield on Deposit Substitutes*. —

(a) The interest earned on Philippine Currency bank deposits and yield from deposit substitutes subjected to the withholding taxes in accordance with these regulations need not be included in the gross income in computing the depositor's/ investor's income tax liability. x x x

(b) Only interest paid or accrued on bank deposits, or yield from deposit substitutes declared for purposes of imposing the withholding taxes in accordance with these regulations shall be allowed as interest expense deductible for purposes of computing taxable net income of the payor.

(c) If the recipient of the above-mentioned items of income are financial institutions, the same shall be included as part of the tax base upon which the gross receipt tax is imposed.

Revenue Regulations No. 17-84 categorically states that ***if the recipient of the above-mentioned items of income are financial institutions, the same shall be included as part of the tax base upon which the gross receipts tax is imposed.*** x x x.[21] (Emphasis supplied)

Significantly, the Court even categorically stated in the aforementioned case that there is an implied repeal of Section 4 (e). It held that there exists a disparity between Section 4 (e)

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[20] G.R. Nos. 139786 and 140857, September 27, 2006, 503 SCRA 398; 534 Phil. 517 (2006).

[21] *Id.* at 412-413; at 534-535.

of RR No. 12-80, which imposes the GRT only on all items of income actually received (as opposed to their mere accrual) and Section 7 (c) of RR No. 17-84, which includes **all interest income** (whether actual or accrued) in computing the GRT. Plainly, RR No. 17-84, which requires interest income, whether actually received or merely accrued, to form part of the bank's taxable gross receipts, should prevail.[22]

All told, petitioner failed to point to any specific provision of law allowing the deduction, exemption or exclusion from its taxable gross receipts, of the amount withheld as final tax. Besides, the exclusion sought by petitioner of the 20% final tax on its passive income from the taxpayer's tax base constitutes a tax exemption, which is highly disfavored. A governing principle in taxation states that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority and should be granted only by clear and unmistakable terms.[23]

WHEREFORE, premises considered, the Decision dated June 16, 2006 and Resolution dated October 17, 2006 of the former Fifth Division of the Court of Appeals are hereby **AFFIRMED** *in toto*.

SO ORDERED.

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

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[22] *Id.* at 413; at 535.

[23] *Id.* at 416; at 538.

FIRST DIVISION

[G.R. No. 175369. February 27, 2013]

TEGIMENTA CHEMICAL PHILS. and VIVIAN ROSE D. GARCIA, *petitioners, vs.* **MARY ANNE OCO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF LABOR TRIBUNALS, RESPECTED.—** [W]hether Garcia verbally fired Oco and whether the employee abandoned her job are factual determinations generally beyond the jurisdiction of this Court. x x x An established doctrine in labor cases is that factual questions are for labor tribunals to resolve. Their consistent findings are binding and conclusive and will normally not be disturbed, since this Court is not a trier of facts. Therefore, on the basis of these circumstances alone, the appeal before us already deserves scant consideration.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ABANDONMENT OF WORK; FACTORS.—** First, the nonappearance of Oco at work was already accepted by the company as having resulted from complications in her pregnancy. x x x [G]rounded on justifiable reasons, these absences cannot serve as the antecedent to the conclusion that she had already abandoned her job. For abandonment to exist, two factors must be present: (1) the failure to report for work or absence without a valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts. The mere absence of an employee is not sufficient to constitute abandonment. As an employer, Tegimenta has the burden of proof to show the deliberate and unjustified refusal of the employee to resume the latter's employment without any intention of returning.

3. **ID.; ID.; ID.; INTENTION TO LEAVE WORK NOT PRESENT WITH THE MERE ASKING FOR SEPARATION PAY AFTER BEING TOLD NOT TO**

REPORT FOR WORK ANYMORE.— Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. For abandonment to be appreciated, there must be a "clear, willful, deliberate, and unjustified refusal of the employee to resume employment." Here, the mere fact that Oco asked for separation pay, after she was told to no longer report for work, does not reflect her intention to leave her job. She is merely exercising her option under Article 279 of the Labor Code, which entitles her to either reinstatement and back wages or payment of separation pay.

4. **REMEDIAL LAW; POWERS AND DUTIES OF COURT AND JUDICIAL OFFICERS; TO AMEND ORDERS TO MAKE THEM CONFORM TO LAW AND JUSTICE; INCLUDES RIGHT TO REVERSE JUDGMENT UPON BELIEF THAT ERROR THEREIN WAS COMMITTED.—** [P]etitioners advance a procedural lapse on the part of the CA. They argue that since no new facts, evidence or circumstances were introduced by respondent to the appellate court, it cannot issue a Resolution that reverses its earlier Decision. x x x As stated in Section 5(g) of Rule 135, every court shall have the inherent power to amend and control its processes and orders, so as to make them conformable to law and justice. "This power includes the right to reverse itself, especially when in its honest opinion it has committed an error or mistake in judgment, and that to adhere to its decision will cause injustice to a party-litigant."

APPEARANCES OF COUNSEL

Alcid Favila Bayobay & Partners for petitioners.
Public Attorney's Office for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Rule 45 Petition, seeking a review of the 24 April 2006 Court of Appeals (CA) Resolution in CA-

G.R. SP No. 87706.[1] The CA reversed its 3 January 2006 Decision and, in effect, affirmed the 30 July[2] and 24 September 2004[3] Resolutions of the National Labor Relations Commission (NLRC) in NLRC CA No. 036684-03 and the 30 May 2003 Decision[4] in NLRC NCR Case No. 06-03760-2002 of the labor arbiter (LA). The courts *a quo* similarly found that petitioner had illegally dismissed respondent Mary Anne Oco (Oco).

The antecedent facts are as follows:[5]

Starting 5 September 2001, respondent worked as a clerk, and later on as a material controller, for petitioner Tegimenta Chemical Philippines, Incorporated (Tegimenta), a company owned by petitioner Vivian Rose D. Garcia (Garcia).

By reason of her pregnancy, Oco incurred numerous instances of absence and tardiness from March to April 2002. Garcia subsequently advised her to take a vacation, which the latter did from 1 to 15 May 2002.

On her return, Oco immediately worked for the next four working days of May. However, on 21 May 2002, Garcia allegedly told her to no longer report to the office effective that day. Hence, respondent no longer went to work. She nevertheless called petitioner at the end of the month, but was informed that she had no more job to do.

Immediately thereafter, on 3 June 2002, respondent filed a Complaint for illegal dismissal and prayed for reinstatement and back wages before the LA. Later on, she amended her Complaint by asking for separation pay instead of reinstatement.

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[1] *Rollo*, pp. 45-50; CA Resolution, penned by Associate Justice Santiago Javier Ranada, with Associate Justices Roberto A. Barrios and Mario L. Guariña III concurring.

[2] *Id.* at 152-157.

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

[4] *Id.* at 98-101.

[5] *Id.* at 172-176.

In her Position Paper,[6] Oco maintained that petitioner verbally dismissed her without any valid cause and without due process. To bolster her story, respondent adduced that Tegimenta hired new employees to replace her. In their defense, petitioners countered that she had abandoned her job by being continuously absent without official leave (AWOL). They further narrated that they could not possibly terminate her services, because she still had to settle her accountabilities.[7]

The LA disbelieved the narration of petitioners and thus ruled in favor of respondent. The arbiter deduced that the employer only wanted to "make it appear that the complainant was not dismissed from employment, as she could not prove it with any Memorandum issued to that effect and yet, they also maintain that complainant was AWOL."[8] The LA further observed that petitioners did not deny the main claim of respondent that she had simply been told not to report for work anymore.

Aggrieved, petitioners appealed to the NLRC. They assailed the ruling of the LA for having been issued based not on solid proof, but on mere allegations of the employee.[9] They advanced further that Oco had abandoned her employment, given that she claimed separation pay instead of reinstatement.

The NLRC reviewed the records of the case and found that the documentary evidence coincided with the allegations of Oco.[10] Consequently, it affirmed her claim that Garcia, without advancing any reason and without giving any written notice, had categorically told her not to work for Tegimenta anymore. Accordingly, the NLRC sustained the illegality of respondent's dismissal.[11]

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[6] *Id.* at 55-61.

[7] *Id.* at 99, LA Decision dated 30 May 2003.

[8] *Id.* at 100, LA Decision dated 30 May 2003.

[9] *Id.* at 105-106, Memorandum of Appeal with Entry of Appearance.

[10] *Id.* at 155, NLRC Resolution dated 30 July 2004.

[11] *Id.*

On Motion for Reconsideration, the NLRC still affirmed the LA's Decision *in toto*.[12] Thus, petitioners pursued their action before the CA via a Rule 65 Petition.

Alleging grave abuse of discretion amounting to lack or excess of jurisdiction, petitioners again assailed the factual determinations of the LA and the NLRC. In doing so, they attacked Oco's allegations for being inconsistent with the evidence on record.

Petitioners reiterated the following before the CA: (1) the payroll sheets from May to August 2002 belied the claim of Oco that Tegimenta had hired new employees to replace her; (2) the time cards showing respondent's attendance in the office on 21 May 2002 negated the story that Garcia had verbally instructed her not to report for work starting from the said date; and (3) the Complaint that Oco filed before the LA, stating that she was fired on 3 June 2002, contradicted her allegation in her Position Paper that she was ultimately terminated on 30 May 2002 – a discrepancy of three days.[13] The employer also highlighted the marginal notation on the 16 to 30 June 2002 payroll sheet, which indicated that the company considered respondent "on leave."

Appreciating these inconsistencies, together with the marginal notes in the payroll sheet, the CA overturned the courts *a quo* and pronounced that no actual dismissal transpired; rather, Oco was merely on AWOL.

Subsequently, respondent sought reconsideration. She insisted that petitioners actually terminated her services, and that they failed to discharge their burden to prove that it was she who had abandoned work by being on AWOL.

This time around, the CA reversed its earlier ruling.[14] Albeit belatedly, the CA realized that (1) the alleged hiring of new

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[12] *Id.* at 162, NLRC Resolution dated 24 September 2004.

[13] *Id.* at 177-178, CA Decision dated 3 January 2006.

[14] *Id.* at 45-50, CA Resolution dated 24 April 2006.

employees, (2) the presence of Oco in the office on the day of her termination, and (3) the three-day discrepancy between the date of her dismissal, stated in her Complaint before the LA and that in her Position Paper were all immaterial to the threshold question of whether she abandoned her work or was illegally dismissed.

Proceeding therefore with the main issue, the CA debunked petitioners' insistence that Oco abandoned her employment by being on AWOL. Firstly, it noted that she reported for work right after her vacation, an act that indicated her intention to resume her employment. In this light, petitioners failed to prove that she had intended to abandon her work. The appellate court held:[15]

> A deeper study of the records show that Tegimenta failed to adduce proof of any **overt act of Oco that clearly and unequivocably** showed her intention to abandoned her work when she allegedly absented herself without leave. The absences incurred by Oco do not indicate that she already abandoned her work, **especially considering that Oco reported for work after the agreed dates of her vacation leave**, and she subsequently filed an illegal dismissal case against Tegimenta. (Emphasis supplied).

Secondly, the CA rejected the payroll sheets as proof that Oco was on AWOL. It held that the company's marginal notes reflecting that she was "on leave" had no supporting attachments. It even construed the notations as incompetent evidence because, despite her absence, the payroll sheets for July 2002 onwards had no notations at all that she was "on leave."[16]

Thirdly, the CA dismissed petitioners' argument that Oco had effectively abandoned her work and waived her claim for back wages when she changed her prayer from reinstatement to separation pay. The appellate court simply explained that opting for separation pay, in lieu of reinstatement, could not support the allegation that Oco abandoned her work; and that the relief

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[15] *Id.* at 47, CA Resolution dated 24 April 2006.

[16] *Id.* at 46-47, CA Resolution dated 24 April 2006.

for separation pay did not preclude the grant of back wages, as these two awards were twin remedies available to an illegally dismissed employee.

Completely dissatisfied with the reversal of their fortune, petitioners implore this Court (1) to discredit the allegation of Oco that she had in fact been dismissed by them and (2) to make a finding that she abandoned her work by being on AWOL.

RULING OF THE COURT

The Factual Determination of the Employee's Dismissal

Prefatorily, the inquiry into whether Garcia verbally fired Oco and whether the employee abandoned her job are factual determinations generally beyond the jurisdiction of this Court;[17] and in addition to the weakness of petitioners' case, all the courts below consistently affirmed the certainty of the employee's dismissal by the employer.[18]

An established doctrine in labor cases is that factual questions are for labor tribunals to resolve. Their consistent findings are binding and conclusive and will normally not be disturbed, since this Court is not a trier of facts.[19] Therefore, on the basis of these circumstances alone, the appeal before us already deserves scant consideration.

Nevertheless, petitioners adamantly try to persuade this Court to believe their narration that they did not dismiss Oco. To prove their version of the story, they poke holes in her narration by harping on her allegedly false claim that Tegimenta hired replacements and by faulting her for rendering work on the very day that her services were supposedly terminated. Unfortunately,

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[17] *Rambuyon v. Fiesta Brands, Inc.*, 514 Phil. 325 (2005); *Premiere Development Bank v. NLRC*, 354 Phil. 851 (1998).

[18] *San Juan de Dios Educational Foundation Employees Union-Alliance of Filipino Workers v. San Juan de Dios Educational Foundation, Inc. (Hospital),* G.R. No. 143341, 28 May 2004, 430 SCRA 193.

[19] *Id.* at 205-206.

these purported defects in her narration cannot carry the day for petitioners.

According to the CA, the hiring of new employees and the presence of Oco on the day of her termination were all immaterial to resolving the issue of whether she was on AWOL or was illegally dismissed. We find this appreciation to be correct. Courts consider the evidence as material if it refers to the be-all and end-all of a petitioner's cause.[20] Here, none of the loopholes can resolve the case, since it is expected that dismissals may occur even if no prior replacements were hired, and an employer can indeed attempt to terminate employees on any day that they come in for work.

Petitioners also make a big fuss about the differing termination dates that Oco stated in her Complaint (3 June 2002) and her Position Paper (30 May 2002). But in *Prieto v. NLRC*,[21] we held that employees who are not assisted by lawyers when they file a complaint with the LA may commit a slight error that is forgivable if rectified later on.

Here, Oco only had one inadvertence when she filled out the Complaint in template form. She also stated in all her subsequent pleadings before the LA, the NLRC, the CA and this Court that she was dismissed on 30 May 2002. On this point, we similarly rule by regarding the inaccuracy as an error that is insufficient to destroy her case.

Most notably, the LA observed that the employers "did not deny the claims of complainant [Oco] that she was simply told not to work."[22] As in *Solas v. Power & Telephone Supply Phils. Inc.*,[23] this silence constitutes an admission that fortifies the truth of the employee's narration. Section 32, Rule 130 of the Rules Court, provides:

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[20] *VH Manufacturing, Inc. v. NLRC*, 379 Phil. 444, 450 (2000).

[21] G.R. No. 93699, 10 September 1993, 226 SCRA 232, 237.

[22] *Rollo*, p. 100, LA Decision dated 30 May 2003.

[23] G.R. No. 162332, 28 August 2008, 563 SCRA 522, 530.

An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

Considering this rule of evidence, together with the immaterial discrepancies, this Court thus rules against wholly invalidating the findings of the courts *a quo*.

The Employer's Defense of Absence without Official Leave

After unsuccessfully assailing the narration of the employee, petitioners argue that Oco abandoned her job by being on AWOL. As bases for this affirmative defense, they highlight her previous instances of absence and tardiness. Then, they emphasize the marginal notes in the 16 to 30 June 2002 payroll, which showed that she was on leave. Finally, they equate the employee's act of asking for separation pay instead of reinstatement as an act of abandonment.

The bases cited by petitioners are bereft of merit.

First, the nonappearance of Oco at work was already accepted by the company as having resulted from complications in her pregnancy. In fact, Garcia herself offered respondent a vacation leave. Therefore, given that the absences of the latter were grounded on justifiable reasons, these absences cannot serve as the antecedent to the conclusion that she had already abandoned her job. [24]

For abandonment to exist, two factors must be present: (1) the failure to report for work or absence without a valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts.[25]

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[24] *Del Monte v. Velasco*, G.R. No. 153477, 6 March 2007, 517 SCRA 510, 518.

[25] *Josan v. Aduna*, G.R. No. 190794, 22 February 2012, 666 SCRA 686.

The mere absence of an employee is not sufficient to constitute abandonment.[26] As an employer, Tegimenta has the burden of proof to show the deliberate and unjustified refusal of the employee to resume the latter's employment without any intention of returning.[27]

Here, Tegimenta failed to discharge its burden of proving that Oco desired to leave her job. The courts *a quo* uniformly found that she had continuously reported for work right after her vacation, and that her office attendance was simply cut off when she was categorically told not to report anymore. These courts even noted that she had also called up the office to follow up her status; and when informed of her definite termination, she lost no time in filing a case for illegal dismissal. Evidently, her actions did not constitute abandonment and instead implied her continued interest to stay employed.

Second, the marginal notes in the 16 to 30 June 2002 payroll showing that she was on leave are dubious. For one, the CA dutifully detected that none of the succeeding payroll sheets indicated that Oco was considered by the company as merely AWOL. Hence, it becomes questionable whether there is regularity in making simple notations as Tegimenta's reference in considering the status of an employee. Therefore, we hold that the marginal notations in a single payroll sheet are not competent proofs to back up petitioner's main defense.

This Court also rejects the invocation by petitioners of the best-evidence rule. According to them, the payroll sheet, and not the mere allegation of Oco, is the best evidence that they did not terminate her.

However, petitioners seem to miss the whole import of the best- evidence rule. This rule is used to compel the production of the original document, if the subject of the inquiry is the content of the document itself.[28] The rule provides that the court

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[26] *Garden of Memories Park and Life Plan, Inc. v. NLRC*, G.R. No. 160278, 8 February 2012, 665 SCRA 293, 308-309.

[27] *Id.*

[28] RULES OF COURT, Rule 130, Sec. 3.

shall not receive any evidence that is merely substitutionary in nature, such as a photocopy, as long as the original evidence of that document can be had.[29]

Based on the explanation above, the best-evidence rule has no application to this case. The subject of the inquiry is not the payroll sheet of Tegimenta rather, the thrust of this case is the abundance of evidence present to prove the allegation that Oco abandoned her job by being on AWOL. Consequently, the employer cannot be logically stumped by a payroll sheet, but must be able to submit testimonial and other pieces of documentary evidence — like leave forms, office memos, warning letters and notices — to be able to prove that the employee abandoned her work.

Finally, petitioners posit that Oco's act of replacing the prayer for reinstatement with that for separation pay implied that respondent abandoned her employment.

Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts.[30] For abandonment to be appreciated, there must be a "clear, willful, deliberate, and unjustified refusal of the employee to resume employment."[31] Here, the mere fact that Oco asked for separation pay, after she was told to no longer report for work, does not reflect her intention to leave her job. She is merely exercising her option under Article 279 of the Labor Code, which entitles her to either reinstatement and back wages or payment of separation pay.

As an end note, petitioners advance a procedural lapse on the part of the CA. They argue that since no new facts, evidence or circumstances were introduced by respondent to the appellate court, it cannot issue a Resolution that reverses its earlier Decision.

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[29] *Philippine Banking Corporation v. Court of Appeals*, 464 Phil. 614, 643 (2004).

[30] *Camua, Jr. v. NLRC*, 541 Phil. 650, 657 (2007).

[31] *La Rosa v. Ambassador Hotel*, G.R. No. 177059, 13 March 2009, 581 SCRA 340, 347.

In *Astraquillo v. Javier*,[32] we have similarly dealt with this contention and considered it as flawed. Our procedural laws allow motions for reconsideration and their concomitant resolutions, which give the same court an opportunity to reconsider and review its own ruling.

As stated in Section 5(g) of Rule 135, every court shall have the inherent power to amend and control its processes and orders, so as to make them conformable to law and justice. "This power includes the right to reverse itself, especially when in its honest opinion it has committed an error or mistake in judgment, and that to adhere to its decision will cause injustice to a party-litigant."[33] Thus, upon finding that petitioners had indeed illegally dismissed respondent, the CA merely exercised its prerogative to reverse an incorrect judgment.

IN VIEW THEREOF, the 24 April 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 87706 is **AFFIRMED.** The 12 May 2006 Petition for Review on *Certiorari* filed by Tegimenta Chemical Philippines, Incorporated and Vivian Rose D. Garcia is hereby **DENIED** for lack of merit.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[32] 121 Phil. 138 (1965).

[33] *Id.* at 144.

SECOND DIVISION

[G.R. No. 175492. February 27, 2013]

CARLOS L. OCTAVIO, *petitioner, vs.* **PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION; GRIEVANCES ARISING FROM THE INTERPRETATION OF THE COLLECTIVE BARGAINING AGREEMENT (CBA), RESOLVED ACCORDING TO AGREEMENT THEREIN.—** Under Article 260 of the Labor Code, grievances arising from the interpretation or implementation of the parties' CBA should be resolved in accordance with the grievance procedure embodied therein. It also provides that all unsettled grievances shall be automatically referred for voluntary arbitration as prescribed in the CBA.

2. **ID.; ID.; ID.; ID.; CBA ON VOLUNTARY ARBITRATION MUST BE RESORTED TO BEFORE GOING TO THE COURTS.—** It is settled that "when parties have validly agreed on a procedure for resolving grievances and to submit a dispute to voluntary arbitration then that procedure should be strictly observed." Moreover, we have held time and again that "before a party is allowed to seek the intervention of the court, it is a precondition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction[, then] such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of [the] court's judicial intervention is fatal to one's cause of action."

3. **ID.; ID.; ID.; ID.; RESOLUTION MADE ACCORDING TO CBA GRIEVANCE PROCEDURE IS NOT A VIOLATION OF THE CBA.—** Octavio cannot claim that the Committee Resolution (denying his claim for salary increase) is not valid, binding and conclusive as to him for being a modification of

the CBA in violation of Article 253 of the Labor Code. It bears to stress that the said resolution is a product of the grievance procedure outlined in the CBA itself. x x x In fine, it cannot be gainsaid that the Committee Resolution is a modification of the CBA. Rather, it only provides for the proper implementation of the CBA provision respecting salary increases.

4. **ID.; ID.; PROHIBITION AGAINST DIMINUTION OF BENEFITS; NOT APPRECIATED WITH THE DENIAL OF SALARY INCREASE FOR THE PURPOSE OF STABILIZING LABOR-MANAGEMENT RELATIONS AND INDUSTRIAL PEACE.—** Octavio's argument that the denial of his claim for salary increases constitutes a violation of Article 100 of the Labor Code is devoid of merit. Even assuming that there has been a diminution of benefits on his part, Article 100 does not prohibit a union from offering and agreeing to reduce wages and benefits of the employees as the right to free collective bargaining includes the right to suspend it. PLDT averred that one of the reasons why Octavio's salary was recomputed as to include in his salary of ₱13,730.00 the ₱2,000.00 increase for 2002 is to avoid salary distortion. At this point, it is well to emphasize that bargaining should not be equated to an "adversarial litigation where rights and obligations are delineated and remedies applied." Instead, it covers a process of finding a reasonable and acceptable solution to stabilize labor-management relations to promote stable industrial peace. Clearly, the Committee Resolution was arrived at after considering the intention of both PLDT and GUTS to foster industrial peace.

APPEARANCES OF COUNSEL

Angelito R. Villarin for petitioner.

Florentino D. Mabasa, Jr. Kristin Barbra B. Bello and Ruben V. Tejada for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Every Collective Bargaining Agreement (CBA) shall provide a grievance machinery to which all disputes arising from its

implementation or interpretation will be subjected to compulsory negotiations. This essential feature of a CBA provides the parties with a simple, inexpensive and expedient system of finding reasonable and acceptable solutions to disputes and helps in the attainment of a sound and stable industrial peace.

Before us is a Petition for Review on *Certiorari*[1] assailing the August 31, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 93578, which dismissed petitioner Carlos L. Octavio's (Octavio) Petition for *Certiorari*[3] assailing the September 30, 2005 Resolution[4] of the National Labor Relations Commission (NLRC). Said NLRC Resolution affirmed the August 30, 2004 Decision[5] of the Labor Arbiter which dismissed Octavio's Complaint for payment of salary increases against respondent Philippine Long Distance Company (PLDT). Likewise assailed in this Petition is the November 15, 2006 Resolution[6] which denied Octavio's Motion for Reconsideration.[7]

Factual Antecedents

On May 28, 1999, PLDT and *Gabay ng Unyon sa Telekomunikasyon ng mga Superbisor* (GUTS) entered into a CBA covering the period January 1, 1999 to December 31, 2001 (CBA of 1999-2001). Article VI, Section I thereof provides:

Section 1. The COMPANY agrees to grant the following across-the-board salary increase during the three years covered by this

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[1] *Rollo,* pp. 18-28.

[2] CA *rollo,* pp. 96-102; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Hakim S. Abdulwahid and Mariflor P. Punzalan Castillo.

[3] *Id.* at 2-12.

[4] *Id.* at 64-68; penned by Commissioner Tito F. Genilo and concurred in by Commissioner Romeo C. Lagman. Presiding Commissioner Lourdes C. Javier did not participate.

[5] *Id.* at 49-53; penned by Labor Arbiter Fatima Jambaro-Franco.

[6] *Id.* at 112.

[7] *Id.* at 103-105.

Agreement to all employees covered by the bargaining unit as of the given dates:

Effective January 1, 1999 – 10% of basic wage or ₱2,000.00 whichever is higher;

Effective January 1, 2000 – 11% of basic wage or ₱2,250.00 whichever is higher;

Effective January 1, 2001 – 12% of basic wage or ₱2,500.00 whichever is higher.[8]

On October 1, 2000, PLDT hired Octavio as Sales System Analyst I on a probationary status. He became a member of GUTS. When Octavio was regularized on January 1, 2001, he was receiving a monthly basic salary of ₱10,000.00. On February 1, 2002, he was promoted to the position of Sales System Analyst 2 and his salary was increased to ₱13,730.00.

On May 31, 2002, PLDT and GUTS entered into another CBA covering the period January 1, 2002 to December 31, 2004 (CBA of 2002-2004) which provided for the following salary increases: 8% of basic wage or ₱2,000.00 whichever is higher for the first year (2002); 10% of basic wage or ₱2,700.00 whichever is higher for the second year (2003); and, 10% of basic wage or ₱2,400.00 whichever is higher for the third year (2004).[9]

Claiming that he was not given the salary increases of ₱2,500.00 effective January 1, 2001 and ₱2,000.00 effective January 1, 2002, Octavio wrote the President of GUTS, Adolfo Fajardo (Fajardo).[10] Acting thereon and on similar grievances from other GUTS members, Fajardo wrote the PLDT Human Resource Head to inform management of the GUTS members' claim for entitlement to the across-the-board salary increases.[11]

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[8] *See* Octavio's Position Paper, p. 4; *id.* at 16.

[9] *See* 2002-2004 CBA Signed, Annex "C" of Octavio's Position Paper before the Labor Arbiter, *id.* at 24.

[10] Annex "D", *id.* at 25.

[11] Annex "F", *id.* at 26-28.

Accordingly, the Grievance Committee convened on October 7, 2002 consisting of representatives from PLDT and GUTS. The Grievance Committee, however, failed to reach an agreement. In effect, it denied Octavio's demand for salary increases. The Resolution (Committee Resolution), reads as follows:

October 7, 2002

UNION ISSUE :

1. Mr. Carlos L. Octavio, Sales System Analyst I, CCIM-Database, was promoted to S2 from S1 last February 01, 2002. He claimed that the whole ₱2,000 (1st yr. GUTS-CBA increase) was not given to him.

2. He was hired as a probationary employee on October 01, 2000 and was regularized on January 01, 2001. He claimed that Management failed to grant him the GUTS-CBA increase last January 2001.

MANAGEMENT POSITION :

Issue # 1:

A) Promotional Policy: adjustment of basic monthly salary to the minimum salary of the new position.

B) Mr. Octavio's salary at the time of his promotion and before the conclusion of the GUTS CBA was ₱10,000.00.

C) Upon the effectivity of his promotion on February 1, 2002, his basic monthly salary was adjusted to ₱13,730.00, the minimum salary of the new position.

D) In June 2002, the GUTS-CBA was concluded and Mr. Octavio's basic salary was recomputed to include the ₱2,000.00 1st year increase retroactive January 2002. The resulting basic salary was ₱12,000.00.

E) Applying the above-mentioned policy, Mr. Octavio's basic salary was adjusted to the minimum salary of the new position, which is ₱13,730.00.

Issue # 2:

All regularized supervisory employees as of January 1 are not entitled to the GUTS CBA increase. However, as agreed with GUTS in the grievance case of 18 personnel of International & Luzon Core Network Management Center, probationary employees who were hired outside of PLDT and regularized as supervisors/ management personnel on January 1, 2002 shall be entitled to GUTS CBA. This decision shall be applied prospectively and all previous similar cases are not covered.

RESOLUTION :

After protracted deliberation of these issues, the committee failed to reach an agreement. Hence, Management position deemed adopted.

MANAGEMENT	**UNION**
(signed)	(signed)
WILFREDO A. GUADIA	**ADOLFO L. FAJARDO**
(signed)	(signed)
ROSALINDA S. RUIZ	**CONFESOR A. ESPIRITU**
(signed)	(signed)
ALEJANDRO C. FABIAN	**CHARLITO A. AREVALO**[12]

Aggrieved, Octavio filed before the Arbitration Branch of the NLRC a Complaint for payment of said salary increases.

Ruling of the Labor Arbiter

Octavio claimed entitlement to salary increases per the CBAs of 1999-2001 and 2002-2004. He insisted that when he was regularized as a supervisory employee on January 1, 2001, he became entitled to receive the across-the-board increase of

[12] Annex "G", *id.* at 29-30; Annex "A" of PLDT's Position Paper before the Labor Arbiter, *id.* at 36-37.

₱2,500.00 as provided for under the CBA of 1999-2001 which took effect on January 1, 1999. Then pursuant to the CBA of 2002-2004, he should have received an additional increase of ₱2,000.00 apart from the merit increase of ₱3,730.00 which was given him due to his promotion on February 1, 2002. However, PLDT unilaterally decided to deem as included in the said ₱3,730.00 the ₱2,000.00 across-the-board increase for 2002 as stipulated in the CBA of 2002-2004. This, according to Octavio, amounts to diminution of benefits. Moreover, Octavio averred that the CBA cannot be the subject of further negotiation as it has the force of law between the parties. Finally, Octavio claimed that PLDT committed an act of unfair labor practice because, while it granted the claim for salary increase of 18 supervisory employees who were regularized on January 1, 2002 and onwards, it discriminated against him by refusing to grant him the same salary increase. He thus prayed for an additional award of damages and attorney's fees.

PLDT countered that the issues advanced by Octavio had already been resolved by the Union-Management Grievance Committee when it denied his claims through the Committee Resolution. Moreover, the grant of across-the-board salary increase for those who were regularized starting January 1, 2002 and the exclusion thereto of those who were regularized on January 1, 2001, do not constitute an act of unfair labor practice as would result in any discrimination or encourage or discourage membership in a labor organization. In fact, when the Union-Management Grievance Committee came up with the Committee Resolution, they considered the same as the most practicable and reasonable solution for both management and union. At any rate, the said Committee Resolution had already become final and conclusive between the parties for failure of Octavio to elevate the same to the proper forum. In addition, PLDT claimed that the NLRC has no jurisdiction to hear and decide Octavio's claims.

In a Decision dated August 30, 2004, the Labor Arbiter dismissed the Complaint of Octavio and upheld the Committee Resolution.

Ruling of the National Labor Relations Commission

Upon Octavio's appeal, the NLRC, in its September 30, 2005 Resolution, affirmed the Labor Arbiter's Decision. It upheld the Labor Arbiter's finding that Octavio's salary had already been adjusted in accordance with the provisions of the CBA. The NLRC further ruled that it has no jurisdiction to decide the issues presented by Octavio, as the same involved the interpretation and implementation of the CBA. According to it, Octavio should have brought his claim before the proper body as provided in the 2002-2004 CBA's provision on grievance machinery and procedure.

Octavio's Motion for Reconsideration was likewise dismissed by the NLRC in its November 21, 2005 Resolution.[13]

Ruling of the Court of Appeals

Octavio thus filed a Petition for *Certiorari*[14] which the CA found to be without merit. In its August 31, 2006 Decision,[15] the CA declared the Committee Resolution to be binding on Octavio, he being a member of GUTS, and because he failed to question its validity and enforceability.

In his Motion for Reconsideration,[16] Octavio disclaimed his alleged failure to question the Committee Resolution by emphasizing that he filed a Complaint before the NLRC against PLDT. However, the CA denied Octavio's Motion for Reconsideration in its November 15, 2006 Resolution.[17]

Issues

Hence, Octavio filed this Petition raising the following issues for our consideration:

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[13] *Id.* at 75-76.

[14] *Id.* at 2-12.

[15] *Id.* at 96-102.

[16] *Id.* at 103-105.

[17] *Id.* at 112.

a. Whether x x x the employer and bargaining representative may amend the provisions of the collective bargaining agreement without the consent and approval of the employees;

b. If so, whether the said agreement is binding [on] the employees;

c. Whether x x x merit increases may be awarded simultaneously with increases given in the Collective Bargaining Agreement;

d. Whether x x x damages may be awarded to the employee for violation by the employer of its commitment under its existing collective bargaining agreement.[18]

Octavio submits that the CA erred in upholding the Committee Resolution which denied his claim for salary increases but granted the same request of 18 other similarly situated employees. He likewise asserts that both PLDT and GUTS had the duty to strictly implement the CBA salary increases; hence, the Committee Resolution, which effectively resulted in the modification of the CBAs' provision on salary increases, is void.

Octavio also insists that PLDT is bound to grant him the salary increase of ₱2,000.00 for the year 2002 on top of the merit increase given to him by reason of his promotion. It is his stance that merit increases are distinct and separate from across-the-board salary increases provided for under the CBA.

Our Ruling

The Petition has no merit.

Under Article 260[19] of the Labor Code, grievances arising from the interpretation or implementation of the parties' CBA

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[18] *Rollo,* p. 22.

[19] ART. 260. *GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION*

The parties to a Collective Bargaining Agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies.

should be resolved in accordance with the grievance procedure embodied therein. It also provides that all unsettled grievances shall be automatically referred for voluntary arbitration as prescribed in the CBA.

In its Memorandum,[20] PLDT set forth the grievance machinery and procedure provided under Article X of the CBA of 2002-2004, *viz*:

Section 1. GRIEVANCE MACHINERY - there shall be a Union-Management Grievance Committee composed of three (3) Union representatives designated by the UNION Board of Directors and three (3) Management representatives designated by the company President. The committee shall act upon any grievance properly processed in accordance with the prescribed procedure. The Union representatives to the Committee shall not lose pay for attending meetings where Management representatives are in attendance.

Section 2. GRIEVANCE PROCEDURE - The parties agree that all disputes between labor and management may be settled through friendly negotiations; that the parties have the same interest in the continuity of work until all points in dispute shall have been discussed and settled; that an open conflict in any form involves losses to the parties; and that therefore, every effort shall be exerted to avoid such an open conflict. In furtherance of these principles, the parties agree to observe the following grievance procedures.

All grievances submitted to the grievance machinery which are not settled within seven (7) calendar days from the date of its submission shall automatically be referred to voluntary arbitration prescribed in the Collective Bargaining Agreement.

For this purpose, parties to a Collective Bargaining Agreement shall name and designate in advance a Voluntary Arbitrator or panel of Voluntary Arbitrators, or include in the agreement a procedure for the selection of such Voluntary Arbitrator or panel of Voluntary Arbitrators, preferably from the listing of qualified Voluntary Arbitrators duly accredited by the Board. In case the parties fail to select a Voluntary Arbitrator or panel of Voluntary Arbitrators, the Board shall designate the Voluntary Arbitrator or panel of Voluntary Arbitrators, as may be necessary, pursuant to the selection procedure agreed upon in the Collective Bargaining Agreement, which shall act with the same force and effect as if the Arbitrator or panel of Arbitrators has been selected by the parties as described above.

[20] *Id.* at 157-177.

Step 1. Any employee (or group of employees) who believes that he has a justifiable grievance shall present the matter initially to his division head, or if the division is involved in the grievance, to the company official next higher to the division head (the local manager in the provincial exchanges) not later that fifteen (15) days after the occurrence of the incident giving rise to the grievance. The initial presentation shall be made to the division head either by the aggrieved party himself or by the Union Steward or by any Executive Officer of the Union who is not a member of the grievance panel. The initial presentation may be made orally or in writing.

Step 2. Any party who is not satisfied with the resolution of the grievance at Step 1 may appeal in writing to the Union-Management Grievance Committee within seven (7) days from the date of receipt of the department head's decision.

Step 3. **If the grievance is not settled either because of deadlock or the failure of the committee to decide the matter, the grievance shall be transferred to a Board of Arbitrators for the final decision.** The Board shall be composed of three (3) arbitrators, one to be nominated by the Union, another to be nominated by the Management, and the third to be selected by the management and union nominees. The decision of the board shall be final and binding both the company and the Union in accordance with law. Expenses of arbitration shall be divided equally between the Company and the Union.[21] (Emphasis supplied)

Indisputably, the present controversy involves the determination of an employee's salary increases as provided in the CBAs. When Octavio's claim for salary increases was referred to the Union-Management Grievance Committee, the clear intention of the parties was to resolve their differences on the proper interpretation and implementation of the pertinent provisions of the CBAs. And in accordance with the procedure prescribed therein, the said committee made up of representatives of both the union and the management convened. Unfortunately, it failed to reach an agreement. Octavio's recourse pursuant to the CBA

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

was to elevate his grievance to the Board of Arbitrators for final decision. Instead, nine months later, Octavio filed a Complaint before the NLRC.

It is settled that "when parties have validly agreed on a procedure for resolving grievances and to submit a dispute to voluntary arbitration then that procedure should be strictly observed."[22] Moreover, we have held time and again that "before a party is allowed to seek the intervention of the court, it is a precondition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction[, then] such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of [the] court's judicial intervention is fatal to one's cause of action."[23] "The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that when the administrative body, or grievance machinery, is afforded a chance to pass upon the matter, it will decide the same correctly."[24]

By failing to question the Committee Resolution through the proper procedure prescribed in the CBA, that is, by raising the same before a Board of Arbitrators, Octavio is deemed to have waived his right to question the same. Clearly, he departed from the grievance procedure mandated in the CBA and denied the Board of Arbitrators the opportunity to pass upon a matter over which it has jurisdiction. Hence, and as correctly held by the CA, Octavio's failure to assail the validity and enforceability of the Committee Resolution makes the same binding upon him. On this score alone, Octavio's recourse to the labor tribunals

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[22] *Vivero v. Court of Appeals,* 398 Phil. 158, 172 (2000).

[23] *Diokno v. Cacdac,* G.R. No. 168475, July 4, 2007, 526 SCRA 440, 458; *Metro Drug Distribution, Inc. v. Metro Drug Corporation Employees Association – Federation of Free Workers,* 508 Phil. 47, 60 (2005).

[24] *Rizal Security & Protective Services, Inc. v. Maraan,* G. R. No. 124915, February 18, 2008, 546 SCRA 23, 40; *Province of Zamboanga Del Norte v. Court of Appeals,* 396 Phil. 709, 720 (2000).

below, as well as to the CA, and, finally, to this Court, must therefore fail.

At any rate, Octavio cannot claim that the Committee Resolution is not valid, binding and conclusive as to him for being a modification of the CBA in violation of Article 253[25] of the Labor Code. It bears to stress that the said resolution is a product of the grievance procedure outlined in the CBA itself. It was arrived at after the management and the union through their respective representatives conducted negotiations in accordance with the CBA. On the other hand, Octavio never assailed the competence of the grievance committee to take cognizance of his case. Neither did he question the authority or credibility of the union representatives; hence, the latter are deemed to have properly bargained on his behalf since "unions are the agent of its members for the purpose of securing just and fair wages and good working conditions."[26] In fine, it cannot be gainsaid that the Committee Resolution is a modification of the CBA. Rather, it only provides for the proper implementation of the CBA provision respecting salary increases.

Finally, Octavio's argument that the denial of his claim for salary increases constitutes a violation of Article 100[27] of the

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[25] ART. 253. *DUTY TO BARGAIN COLLECTIVELY WHEN THERE EXISTS A COLLECTIVE BARGAINING AGREEMENT*

When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

[26] *Santuyo v. Remerco Garments Manufacturing, Inc.,* G.R. No. 174420, March 22, 2010, 616 SCRA 333, 344.

[27] ART. 100. *PROHIBITION AGAINST ELIMINATION OR DIMINUTION OF BENEFITS*

Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

Labor Code is devoid of merit. Even assuming that there has been a diminution of benefits on his part, Article 100 does not prohibit a union from offering and agreeing to reduce wages and benefits of the employees as the right to free collective bargaining includes the right to suspend it.[28] PLDT averred that one of the reasons why Octavio's salary was recomputed as to include in his salary of ₱13,730.00 the ₱2,000.00 increase for 2002 is to avoid salary distortion. At this point, it is well to emphasize that bargaining should not be equated to an "adversarial litigation where rights and obligations are delineated and remedies applied."[29] Instead, it covers a process of finding a reasonable and acceptable solution to stabilize labor-management relations to promote stable industrial peace.[30] Clearly, the Committee Resolution was arrived at after considering the intention of both PLDT and GUTS to foster industrial peace.

All told, we find no error on the part of the Labor Arbiter, the NLRC and the CA in unanimously upholding the validity and enforceability of the Grievance Committee Resolution dated October 7, 2002.

WHEREFORE, the petition is **DENIED.** The August 31, 2006 Decision and November 15, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 93578 are **AFFIRMED.**

SO ORDERED.

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

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[28] *Insular Hotel Employees Union-NFL v. Waterfront Insular Hotel Davao,* G.R. Nos. 174040-41, September 22, 2010, 631 SCRA 136, 167, citing *Rivera v. Hon. Espiritu*, 425 Phil. 169, 182 (2002).

[29] *Caltex Refinery Employees Association v. Hon. Brillantes,* 344 Phil. 624, 651 (1997).

[30] *Rivera v. Hon. Espiritu, supra* at 182 (2002).

[*] Per Special Order No. 1421 dated February 20, 2013.

FIRST DIVISION

[G.R. No. 177116. February 27, 2013]

ASIAN TERMINALS, INC., *petitioner, vs.* **SIMON ENTERPRISES, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT.—** A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.

2. **ID.; ID.; ID.; ID.; ONLY QUESTIONS OF LAW SHALL BE RAISED; EXCEPTIONS.—** The well-entrenched rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals

are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

3. **CIVIL LAW; COMMON CARRIERS; PRESUMPTION OF NEGLIGENCE; SHORTAGE IN GOODS TRANSPORTED REQUIRES PROOF THAT THERE WAS SUCH SHORTAGE.—** Though it is true that common carriers are presumed to have been at fault or to have acted negligently if the goods transported by them are lost, destroyed, or deteriorated, and that the common carrier must prove that it exercised extraordinary diligence in order to overcome the presumption, the plaintiff must still, before the burden is shifted to the defendant, prove that the subject shipment suffered actual shortage. This can only be done if the weight of the shipment at the port of origin and its subsequent weight at the port of arrival have been proven by a preponderance of evidence, and it can be seen that the former weight is considerably greater than the latter weight, taking into consideration the exceptions provided in Article 1734 of the Civil Code.

APPEARANCES OF COUNSEL

Cruz Capule Marcon & Nabaza Law Offices for petitioner.
Linsangan Linsangan & Linsangan Law Offices for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated November 27, 2006 and Resolution[2] dated March 23, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 71210.

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[1] *Rollo*, pp. 35-52. Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Myrna Dimaranan-Vidal concurring.

[2] *Id.* at 59.

The facts are as follows:

On October 25, 1995, Contiquincybunge Export Company loaded 6,843.700 metric tons of U.S. Soybean Meal in Bulk on board the vessel M/V "Sea Dream" at the Port of Darrow, Louisiana, U.S.A., for delivery to the Port of Manila to respondent Simon Enterprises, Inc., as consignee. When the vessel arrived at the South Harbor in Manila, the shipment was discharged to the receiving barges of petitioner Asian Terminals, Inc. (ATI), the arrastre operator. Respondent later received the shipment but claimed having received only 6,825.144 metric tons of U.S. Soybean Meal, or short by 18.556 metric tons, which is estimated to be worth US$7,100.16 or ₱186,743.20.[3]

On November 25, 1995, Contiquincybunge Export Company made another shipment to respondent and allegedly loaded on board the vessel M/V "Tern" at the Port of Darrow, Louisiana, U.S.A. 3,300.000 metric tons of U.S. Soybean Meal in Bulk for delivery to respondent at the Port of Manila. The carrier issued its clean Berth Term Grain Bill of Lading.[4]

On January 25, 1996, the carrier docked at the inner Anchorage, South Harbor, Manila. The subject shipment was discharged to the receiving barges of petitioner ATI and received by respondent which, however, reported receiving only 3,100.137 metric tons instead of the manifested 3,300.000 metric tons of shipment. Respondent filed against petitioner ATI and the carrier a claim for the shortage of 199.863 metric tons, estimated to be worth US$79,848.86 or ₱2,100,025.00, but its claim was denied.

Thus, on December 3, 1996, respondent filed with the Regional Trial Court (RTC) of Manila an action for damages[5] against the unknown owner of the vessels M/V "Sea Dream" and M/V "Tern," its local agent Inter-Asia Marine Transport, Inc., and petitioner ATI alleging that it suffered the losses through the

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[3] Records, pp. 2-3.

[4] *Id.* at 7.

[5] *Id.* at 1-5. Docketed as Civil Case No. 96-81101.

fault or negligence of the said defendants. Respondent sought to claim damages plus attorney's fees and costs of suit. Its claim against the unknown owner of the vessel M/V "Sea Dream," however, was later settled in a Release and Quitclaim[6] dated June 9, 1998, and only the claims against the unknown owner of the M/V "Tern," Inter-Asia Marine Transport, Inc., and petitioner ATI remained.

In their Answer,[7] the unknown owner of the vessel M/V "Tern" and its local agent Inter-Asia Marine Transport, Inc., prayed for the dismissal of the complaint essentially alleging lack of cause of action and prescription. They alleged as affirmative defenses the following: that the complaint does not state a cause of action; that plaintiff and/or defendants are not the real parties-in-interest; that the cause of action had already prescribed or laches had set in; that the claim should have been filed within three days from receipt of the cargo pursuant to the provisions of the Code of Commerce; that the defendant could no longer check the veracity of plaintiff's claim considering that the claim was filed eight months after the cargo was discharged from the vessel; that plaintiff hired its own barges to receive the cargo and hence, any damages or losses during the discharging operations were for plaintiff's account and responsibility; that the statement of facts bears no remarks on any short-landed cargo; that the draft survey report indicates that the cargo discharged was more than the figures appearing in the bill of lading; that because the bill of lading states that the goods are carried on a "shipper's weight, quantity and quality unknown" terms and on "all terms, conditions and exceptions as per charter party dated October 15, 1995," the vessel had no way of knowing the actual weight, quantity, and quality of the bulk cargo when loaded at the port of origin and the vessel had to rely on the shipper for such information; that the subject shipment was discharged in Manila in the same condition and quantity as when loaded at the port of loading; that defendants' responsibility ceased upon discharge from the ship's tackle; that the damage

[6] *Rollo*, pp. 74-75.

[7] Records, pp. 28-35.

or loss was due to the inherent vice or defect of the goods or to the insufficiency of packing thereof or perils or dangers or accidents of the sea, pre-shipment damage or to improper handling of the goods by plaintiff or its representatives after discharge from the vessel, for which defendants cannot be made liable; that damage/loss occurred while the cargo was in the possession, custody or control of plaintiff or its representative, or due to plaintiff's own negligence and careless actuations in the handling of the cargo; that the loss is less than 0.75% of the entire cargo and assuming *arguendo* that the shortage exists, the figure is well within the accepted parameters when loading this type of bulk cargo; that defendants exercised the required diligence under the law in the performance of their duties; that the vessel was seaworthy in all respects; that the vessel went straight from the port of loading to Manila, without passing through any intermediate ports so there was no chance for any loss of the cargo; the plaintiff's claim is excessive, grossly overstated, unreasonable and a mere paper loss and is certainly unsubstantiated and without any basis; the terms and conditions of the relevant bill of lading and the charter party, as well as the provisions of the Carriage of Goods by Sea Act and existing laws, absolve the defendants from any liability; that the subject shipment was received in bulk and thus defendant carrier has no knowledge of the condition, quality and quantity of the cargo at the time of loading; that the complaint was not referred to the arbitrators pursuant to the bill of lading; that liability, if any, should not exceed the CIF value of the lost cargo, or the limits of liability set forth in the bill of lading and the charter party. As counterclaim, defendants prayed for the payment of attorney's fees in the amount of ₱220,000. By way of cross-claim, they ask for reimbursement from their co-defendant, petitioner ATI, in the event that they are held liable to plaintiff.

Petitioner ATI meanwhile alleged in its Answer[8] that it exercised the required diligence in handling the subject shipment. It moved for the dismissal of the complaint, and alleged by way of special and affirmative defense that plaintiff has no valid

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[8] *Id.* at 23-26.

cause of action against petitioner ATI; that the cargo was completely discharged from the vessel M/V "Tern" to the receiving barges owned or hired by the plaintiff; and that petitioner ATI exercised the required diligence in handling the shipment. By way of counterclaim, petitioner ATI argued that plaintiff should shoulder its expenses for attorney's fees in the amount of ₱20,000 as petitioner ATI was constrained to engage the services of counsel to protect its interest.

On May 10, 2001, the RTC of Manila rendered a Decision[9] holding petitioner ATI and its co-defendants solidarily liable to respondent for damages arising from the shortage. The RTC held:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendants M/V "Tern" Inter-Asia Marine Transport, Inc. and Asian Terminal Inc. jointly and severally liable to pay plaintiff Simon Enterprises the sum of ₱2,286,259.20 with legal interest from the date the complaint was filed until fully satisfied, 10% of the amount due plaintiff as and for attorney's fees plus the costs of suit.

Defendants' counterclaim and cross claim are hereby DISMISSED for lack of merit.

SO ORDERED.[10]

The trial court found that respondent has established that the losses/shortages were incurred prior to its receipt of the goods. As such, the burden shifted to the carrier to prove that it exercised extraordinary diligence as required by law to prevent the loss, destruction or deterioration. However, the trial court held that the defendants failed to prove that they did so. The trial court gave credence to the testimony of Eduardo Ragudo, a super cargo of defendant Inter-Asia Marine Transport, Inc., who admitted that there were spillages or overflow down to the spillage saver. The trial court also noted that said witness also declared that respondent's representative was not allowed to

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[9] *Rollo*, pp. 53-57. Penned by Judge Amor A. Reyes.

[10] *Id.* at 57.

sign the Master's Certificate. Such declaration, said the trial court, placed petitioner ATI in a bad light and weakened its stand.

Not satisfied, the unknown owner of the vessel M/V "Tern," Inter-Asia Marine Transport, Inc. and petitioner ATI respectively filed appeals to the CA. In their petition, the unknown owner of the vessel M/V "Tern" and Inter-Asia Marine Transport, Inc. raised the question of whether the trial court erred in finding that they did not exercise extraordinary diligence in the handling of the goods.[11]

On the other hand, petitioner ATI alleged that:

THE *COURT-A-QUO* COMMITTED SERIOUS AND REVERSIBLE ERROR IN HOLDING DEFENDANT[-]APPELLANT ATI SOLIDARILY LIABLE WITH CO-DEFENDANT APPELLANT INTER-ASIA MARINE TRANSPORT, INC. CONTRARY TO THE EVIDENCE PRESENTED.[12]

On November 27, 2006, the CA promulgated the assailed Decision, the decretal portion of which reads:

WHEREFORE, the appealed Decision dated May 10, 2001 is affirmed, except the award of attorney's fees which is hereby deleted.

SO ORDERED.[13]

In affirming the RTC Decision, the CA held that there is no justification to disturb the factual findings of the trial court which are entitled to respect on appeal as they were supported by substantial evidence. It agreed with the findings of the trial court that the unknown owner of the vessel M/V "Tern" and Inter-Asia Marine Transport, Inc. failed to establish that they exercised extraordinary diligence in transporting the goods or exercised due diligence to forestall or lessen the loss as provided

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[11] *Id*. at 40.

[12] *Id.* at 143.

[13] *Id.* at 51.

in Article 1742[14] of the Civil Code. The CA also ruled that petitioner ATI, as the arrastre operator, should be held jointly and severally liable with the carrier considering that petitioner ATI's stevedores were under the direct supervision of the unknown owner of M/V "Tern" and that the spillages occurred when the cargoes were being unloaded by petitioner ATI's stevedores.

Petitioner ATI filed a motion for reconsideration,[15] but the CA denied its motion in a Resolution[16] dated March 23, 2007. The unknown owner of the vessel M/V "Tern" and Inter-Asia Marine Transport, Inc. for their part, appealed to this Court via a petition for review on *certiorari*, which was docketed as G.R. No. 177170. Its appeal, however, was denied by this Court on July 16, 2007 for failure to sufficiently show any reversible error committed by the CA in the challenged Decision and Resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction. The unknown owner of M/V "Tern" and Inter-Asia Marine Transport, Inc. sought reconsideration of the denial but their motion was denied by the Court in a Resolution dated October 17, 2007.[17]

Meanwhile, on April 20, 2007, petitioner ATI filed the present petition raising the sole issue of whether the appellate court erred in affirming the decision of the trial court holding petitioner ATI solidarily liable with its co-defendants for the shortage incurred in the shipment of the goods to respondent.

Petitioner ATI argues that:

1. Respondent failed to prove that the subject shipment suffered actual loss/shortage as there was no competent evidence to prove that it actually weighed 3,300 metric tons at the port of origin.

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[14] Art. 1742. Even if the loss, destruction, or deterioration of the goods should be caused by the character of the goods, or the faulty nature of the packing or of the containers, the common carrier must exercise due diligence to forestall or lessen the loss.

[15] *Rollo,* pp. 168-184.

[16] *Id.* at 59.

[17] *Id.* at 191, 243.

2. Stipulations in the bill of lading that the cargo was carried on a "shipper's weight, quantity and quality unknown" is not contrary to public policy. Thus, herein petitioner cannot be bound by the quantity or weight of the cargo stated in the bill of lading.

3. Shortage/loss, if any, may have been due to the inherent nature of the shipment and its insufficient packing considering that the subject cargo was shipped in bulk and had a moisture content of 12.5%.

4. Respondent failed to substantiate its claim for damages as no competent evidence was presented to prove the same.

5. Respondent has not presented any scintilla of evidence showing any fault/negligence on the part of herein petitioner.

6. Petitioner ATI should be entitled to its counterclaim.[18]

Respondent, on the other hand, quotes extensively the CA decision and maintains its correctness.

We grant the petition.

The CA erred in affirming the decision of the trial court holding petitioner ATI solidarily liable with its co-defendants for the shortage incurred in the shipment of the goods to respondent.

We note that the matters raised by petitioner ATI involve questions of fact which are generally not reviewable in a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, as the Court is not a trier of facts. Section 1 thereof provides that "[t]he petition x x x shall raise only questions of law, which must be distinctly set forth."

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence

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[18] *Id.* at 222–237.

and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[19]

The well-entrenched rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[20]

After a careful review of the records, we find justification to warrant the application of the fourth exception. The CA misapprehended the following facts.

First, petitioner ATI is correct in arguing that the respondent failed to prove that the subject shipment suffered actual shortage, as there was no competent evidence to prove that it actually weighed 3,300 metric tons at the port of origin.

Though it is true that common carriers are presumed to have been at fault or to have acted negligently if the goods transported by them are lost, destroyed, or deteriorated, and that the common carrier must prove that it exercised extraordinary diligence in

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[19] *Santos v. Committee on Claims Settlement*, G.R. No. 158071, April 2, 2009, 583 SCRA 152, 159-160.

[20] See *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86.

order to overcome the presumption,[21] the plaintiff must still, before the burden is shifted to the defendant, prove that the subject shipment suffered actual shortage. This can only be done if the weight of the shipment at the port of origin and its subsequent weight at the port of arrival have been proven by a preponderance of evidence, and it can be seen that the former weight is considerably greater than the latter weight, taking into consideration the exceptions provided in Article 1734[22] of the Civil Code.

In this case, respondent failed to prove that the subject shipment suffered shortage, for it was not able to establish that the subject shipment was weighed at the port of origin at Darrow, Louisiana, U.S.A. and that the actual weight of the said shipment was 3,300 metric tons.

The Berth Term Grain Bill of Lading[23] (Exhibit "A"), the Proforma Invoice[24] (Exhibit "B"), and the Packing List[25] (Exhibit "C"), being used by respondent to prove that the subject shipment weighed 3,300 metric tons, do not, in fact, help its cause.

The Berth Term Grain Bill of Lading states that the subject shipment was carried with the qualification "Shipper's weight, quantity and quality unknown," meaning that it was transported

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[21] *DSR-Senator Lines v. Federal Phoenix Assurance Co., Inc.,* 459 Phil. 322, 329 (2003).

[22] Art. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

(1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;
(2) Act of the public enemy in war, whether international or civil;
(3) Act or omission of the shipper or owner of the goods;
(4) The character of the goods or defects in the packing or in the containers;
(5) Order or act of competent public authority.

[23] Records, p. 173.

[24] *Id.* at 174.

[25] *Id.* at 175.

with the carrier having been oblivious of the weight, quantity, and quality of the cargo. This interpretation of the quoted qualification is supported by *Wallem Philippines Shipping, Inc. v. Prudential Guarantee & Assurance, Inc.*,[26] a case involving an analogous stipulation in a bill of lading, wherein the Supreme Court held that:

> Indeed, as the bill of lading indicated that the contract of carriage was under a "said to weigh" clause, **the shipper is solely responsible for the loading while the carrier is oblivious of the contents of the shipment.** (Emphasis supplied)

Similarly, *International Container Terminal Services, Inc. v. Prudential Guarantee & Assurance Co., Inc.,*[27] explains the meaning of clauses analogous to "Shipper's weight, quantity and quality unknown" in this manner:

> This means that **the shipper was solely responsible for the loading of the container, while the carrier was oblivious to the contents of the shipment** x x x. The arrastre operator was, like any ordinary depositary, duty-bound to take good care of the goods received from the vessel and to turn the same over to the party entitled to their possession, ***subject to such qualifications as may have validly been imposed in the contract between the parties.*** **The arrastre operator was not required to verify the contents of the container received and to compare them with those declared by the shipper because, as earlier stated, the cargo was at the shipper's load and count** x x x. (Italics in the original; emphasis supplied)

Also, *Bankers & Manufacturers Assurance Corporation v. Court of Appeals*[28] elucidates thus:

> **[T]he recital of the bill of lading** for goods thus transported [*i.e.*, transported in sealed containers or "containerized"] ordinarily would declare "Said to Contain," **"Shipper's Load and Count,"** "Full Container Load," and the amount or quantity of goods in the container in a particular package **is only *prima facie* evidence of the amount or quantity** x x x.

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[26] 445 Phil. 136, 153 (2003).

[27] 377 Phil. 1082, 1093-1094 (1999).

[28] G.R. No. 80256, October 2, 1992, 214 SCRA 433, 435.

A shipment under this arrangement is not inspected or inventoried by the carrier whose duty is only to transport and deliver the containers in the same condition as when the carrier received and accepted the containers for transport x x x. (Emphasis supplied)

Hence, as can be culled from the above-mentioned cases, the weight of the shipment as indicated in the bill of lading is not conclusive as to the actual weight of the goods. Consequently, the respondent must still prove the actual weight of the subject shipment at the time it was loaded at the port of origin so that a conclusion may be made as to whether there was indeed a shortage for which petitioner must be liable. This, the respondent failed to do.

The Proforma Invoice militates against respondent's claim that the subject shipment weighed 3,300 metric tons. The pertinent portion of the testimony of Mr. Jose Sarmiento, respondent's Claims Manager, is narrated below:

Atty. Rebano: You also identified a while ago, Mr. Witness Exhibit B, the invoice. **Why does it state as description of the cargo three thousand metric tons and not three thousand three hundred**?

A: Usually there is a contract between the supplier and our company that embodied [sic] in the letter credit [sic] that **they have the option to ship the cargo plus or minus ten percent of the quantity.**

x x x x x x x x x

Q: **So, it is possible for the shipper to ship less than ten percent in [sic] the quantity stated in the invoice and it will still be a valid shipment.** Is it [sic] correct?

A: **It [sic] is correct** but we must be properly advised and the commercial invoice should indicate how much they sent to us.[29] (Emphasis supplied)

The quoted part of Mr. Sarmiento's testimony not only shows uncertainty as to the actual weight of the shipment, it also shows

[29] TSN, June 8, 1999, pp. 16-17.

that assuming respondent did order 3,300 metric tons of U.S. Soybean Meal from Contiquincybunge Export Company, and also assuming that it only received 3,100.137 metric tons, such volume would still be a valid shipment because it is well within the 10% allowable shortage. Note that Mr. Sarmiento himself mentioned that the supplier has the option to "ship the cargo plus or minus ten percent of the quantity."[30]

Notably also, the genuineness and the due execution of the Packing List, the Berth Term Grain Bill of Lading, and the Proforma Invoice, were not established.

Wallem Philippines Shipping, Inc.,[31] is instructive on this matter:

> We find that the Court of Appeals erred in finding that a shortage had taken place. **Josephine Suarez, Prudential's claims processor, merely identified the papers submitted to her** in connection with GMC's claim (Bill of Lading BEDI/1 (Exh. "B"), Commercial Invoice No. 1401 issued by Toepfer International Asia Pte, Ltd. (Exh. "C"), SGS Certificate of Quality (Exh. "F-1"), and SGS Certificate of Weight (Exh. "F-3")). **Ms. Suarez had no personal knowledge of the contents of the said documents and could only surmise as to the actual weight of the cargo loaded** on M/V *Gao Yang* x x x.
>
> x x x x x x x x x
>
> **Ms. Suarez's testimony regarding the contents of the documents is thus hearsay, based as it is on the knowledge of another person not presented on the witness stand.**
>
> **Nor has the genuineness and due execution of these documents been established. In the absence of clear, convincing, and competent evidence to prove that the shipment indeed weighed 4,415.35 metric tons at the port of origin when it was loaded on the M/V *Gao Yang*, it cannot be determined whether there was a shortage** of the shipment upon its arrival in Batangas. (Emphasis supplied)

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[30] *Id.* at 16.

[31] *Supra* note 26 at 150-151.

As in the present case, Mr. Sarmiento merely identified the three above-mentioned exhibits, but he had no personal knowledge of the weight of the subject shipment when it was loaded onto the M/V "Tern" at the port of origin. His testimony as regards the weight of the subject shipment as described in Exhibits "A", "B", and "C" must then be considered as hearsay,[32] for it was based on the knowledge of a person who was not presented during the trial in the RTC.

The presumption that the Berth Term Grain Bill of Lading serves as *prima facie* evidence of the weight of the cargo has been rebutted, there being doubt as to the weight of the cargo at the time it was loaded at the port of origin. Further, the fact that the cargo was shipped with the arrangement "Shipper's weight, quantity and quality unknown," indeed means that the weight of the cargo could not be determined using as basis the figures written on the Berth Term Grain Bill of Lading. This is in line with *Malayan Insurance Co., Inc. v. Jardine Davies Transport Services, Inc.,*[33] where we said:

> **The presumption that the bill of lading,** which petitioner relies upon to support its claim for restitution, **constitutes *prima facie* evidence of the goods** therein described was correctly deemed by the appellate court to **have been rebutted in light of abundant evidence casting doubts on its veracity**.
>
> That *MV Hoegh* undertook, under the bill of lading, to transport 6,599.23 MT of yellow crude sulphur on a "said to weigh" basis is not disputed. Under such clause, the shipper is solely responsible for the loading of the cargo while the carrier is oblivious of the contents of the shipment. Nobody really knows the *actual* weight of the cargo inasmuch as what is written on the bill of lading, as well as on the manifest, is based solely on the shipper's declaration.

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[32] RULES OF COURT, Rule 130, Section 36.

SEC. 36. *Testimony generally confined to personal knowledge*; *hearsay excluded*. — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these Rules.

[33] G.R. No. 181300, September 18, 2009, 600 SCRA 706, 716-717.

The bill of lading carried an added clause — the shipment's weight, measure, quantity, quality, condition, contents and value unknown. Evidently, the weight of the cargo could not be gauged from the bill of lading. (Italics in the original; emphasis supplied)

The respondent having failed to present evidence to prove the actual weight of the subject shipment when it was loaded onto the M/V "Tern," its cause of action must then fail because it cannot prove the shortage that it was alleging. Indeed, if the claimant cannot definitively establish the weight of the subject shipment at the point of origin, the fact of shortage or loss cannot be ascertained. The claimant then has no basis for claiming damages resulting from an alleged shortage. Again, *Malayan Insurance Co., Inc.,*[34] provides jurisprudential basis:

In the absence of clear, convincing and competent evidence to prove that the cargo indeed weighed, albeit the Bill of Lading qualified it by the phrase "said to weigh," **6,599.23 MT at the port of origin when it was loaded** onto the *MV Hoegh*, **the fact of loss** or shortage in the cargo upon its arrival in Manila **cannot be definitively established. The legal basis for attributing liability to either of the respondents is thus sorely wanting.** (Emphasis supplied)

Second, as correctly asserted by petitioner ATI, the shortage, if any, may have been due to the inherent nature of the subject shipment or its packaging since the subject cargo was shipped in bulk and had a moisture content of 12.5%.

It should be noted that the shortage being claimed by the respondent is minimal, and is an indication that it could be due to consolidation or settlement of the subject shipment, as accurately observed by the petitioner. A Kansas State University study on the handling and storage of soybeans and soybean meal[35] is instructive on this matter. Pertinent portions of the study reads:

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[34] *Id.* at 718.

[35] Acasio, Dr. Ulysses A., *Handling and Storage of Soybeans and Soybean Meal,* Department of Grain Science and Industry, Kansas State University, U.S.A. Retrieved from <ftp://asaim-europe.org/Backup/pdf/handlingsb.pdf.> (Visited December 27, 2012).

Soybean meal is difficult to handle because of poor flow ability and bridging characteristics. **Soybean meal tends to settle or consolidate over time.** This phenomenon occurs in most granular materials and becomes more severe with increased moisture, time and small particle size x x x.

x x x x x x x x x

Moisture is perhaps the most important single factor affecting storage of soybeans and soybean meal. **Soybeans contain moisture ranging from 12% to 15%** (wet basis) at harvest time x x x.

x x x x x x x x x

Soybeans and soybean meal are hygroscopic materials and will either lose (desorb) or gain (adsorb) moisture from the surrounding air. The moisture level reached by a product at a given constant temperature and equilibrium relative humidity (ERH) is its equilibrium moisture content (EMC) x x x. (Emphasis supplied)

As indicated in the Proforma Invoice mentioned above, the moisture content of the subject shipment was 12.5%. Taking into consideration the phenomena of desorption, the change in temperature surrounding the Soybean Meal from the time it left wintertime Darrow, Louisiana, U.S.A. and the time it arrived in Manila, and the fact that the voyage of the subject cargo from the point of loading to the point of unloading was 36 days, the shipment could have definitely lost weight, corresponding to the amount of moisture it lost during transit.

The conclusion that the subject shipment lost weight in transit is bolstered by the testimony of Mr. Fernando Perez, a Cargo Surveyor of L.J. Del Pan. The services of Mr. Perez were requested by respondent.[36] Mr. Perez testified that it was possible for the subject shipment to have lost weight during the 36-day voyage, as it was wintertime when M/V "Tern" left the United States and the climate was warmer when it reached the Philippines; hence the moisture level of the Soybean Meal could have changed.[37] Moreover, Mr. Perez himself confirmed, by answering

[36] TSN, August 19, 1999, p. 3.

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

a question propounded by the RTC, that loss of weight of the subject cargo cannot be avoided because of the shift in temperature from the colder United States weather to the warmer Philippine climate.[38]

More importantly, the 199.863 metric-ton shortage that respondent alleges is a minimal 6.05% of the weight of the entire Soy Bean Meal shipment. Taking into consideration the previously mentioned option of the shipper to ship 10% more or less than the contracted shipment, and the fact that the alleged shortage is only 6.05% of the total quantity of 3,300 metric tons, the alleged percentage loss clearly does not exceed the allowable 10% allowance for loss, as correctly argued by petitioner. The alleged loss, if any, not having exceeded the allowable percentage of shortage, the respondent then has no cause of action to claim for shortages.

Third, we agree with the petitioner ATI that respondent has not proven any negligence on the part of the former.

As petitioner ATI pointed out, a reading of the Survey Report of Del Pan Surveyors[39] (Exhibits "D" to "D-4" of respondent) would not show any untoward incident or negligence on the part of petitioner ATI during the discharging operations.

Also, a reading of Exhibits "D", "D-1", and "D-2" would show that the methods used in determining whether there was a shortage are not accurate.

Respondent relied on the Survey Reports of Del Pan Surveyors to prove that the subject shipment suffered loss. The conclusion that there was a shortage arose from an evaluation of the weight of the cargo using the barge displacement method. This is a type of draught survey, which is a method of cargo weight determination by ship's displacement calculations.[40] The basic

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[38] *Id.* at 13.

[39] Records, pp. 176-179.

[40] United Nations Economic and Social Council, *Code of Uniform Standards and Procedures for the Performance of Draught Surveys of Coal Cargoes*. Retrieved from <http://www.unece.org/fileadmin/DAM/ie/se/pdfs/dce.pdf.> (Visited December 27, 2012).

principle upon which the draught survey methodology is based is the Principle of Archimedes, *i.e.,* a vessel when floating in water, will displace a weight of water equal to its own weight.[41] It then follows that if a weight of cargo is loaded on (or unloaded from) a vessel freely floating in water, then the vessel will sink (or float) into the water until the total weight of water displaced is equal to the original weight of the vessel, plus (or minus) the cargo which has been loaded (or unloaded) and plus (or minus) density variation of the water between the starting survey (first measurement) and the finishing survey (second measurement).[42] It can be seen that this method does not entail the weighing of the cargo itself, but as correctly stated by the petitioner, the weight of the shipment is being measured by mere estimation of the water displaced by the barges before and after the cargo is unloaded from the said barges.

In addition, the fact that the measurements were done by Del Pan Surveyors in prevailing slight to slightly rough sea condition[43] supports the conclusion that the resulting measurement may not be accurate. A United Nations study on draught surveys[44] in fact states that the accuracy of draught surveys will be dependent upon several factors, one of which is the weather and seas condition in the harbor.

Also, it can be seen in respondent's own Exhibit "D-1" that the actual weight of the cargo was established by weighing 20% of the cargo. Though we recognize the practicality of establishing cargo weight through random sampling, we note the discrepancy in the weights used in the determination of the alleged shortage.

Exhibit "D-1" of respondent states that the average weight of each bag is 52 kilos. A total of 63,391 bags[45] were discharged

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[41] *Id.*

[42] *Id.*

[43] Exhibit "D-1" of respondent, records, p. 177.

[44] *Supra* note 40.

[45] *Supra* note 43.

from the barges, and the tare weight[46] was established at 0.0950 kilos.[47] Therefore, if one were to multiply 52 kilos per bag by 63,391 bags and deduct the tare weight of 0.0950 kilos multiplied by 63,391 bags, the result would be 3,290,309.65 kilos, or 3,290.310 metric tons. This would mean that the shortage was only 9.69 metric tons, if we suppose that respondent was able to establish that the shipment actually weighed 3,300 metric tons at the port of loading.

However, the computation in Exhibit "D-2" would show that Del Pan Surveyors inexplicably used 49 kilos as the weight per bag, instead of 52 kilos, therefore resulting in the total net weight of 3,100,137 kilos or 3,100.137 metric tons. This was the figure used as basis for respondent's conclusion that there is a shortage of 199.863 metric tons.[48]

These discrepancies only lend credence to petitioner ATI's assertion that the weighing methods respondent used as bases are unreliable and should not be completely relied upon.

Considering that respondent was not able to establish conclusively that the subject shipment weighed 3,300 metric tons at the port of loading, and that it cannot therefore be concluded that there was a shortage for which petitioner should be responsible; bearing in mind that the subject shipment most likely lost weight in transit due to the inherent nature of Soya Bean Meal; assuming that the shipment lost weight in transit due to desorption, the shortage of 199.863 metric tons that respondent alleges is a minimal 6.05% of the weight of the entire shipment, which is within the allowable 10% allowance for loss; and noting that the respondent was not able to show negligence on the part of the petitioner and that the weighing methods which

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[46] The officially accepted weight of an empty car, vehicle, or container that when subtracted from gross weight yields the net weight of cargo or shipment upon which charges can be calculated. Merriam-Webster Dictionary Online, <http://www.merriam-webster.com/dictionary/tareweight> (Visited January 2, 2013).

[47] Exhibit "D-2", records, p. 178.

[48] *Id.*

respondent relied upon to establish the shortage it alleges is inaccurate, respondent cannot fairly claim damages against petitioner for the subject shipment's alleged shortage.

WHEREFORE, the petition for review on *certiorari* is **GRANTED.** The Decision dated November 27, 2006 and Resolution dated March 23, 2007 of the Court of Appeals in CA-G.R. CV No. 71210 are **REVERSED AND SET ASIDE** insofar as petitioner Asian Terminals, Inc. is concerned. Needless to add, the complaint against petitioner docketed as RTC Manila Civil Case No. 96-81101 is ordered **DISMISSED.**

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Abad,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 180882. February 27, 2013]

THE BAGUIO REGREENING MOVEMENT, INC., represented by ATTY. ERDOLFO V. BALAJADIA; CITY ENVIRONMENT AND PARKS MANAGEMENT OFFICE, represented by its Officer-in-Charge, Cordelia C. Lacsamana; and THE BUSOL FOREST RESERVATION TASK FORCE, represented by its Team Leader, Victor Dictag, *petitioners*, *vs.* **ATTY. BRAIN MASWENG, in his capacity as Regional Hearing Officer, NCIP-CAR; ELIZABETH MAT-AN, for herself**

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[*] Designated additional member per Raffle dated January 7, 2013 vice Associate Justice Bienvenido L. Reyes who recused himself from the case due to prior action in the Court of Appeals.

and as representative of the heirs of Rafael; JUDITH MARANES, for herself and as representative of the heirs of Molintas; HELEN LUBOS, for herself and as representative of the heirs of Kalomis; MAGDALENA GUMANGAN QUE, for herself and as representative of the heirs of Gumangan; Spouses ALEXANDER AMPAGUEY and LUCIA AMPAGUEY; and Spouses CARMEN PANAYO and MELANIO PANAYO, *respondents*.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP); NOT COVERED BY R.A. 8975 AND MAY ISSUE RESTRAINING ORDERS AND INJUNCTIONS AGAINST GOVERNMENT INFRASTRUCTURE PROJECTS.—** The governing law as regards the prohibition to issue restraining orders and injunctions against government infrastructure projects is Republic Act No. 8975, which modified Presidential Decree No. 1818. x x x Should a judge violate the preceding section, Republic Act No. 8975 provides [a] penalty. x x x It is clear from the foregoing provisions that the prohibition covers only judges, and does not apply to the NCIP or its hearing officers. In this respect, Republic Act No. 8975 conforms to the coverage of Presidential Decree No. 605 and Presidential Decree No. 1818, both of which enjoin only the courts.

2. **REMEDIAL LAW; PRINCIPLE OF *STARE DECISIS*; APPLICATION IN CASE AT BAR.—** On February 4, 2009, this Court promulgated its Decision in G.R. No. 180206, a suit which involved several of the parties in the case at bar. x x x In the case at bar, petitioners and private respondents present the very same arguments and counter-arguments with respect to the writ of injunction against the fencing of the Busol Watershed Reservation. The same legal issues are thus being litigated in G.R. No. 180206 and in the case at bar, except that different writs of injunction are being assailed. x x x While *res judicata* does not apply on account of the different subject matters of the case at bar and G.R. No. 180206

(they assail different *writs* of injunction, *albeit* issued by the same hearing officer), we are constrained by the principle of *stare decisis* to grant the instant petition. The Court explained the principle of *stare decisis* in *Ting v. Velez-Ting*: The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by this Court in its final decisions. It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. Basically, it is a bar to any attempt to relitigate the same issues.

APPEARANCES OF COUNSEL

Melchor Carlos R. Rabanes for petitioners.
Law Firm of Avila Reyes Licnachan Maceda Lim Arevalo & Libiran for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rule on Civil Procedure assailing the Decision[1] of the Court of Appeals dated April 30, 2007 in CA-G.R. SP No. 78570 insofar as it affirmed the issuances of National Commission on Indigenous Peoples (NCIP) Hearing Officer Brain Masweng, and the Resolution of the same court dated December 11, 2007 denying petitioners' Motion for Partial Reconsideration.

Herein private respondents Elizabeth Mat-an, Judith Maranes, Helen Lubos, Magdalena Gumangan Que, spouses Alexander and Lucia Ampaguey, and spouses Melanio and Carmen Panayo, claiming that their parents inherited from their ancestors several parcels of land in what is now known as the Busol Watershed Reservation, filed before the NCIP a Petition for Injunction, with an application for a Temporary Restraining Order (TRO),

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[1] *Rollo*, pp. 48-63; penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro, concurring.

and thereafter a Writ of Preliminary Injunction seeking to enjoin the Baguio District Engineer's Office, the Office of the City Architect and Parks Superintendent, and petitioners The Baguio Regreening Movement, Inc. and the Busol Task Force from fencing the Busol Watershed Reservation.

In their Petition before the NCIP, private respondents claim that they are members of the Ibaloi and Kankanaey tribes of Baguio City. Their ancestors' ownership of the properties now known as the Busol Watershed Reservation was allegedly expressly recognized in Proclamation No. 15 issued by Governor General Leonard Wood. As owners of said properties, their ancestors paid the realty taxes thereon. The fencing project of petitioners would allegedly impede their access to and from their residences, farmlands and water sources, and dispossess them of their yard where tribal rituals and ceremonies are usually held.

On October 21, 2002, NCIP Regional Hearing Officer Brain S. Masweng issued a TRO, the dispositive portion of which reads:

> **WHEREFORE,** finding the petition in order and that grave injustice may result should the acts complained of be not immediately restrained, a Temporary Restraining Order is hereby issued pursuant to Section 69 (d) of R.A. 8371, ordering the respondents namely, the Baguio District Engineer's Office, represented by Engineer Nestor M. Nicolas, the Project Contractor, Mr. Pel-ey, the Baguio Regreening Movement Inc., represented by Atty. Erdolfo V. Balajadia, the Busol Task Force, represented by its Team Leader, Moises G. Anipew, the Baguio City Architect and Parks Superintendent Office, represented by Arch. Ignacio Estipona, and all persons acting for and their behalf (sic) of the respondents[,] their agents and/or persons whomever acting for and their behalf (sic), to refrain, stop, cease and desist from fencing and/or constructing fences around and between the areas and premises of petitioners, ancestral land claims, specifically identified in Proclamation No. 15 as Lot "A" with an area of 143,190 square meters, included within the boundary lines, Lot "B" 77,855 square meters, included within the boundary lines, Lot "C" 121,115 square meters, included within the boundary lines, Lot "D" 33,839 square meters, included within the boundary lines, Lot "E" 87,903 square meters, included within the boundary lines, Lot "F" 39,487

square meters, included within the boundary lines, Lot "G" 11,620 square meters, included within the boundary lines, Lot "H" 17,453 square meters, included within the boundary lines, Lot "J" 40,000 square meters, included within the boundary lines, all described and embraced under Proclamation No. 15, the land embraced and described under the approved plan No. 12064 of the then Director of Lands, containing an area of 186, square meters surveyed for Gumangan, the land covered by LRC PSD 52910, containing an area of 77,849 square meters as surveyed for Emily Kalomis, that land covered by survey plan 11935 Amd, containing an area of 263153 square meters as surveyed for Molintas, and that land covered by AP-7489, containing an area of 155084 as surveyed for the heirs of Rafael.

This Restraining Order shall be effective for a period of twenty (20) days from receipt hereof.

Meantime, the respondents are further ordered to show cause on November 5, 2002 (Tuesday) at 2:00 o'clock in the afternoon, why petitioners' prayer for the issuance of a writ of preliminary injunction should not be granted.[2]

On November 6, 2002, Atty. Masweng denied petitioners' motion to dissolve the TRO, explaining that a TRO may be issued *motu proprio* where the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury. He further stated that petitioners failed to comply with the procedure laid down in Section 6, Rule 58 of the Rules of Court.

On November 12, 2002, Atty. Masweng issued an Order, the dispositive portion of which states:

WHEREFORE, a writ of preliminary injunction is hereby issued against the respondents, their agents, or persons acting for and in their behalves (sic), ordering them to refrain, cease and desist from implementing their fencing project during the pendancy (sic) of the above-entitled case in any portion of petitioners' ancestral land claims within the Busol Watershed Reservation. The lands being identified under Proclamation No. 15 as lot[s] 'A', 'B', 'C', 'D', 'E', 'F', 'G', 'H', and 'J', including the lands covered by Petitioners'

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[2] *Id.* at 93.

approved survey plans as follows: that land identified and plotted under Survey Plan No. B.L. FILE No. II-11836, September, 1916 surveyed for Gumangan; that land covered by PSD-52910, May, 1921, surveyed for Emily Kalomis; that land covered by survey plan II-11935 Amd, 1916, surveyed for Molintas; and that land covered by Survey Plan No. AP 7489, March 1916, surveyed for the heirs of Rafael.

The writ of preliminary injunction shall be effective and shall be enforced only upon petitioners' compliance with the required injunctive bond of Twenty Thousand Pesos (₱20,000.00) each in compliance with Section 3, R.A. 8975.[3]

Atty. Masweng ruled that the NCIP has jurisdiction over all claims and disputes involving rights of Indigenous Cultural Communities (ICCs) and Indigenous Peoples (IPs) and, in the exercise of its jurisdiction, may issue injunctive writs. According to Atty. Masweng, the allegations in the verified petition show that private respondents invoked the provisions of Republic Act No. 8371, otherwise known as the Indigenous Peoples Rights Act of 1997 (IPRA), when they sought to enjoin petitioners from fencing their ancestral lands within the Busol Watershed Reservation. Petitioners' fencing project violated Section 58 of the IPRA, which requires the prior written consent of the affected ICCs/IPs. The NCIP therefore has authority to hear the petition filed by private respondents and to issue the injunctive writ. As regards petitioners' contention that the issuance of the TRO violated Presidential Decree No. 1818, Atty. Masweng applied the Decision of this Court in *Malaga v. Penachos, Jr.*,[4] and held that:

[R]espondent's project of fencing the Busol Watershed is not in the exercise of administrative discretion involving a very technical matter. This is so since the implementation of the fencing project would traverse along lands occupied by people who claim that they have a legal right over their lands. The fence would actually cut across, divide, or segregate lands occupied by people. The effect of it would fence in and fence out property claims. In this case, petitioners

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[3] CA *rollo*, pp. 38-39.

[4] G.R. No. 86695, September 3, 1992, 213 SCRA 516.

invoke their constitutional rights to be protected against deprivation of property without due process of law and of taking private property without just compensation. Such situations involve pure question of law.[5]

As regards the invocation of *res judicata* by petitioners, Atty. Masweng held that they failed to present copies of the Decisions supposedly rendered by the Regional Trial Court and the Supreme Court.

On November 29, 2002, petitioners filed a Motion for Reconsideration of the above Order. On June 20, 2003, Atty. Masweng denied said Motion on the ground that the same was filed out of time.

Petitioners filed before the Court of Appeals a Petition for *Certiorari*, alleging grave abuse of discretion on the part of Atty. Masweng in issuing the TRO and the writ of preliminary injunction.

On April 30, 2007, the Court of Appeals rendered its Decision dismissing petitioners' Petition for *Certiorari*. The dispositive portion of the Decision is as follows:

> **WHEREFORE,** premises considered, the instant petition is **DISMISSED** and the assailed orders of public respondent **AFFIRMED**. Nevertheless, private respondents are hereby enjoined from (i) introducing constructions at the Busol Watershed and Forest Reservation and (ii) engaging in activities that degrade the resources therein until viable measures or programs for the maintenance, preservation and development of said reservation are adopted pursuant to Sec. 58 of Rep. Act No. 8371.[6]

The Court of Appeals ruled that since the petition before the NCIP involves the protection of private respondents' rights to their ancestral domains in accordance with Section 7(b), (c)

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[5] CA *rollo*, p. 35.

[6] *Rollo*, p. 62.

and (g)[7] of the IPRA, the NCIP clearly has jurisdiction over the dispute pursuant to Section 66. The Court of Appeals also

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[7] Section 7. *Rights to Ancestral Domains*. — The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

x x x x x x x x x

b) *Right to Develop Lands and Natural Resources*.— Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;

c) *Right to Stay in the Territories*. — The right to stay in the territory and not to be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;

x x x x x x x x x

g) *Right to Claim Parts of Reservations*. - The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common and public welfare and service[.]

upheld the conclusion of Atty. Masweng that the NCIP can issue injunctive writs as a principal relief against acts adversely affecting or infringing on the rights of ICCs or IPs, because "(t)o rule otherwise would render NCIP inutile in preventing acts committed in violation of the IPRA."[8]

As regards petitioners' allegations that government reservations such as the subject Busol Watershed cannot be the subject of ancestral domain claims, the Court of Appeals pointed out that Section 58[9] of the IPRA in fact mandates the full participation of ICCs/IPs in the maintenance, management, and development of ancestral domains or portions thereof that are necessary for critical watersheds. The IPRA, thus, gives the ICCs/IPs responsibility to maintain, develop, protect, and conserve such areas with the full and effective assistance of government agencies.[10]

Despite ruling in favor of private respondents, the Court of Appeals nevertheless found merit in petitioners' own application for injunction and observed that certain activities by private respondents without regard for environmental considerations

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[8] *Rollo*, p. 59.

[9] Section 58. *Environmental Considerations*. - Ancestral domains or portions thereof, which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by appropriate agencies with the full participation of the ICCs/IPs concerned shall be maintained, managed and developed for such purposes. The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect and conserve such areas with the full and effective assistance of government agencies. Should the ICCs/IPs decide to transfer the responsibility over the areas, said decision must be made in writing. The consent of the ICCs/IPs should be arrived at in accordance with its customary laws without prejudice to the basic requirements of existing laws on free and prior informed consent: *Provided*, That the transfer shall be temporary and will ultimately revert to the ICCs/IPs in accordance with a program for technology transfer: *Provided, further*, That no ICCs/IPs shall be displaced or relocated for the purpose enumerated under this section without the written consent of the specific persons authorized to give consent.

[10] *Rollo*, p. 61.

could result in irreparable damage to the watershed and the ecosystem. Thus, the Court of Appeals enjoined private respondents from introducing constructions at the Busol Watershed and from engaging in activities that degrade its resources, until viable measures or programs for the maintenance, preservation and development of said reservation are adopted pursuant to the aforementioned Section 58 of the IPRA.

Hence, the present Petition for Review wherein petitioners assert the following grounds:

1. THE COURT OF APPEALS GRAVELY AND PATENTLY ERRED IN SUSTAINING THE NCIP'S ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND WRIT OF PRELIMINARY INJUNCTION DESPITE CLEAR AND PATENT VIOLATION OF P.D. 1818, SUPREME COURT CIRCULAR NO. 68-94 AND SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 11-2000;

2. THE COURT OF APPEALS GRAVELY AND PATENTLY ERRED IN AFFIRMING THE ACT OF THE NCIP IN ISSUING A 20-DAYS TEMPORARY RESTRAINING ORDER *EX PARTE* SANS THE MANDATORY NOTICE AND HEARING FOR THE ISSUANCE THEREOF;

3. THE COURT OF APPEALS GRAVELY AND PATENTLY ERRED IN SUSTAINING THE NCIP'S ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION DESPITE ABSOLUTE ABSENCE OF CLEAR, UNMISTAKABLE AND POSIT[I]VE LEGAL RIGHTS ON THE PART OF THE APPLICANTS;

4. THE COURT OF APPEALS GRAVELY AND PATENTLY ERRED IN HOLDING THAT THE NCIP HEARING OFFICER HAS JURISDICTION OVER A CASE OF INJUNCTION INVOLVING A GOVERNMENT INFRASTRUCTURE PROJECT;

5. THE COURT OF APPEALS PATENTLY AND GRAVELY ERRED IN BRUSHING ASIDE SECTION 78, A SPECIAL PROVISION OF REPUBLIC ACT 8371 WHICH EXCLUDES THE CITY OF BAGUIO FROM THE COVERAGE OF ANCESTRAL LAND CLAIMS APPLICATIONS;

6. THE COURT OF APPEALS GRAVELY AND PATENTLY ERRED IN UPHOLDING RULE XIII OF THE IMPLEMENTING

RULES OF REPUBLIC ACT 8371, EVEN IF THE PROVISIONS OF SAID RULE XIII CLEARLY OVERSTEPPED AND EXCEEDED SECTION 78 OF R.A. 8371.[11]

TRO and Preliminary Injunction against Government Infrastructure Projects

The governing law as regards the prohibition to issue restraining orders and injunctions against government infrastructure projects is Republic Act No. 8975,[12] which modified Presidential Decree No. 1818, the law cited by the parties, upon its effectivity on November 26, 2000.[13] Section 9 of Republic Act No. 8975 provides:

> Section 9. *Repealing Clause*. — All laws, decrees, including Presidential Decree Nos. 605, 1818 and Republic Act No. 7160, as amended, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

Thus, in *GV Diversified International, Incorporated v. Court of Appeals*,[14] we ruled that Presidential Decree No. 1818 have been effectively superseded by Republic Act No. 8975. The prohibition is thus now delineated in Section 3 of said latter law, which provides:

> Section 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory*

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

[12] AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS BY PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS OR PRELIMINARY MANDATORY INJUNCTIONS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES.

[13] Section 10 of Republic Act No. 8975 provides that the Act shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation. Republic Act No. 8975 was published in Malaya and the Manila Bulletin on November 11, 2000.

[14] 532 Phil. 296, 302 (2006).

Injunctions. — **No court, except the Supreme Court**, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

(a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;

(b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;

(c) Commencement, prosecution, execution, implementation, operation of any such contract or project;

(d) Termination or rescission of any such contract/project; and

(e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply to all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under the existing laws. (Emphasis supplied.)

Should a judge violate the preceding section, Republic Act No. 8975 provides the following penalty:

Section 6. *Penal Sanction*. — In addition to any civil and criminal liabilities he or she may incur under existing laws, **any judge** who shall issue a temporary restraining order, preliminary injunction or preliminary mandatory injunction in violation of Section 3 hereof,

shall suffer the penalty of suspension of at least sixty (60) days without pay. (Emphasis added.)

It is clear from the foregoing provisions that the prohibition covers only judges, and does not apply to the NCIP or its hearing officers. In this respect, Republic Act No. 8975 conforms to the coverage of Presidential Decree No. 605[15] and Presidential Decree No. 1818,[16] both of which enjoin only the courts. Accordingly, we cannot nullify the assailed Orders on the ground of violation of said laws.

The Court's Previous Decision in G.R. No. 180206

On February 4, 2009, this Court promulgated its Decision in G.R. No. 180206, a suit which involved several of the parties in the case at bar. In G.R. No. 180206, the City Mayor of Baguio City issued three Demolition Orders with respect to allegedly illegal structures constructed by private respondents therein on a portion of the Busol Forest Reservation. Private respondents filed a Petition for Injunction with the NCIP. Atty. Masweng issued two temporary restraining orders directing the

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[15] Section 1. No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction in any case involving or growing out of the issuance, approval or disapproval, revocation or suspension of, or any action whatsoever by the proper administrative official or body on concessions, licences, permits, patents, or public grants of any kind in connection with the disposition, exploitation, utilization, exploration and/or development of the natural resources of the Philippines.

[16] Section 1. No court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project, or a mining, fishery, forest or other natural resource development projects of the government, or any public utility operated by the government, including among others public utilities for the transport of the goods or commodities, stevedoring and arrastre contracts, to prohibit any person or persons, entity or governmental official from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation.

City Government of Baguio to refrain from enforcing said Demolition Orders and subsequently granted private respondents' application for a preliminary injunction. The Court of Appeals, acting on petitioners' Petition for *Certiorari*, affirmed the temporary restraining orders and the writ of preliminary injunction.

This Court then upheld the jurisdiction of the NCIP on the basis of the allegations in private respondents' Petition for Injunction. It was similarly claimed in said Petition for Injunction that private respondents were descendants of Molintas and Gumangan whose claims over the portions of the Busol Watershed Reservation had been recognized by Proclamation No. 15. This Court thus ruled in G.R. No. 180206 that the nature of the action clearly qualify it as a dispute or controversy over ancestral lands/domains of the ICCs/IPs.[17] On the basis of Section 69(d)[18] of the IPRA and Section 82, Rule XV[19] of NCIP Administrative Circular No. 1-03, the NCIP may issue temporary restraining orders and writs of injunction without any prohibition against the issuance of the writ when the main action is for injunction.[20]

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[17] *City Government of Baguio City v. Masweng*, G.R. No. 180206, February 4, 2009, 578 SCRA 88, 96.

[18] Section 69. *Quasi-Judicial Powers of the NCIP*. — The NCIP shall have the power and authority:

x x x x x x x x x

d) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity.

[19] Section 82. *Preliminary Injunction and Temporary Restraining Order*. — A writ of preliminary injunction or temporary restraining order may be granted by the Commission pursuant to the provisions of Sections 59 and 69 of R.A. 8371 when it is established, on the basis of sworn allegations in a petition, that the acts complained of involving or arising from any case, if not restrained forthwith, may cause grave or irreparable damage or injury to any of the parties, or seriously affect social or economic activity. This power may also be exercised by RHOs in cases pending before them in order to preserve the rights of the parties.

[20] *City Government of Baguio City v. Masweng*, *supra* note 17 at 97-98.

On petitioners' argument that the City of Baguio is exempt from the provisions of the IPRA and, consequently, the jurisdiction of the NCIP, this Court ruled in G.R. No. 180206 that said exemption cannot *ipso facto* be deduced from Section 78[21] of the IPRA because the law concedes the validity of prior land rights recognized or acquired through any process before its effectivity.[22]

Lastly, however, this Court ruled that although the NCIP has the authority to issue temporary restraining orders and writs of injunction, it was not convinced that private respondents were entitled to the relief granted by the Commission.[23] Proclamation No. 15 does not appear to be a definitive recognition of private respondents' ancestral land claim, as it merely identifies the Molintas and Gumangan families as *claimants* of a portion of the Busol Forest Reservation, but does not acknowledge vested rights over the same.[24] Since it is required before the issuance of a writ of preliminary injunction that claimants show the existence of a right to be protected, this Court, in G.R. No. 180206, ultimately granted the petition of the City Government of Baguio and set aside the writ of preliminary injunction issued therein.

In the case at bar, petitioners and private respondents present the very same arguments and counter-arguments with respect to the writ of injunction against the fencing of the Busol Watershed Reservation. The same legal issues are thus being litigated in

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[21] Section 78. *Special Provision*. — The City of Baguio shall remain to be governed by its Charter and all lands proclaimed as part of its townsite reservation shall remain as such until otherwise reclassified by appropriate legislation: *Provided*, That prior land rights and titles recognized and/or acquired through any judicial, administrative or other processes before the effectivity of this Act shall remain valid: *Provided, further*, That this provision shall not apply to any territory which becomes part of the City of Baguio after the effectivity of this Act.

[22] *City Government of Baguio City v. Masweng*, *supra* note 17 at 98-99.

[23] *Id.* at 100.

[24] *Id.* at 99-100.

G.R. No. 180206 and in the case at bar, except that different writs of injunction are being assailed. In both cases, petitioners claim (1) that Atty. Masweng is prohibited from issuing temporary restraining orders and writs of preliminary injunction against government infrastructure projects; (2) that Baguio City is beyond the ambit of the IPRA; and (3) that private respondents have not shown a clear right to be protected. Private respondents, on the other hand, presented the same allegations in their Petition for Injunction, particularly the alleged recognition made under Proclamation No. 15 in favor of their ancestors. While *res judicata* does not apply on account of the different subject matters of the case at bar and G.R. No. 180206 (they assail different writs of injunction, *albeit* issued by the same hearing officer), we are constrained by the principle of *stare decisis* to grant the instant petition. The Court explained the principle of *stare decisis*[25] in *Ting v. Velez-Ting*[26]:

> The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by this Court in its final decisions. It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. Basically, it is a bar to any attempt to relitigate the same issues, necessary for two simple reasons: economy and stability. In our jurisdiction, the principle is entrenched in Article 8 of the Civil Code. (Citations omitted.)

We have also previously held that "[u]nder the doctrine of *stare decisis*, once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same."[27]

However, even though the principal action in the case at bar is denominated as a petition for injunction, the relief prayed

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[25] *Stare decisis et non quieta movere* (Stand by the decision and disturb not what is settled).

[26] G.R. No. 166562, March 31, 2009, 582 SCRA 694, 704-705.

[27] *Tala Realty Services Corporation v. Court of Appeals,* G.R. No. 130088, April 7, 2009, 584 SCRA 63, 79.

for and granted by the NCIP partakes of the nature of a preliminary injunction in the sense that its effectivity would cease the moment the NCIP issues its decision in an appropriate action. The conclusions of this Court in both the case at bar and that in G.R. No. 180206 as regards private respondents' ancestral land claim should therefore be considered provisional, as they are based merely on the allegations in the complaint or petition and not on evidence adduced in a full-blown proceeding on the merits by the proper tribunal. Private respondents are therefore not barred from proving their alleged ancestral domain claim in the appropriate proceeding, despite the denial of the temporary injunctive relief prayed for.

WHEREFORE, the present Petition for Review on *Certiorari* is hereby **GRANTED.** The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 78570 dated April 30, 2007 and December 11, 2007, respectively, are **REVERSED** and **SET ASIDE.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 181354. February 27, 2013]

SIMON A. FLORES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; REQUIRES NOTICE OF HEARING; ABSENCE THEREOF WARRANTS

DISMISSAL OF THE MOTION.— Sec. 2 of Rule 37 (*Contents of motion for new trial or reconsideration and notice thereof*) and Sec. 4 of Rule 121 (*Form of motion and notice to the prosecutor*) should be read in conjunction with Sec. 5 of Rule 15 (Notice of hearing) of the Rules of Court. Basic is the rule that every motion must be set for hearing by the movant except for those motions which the court may act upon without prejudice to the rights of the adverse party. The notice of hearing must be addressed to all parties and must specify the time and date of the hearing, with proof of service. This Court has indeed held, time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, the requirement is mandatory. Failure to comply with the requirement renders the motion defective. "As a rule, a motion without a notice of hearing is considered *pro forma* and does not affect the reglementary period for the appeal or the filing of the requisite pleading." In this case, as Flores committed a procedural lapse in failing to include a notice of hearing, his motion was a worthless piece of paper with no legal effect whatsoever. Thus, his motion was properly dismissed by the Sandiganbayan.

2. ID.; ID.; JUDGMENTS; VALIDITY THEREOF; FACT THAT THE PONENTE AND SOME MEMBERS OF THE DECIDING DIVISION OF THE SANDIGANBAYAN WERE NOT PRESENT DURING THE TRIAL DOES NOT INVALIDATE THE DECISION.— [Petitioner]avers that the *ponente* as well as the other members of the First Division (of the Sandiganbayan) who rendered the assailed decision, were not able to observe the witnesses or their manner of testifying as they were not present during the trial. He, thus, argues that there was palpable misapprehension of the facts that led to wrong conclusions of law resulting in his unfounded conviction. His contention is likewise devoid of merit. "It is often held that the validity of a decision is not necessarily impaired by the fact that the *ponente* only took over from a colleague who had earlier presided at the trial, unless there is a showing of grave abuse of discretion in the factual findings reached by him." "Moreover, it should be stressed that the Sandiganbayan, which functions in divisions of three Justices each, is a collegial body which arrives at its decisions only after deliberation, the exchange of view and ideas, and the concurrence of the required majority vote." In the present case,

Flores has not convinced the Court that there was misapprehension or misinterpretation of the material facts nor was the defense able to adduce evidence to establish that the factual findings were arrived at with grave abuse of discretion.

3. **ID.; ID.; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED.—** The issue of whether Flores indeed acted in self-defense is basically a question of fact. In appeals to this Court, only questions of law may be raised and not issues of fact. The factual findings of the Sandiganbayan are, thus, binding upon this Court. This Court, nevertheless, finds no reason to disturb the finding of the Sandiganbayan that Flores utterly failed to prove the existence of self-defense.

4. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.—** If the accused admits killing the victim, but pleads self-defense, the burden of evidence is shifted to him to prove such defense by clear, satisfactory and convincing evidence that excludes any vestige of criminal aggression on his part. x x x [T]he accused must satisfactorily prove the concurrence of the elements of self-defense. Under Article 11 of the Revised Penal Code, any person who acts in defense of his person or rights does not incur any criminal liability provided that the following circumstances concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

5. **ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; ELUCIDATED.—** The most important among all the elements is unlawful aggression. "There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense." "Unlawful aggression is defined as an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It presupposes actual, sudden, unexpected or imminent danger—not merely threatening and intimidating action. It is present only when the one attacked faces real and immediate threat to one's life." "Aggression, if not continuous, does not constitute aggression warranting self-defense."

6. **REMEDIAL LAW; EVIDENCE; TESTIMONIES; MUST BE CREDIBLE.—** The circumstances indeed tainted Flores' credibility and reliability, his story being contrary to ordinary human experience. "Settled is the rule that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself. Hence, the test to determine the value or credibility of the testimony of a witness is whether the same is in conformity with common knowledge and is consistent with the experience of mankind."

7. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; UNLAWFUL AGGRESSION; CEASED WHEN THE PERCEIVED THREAT TO LIFE WAS NO LONGER ATTENDANT; CASE AT BAR.—** Granting for the sake of argument that unlawful aggression was initially staged by Jesus, the same ceased to exist when Jesus was first shot on the shoulder and fell to the ground. At that point, the perceived threat to Flores' life was no longer attendant. The latter had no reason to pump more bullets on Jesus' abdomen and buttocks. x x x "It has been held in this regard that the location and presence of several wounds on the body of the victim provide physical evidence that eloquently refutes allegations of self-defense." x x x The means employed by a person claiming self-defense must be commensurate to the nature and the extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression.

APPEARANCES OF COUNSEL

Danilo C. Cunanan for petitioner.
Office of the Special Prosecutor for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to annul and set aside the August 27, 2004 Decision[1] of the Sandiganbayan, First Division

[1] Annex "A" of Petition, *rollo*, pp. 36-47. Penned by Associate Justice Teresita J. Leonardo-De Castro (now Associate Justice of the Supreme

(Sandiganbayan), in Criminal Case No. 16946, finding petitioner Simon A. Flores *(Flores)* guilty beyond reasonable doubt of the crime of Homicide, and its November 29, 2007 Resolution[2] denying his motion for reconsideration.

Flores was charged with the crime of Homicide in an *Information,* dated July 9, 1991, filed before the Sandiganbayan which reads:

That on or about the 15th day of August, 1989, at nighttime, in the Municipality of Alaminos, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the *Barangay* Chairman of San Roque, Alaminos, Laguna, while in the performance of his official functions and committing the offense in relation to his office, did then and there willfully, unlawfully, feloniously and with intent to kill, shoot one JESUS AVENIDO with an M-16 Armalite Rifle, thereby inflicting upon him several gunshot wounds in different parts of his body, which caused his instantaneous death, to the damage and prejudice of the heirs of said JESUS AVENIDO.

CONTRARY TO LAW.[3]

During his arraignment, on August 26, 1991, Flores pleaded "Not Guilty" and waived the pre-trial. Thereafter, the prosecution presented four (4) witnesses, namely: Paulito Duran, one of the visitors *(Duran);* Gerry Avenido *(Gerry),* son of the victim; Elisa Avenido *(Elisa),* wife of the victim; and Dr. Ruben Escueta, the physician who performed the autopsy on the cadaver of the victim, Jesus Avenido *(Jesus)*.

For its part, the defense presented as witnesses, the accused Flores himself; his companion-members of the Civilian Action Force Group Unit (CAFGU), Romulo Alquizar and Maximo H. Manalo; and Dr. Rene Bagamasbad, resident physician of San Pablo City District Hospital.

Court) with Associate Justice Diosdado M. Peralta (now Associate Justice of the Supreme Court) and Associate Justice Roland B. Jurado, concurring.

[2] Annex "B" of Petition, *id.* at 48-49.

[3] Records, pp. 20-21.

The Version of the Prosecution

On August 15, 1989, on the eve of the *barangay* fiesta in San Roque, Alaminos, Laguna, certain visitors, Ronnie de Mesa, Noli de Mesa, Marvin Avenido, and Duran, were drinking at the terrace of the house of Jesus. They started drinking at 8:30 o'clock in the evening. Jesus, however, joined his visitors only at around 11:00 o'clock after he and his wife arrived from Sta. Rosa, Laguna, where they tried to settle a problem regarding a vehicular accident involving one of their children. The drinking at the terrace was ongoing when Flores arrived with an M-16 armalite rifle.[4]

Duran testified that Jesus stood up from his seat and met Flores who was heading towards the terrace. After glancing at the two, who began talking to each other near the terrace, Duran focused his attention back to the table. Suddenly, he heard several gunshots prompting him to duck under the table. Right after the shooting, he looked around and saw the bloodied body of Jesus lying on the ground. By then, Flores was no longer in sight.[5]

Duran immediately helped board Jesus in an owner-type jeep to be brought to a hospital. Thereafter, Duran, Ronnie de Mesa and Noli de Mesa went home. Jesus was brought to the hospital by his wife and children. Duran did not, at any time during the occasion, notice the victim carrying a gun with him.[6]

Gerry narrated that he was going in and out of their house before the shooting incident took place, anxiously waiting for the arrival of his parents from Sta. Rosa, Laguna. His parents were then attending to his problem regarding a vehicular accident. When they arrived, Gerry had a short conversation with his father, who later joined their visitors at the terrace.[7]

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[4] *Rollo*, pp. 36-37.

[5] *Id.* at 37.

[6] *Id.*

[7] *Id.*

Gerry was outside their house when he saw Flores across the street in the company of some members of the CAFGU. He was on his way back to the house when he saw Flores and his father talking to each other from a distance of about six (6) meters. Suddenly, Flores shot his father, hitting him on the right shoulder. Flores continued shooting even as Jesus was already lying flat on the ground. Gerry testified that he felt hurt to have lost his father.[8]

Elisa related that she was on her way from the kitchen to serve "pulutan" to their visitors when she saw Flores, from their window, approaching the terrace. By the time she reached the terrace, her husband was already lying on the ground and still being shot by Flores. After the latter had left, she and her children rushed him to the hospital where he was pronounced dead on arrival.[9]

As a consequence of her husband's untimely demise, she suffered emotionally. She testified that Jesus had an average monthly income of Twenty Thousand Pesos (₱20,000.00) before he died at the age of forty-one (41). He left four (4) children. Although she had no receipt, Elisa asked for actual damages consisting of lawyer's fees in the amount of Fifteen Thousand Pesos (₱15,000.00) plus Five Hundred Pesos (₱500.00) for every hearing, and Six Thousand Five Hundred Pesos (₱6,500.00) for the funeral expenses.[10]

Dr. Ruben Escueta *(Dr. Escueta)* testified that on August 17, 1989, he conducted an autopsy on the cadaver of Jesus, whom he assessed to have died at least six (6) hours before his body was brought to him.[11]

Based on the Autopsy Report,[12] it appeared that the victim suffered four gunshot wounds in the different parts of his body,

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

[9] *Id.* at 38.

[10] *Id.*

[11] *Id.*

[12] Exhibit "A" for the Prosecution.

specifically: on the medial portion of the left shoulder, between the clavicle and the first rib; on the left hypogastric region through the upper right quadrant of the abdomen; on the tip of the left buttocks to the tip of the sacral bone or hip bone; and on the right flank towards the umbilicus. The victim died of massive intra-abdominal hemorrhage due to laceration of the liver.

The Version of the Defense

To avoid criminal liability, Flores interposed self-defense.

Flores claimed that in the evening of August 15, 1989, he, together with four members of the CAFGU and Civil Service Unit (CSU), Maximo Manalo, Maximo Latayan *(Latayan)*, Ronilo Haballa, and Romulo Alquizar, upon the instructions of Mayor Samuel Bueser of Alaminos, Laguna, conducted a *ronda* in *Barangay* San Roque which was celebrating the eve of its fiesta.[13]

At around midnight, the group was about 15 meters from the house of Jesus, who had earlier invited them for some "bisperas" snacks, when they heard gunshots seemingly emanating from his house. Flores asked the group to stay behind as he would try to talk to Jesus, his cousin, to spare the shooting practice for the fiesta celebration the following day. As he started walking towards the house, he was stopped by Latayan and handed him a baby armalite. He initially refused but was prevailed upon by Latayan who placed the weapon over his right shoulder, with its barrel or nozzle pointed to the ground. Latayan convinced Flores that such posture would gain respect from the people in the house of Jesus.[14]

Flores then proceeded to the terrace of the house of Jesus, who was having a drinking spree with four others. In a calm and courteous manner, Flores asked Jesus and his guests to cease firing their guns as it was already late at night and to save their shots for the following day's fiesta procession. Flores

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[13] *Rollo*, pp. 10-11.

[14] *Id.* at 11.

claimed that despite his polite, unprovocative request and the fact that he was a relative of Jesus and the *barangay* chairman, a person in authority performing a regular routine duty, he was met with hostility by Jesus and his guests. Jesus, who appeared drunk, immediately stood up and approached him as he was standing near the entrance of the terrace. Jesus abruptly drew his magnum pistol and poked it directly at his chest and then fired it. By a twist of fate, he was able to partially parry Jesus' right hand, which was holding the pistol, and was hit on his upper right shoulder.[15]

With fierce determination, however, Jesus again aimed his gun at Flores, but the latter was able to instinctively take hold of Jesus' right hand, which was holding the gun. As they wrestled, Jesus again fired his gun, hitting Flores' left hand.[16]

Twice hit by bullets from Jesus' magnum pistol and profusely bleeding from his two wounds, Flores, with his life and limb at great peril, instinctively swung with his right hand the baby armalite dangling on his right shoulder towards Jesus and squeezed its trigger. When he noticed Jesus already lying prostrate on the floor, he immediately withdrew from the house. As he ran towards the coconut groves, bleeding and utterly bewildered over the unfortunate incident that just transpired between him and his cousin Jesus, he heard more gunshots. Thus, he continued running for fear of more untoward incidents that could follow. He proceeded to the Mayor's house in Barangay San Gregorio, Alaminos, Laguna, to report what had happened. There, he found his *ronda* groupmates.[17]

The incident was also reported the following day to the CAFGU Superior, Sgt. Alfredo Sta. Ana.

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[15] *Id.* at 11-12.

[16] *Id.* at 12.

[17] *Id.*

Decision of the Sandiganbayan

On August 27, 2004, after due proceedings, the Sandiganbayan issued the assailed decision[18] finding Flores guilty of the offense charged. The Sandiganbayan rejected Flores' claim that the shooting was justified for failure to prove self-defense. It gave credence to the consistent testimonies of the prosecution witnesses that Flores shot Jesus with an armalite rifle (M16) which resulted in his death. According to the Sandiganbayan, there was no reason to doubt the testimonies of the said witnesses who appeared to have no ill motive to falsely testify against Flores. The dispositive portion of the said decision reads:

> **WHEREFORE,** judgment is hereby rendered in **Criminal Case No. 16946** finding the accused **Simon A. Flores GUILTY** beyond reasonable doubt of the crime of homicide and to suffer the penalty of 10 years and 1 day of *prision mayor* maximum, as minimum, to 17 years, and 4 months of *reclusion temporal* medium, as maximum. The accused is hereby ordered to pay the heirs of the victim Fifty Thousand Pesos (₱50,000.00) as civil indemnity for the death of Jesus Avenido, another Fifty Thousand Pesos (₱50,000.00) as moral damages, and Six Thousand Five Hundred Pesos (₱6,500.00) as actual or compensatory damages.
>
> **SO ORDERED.**[19]

Flores filed a motion for the reconsideration. As the motion did not contain any notice of hearing, the Prosecution filed its Motion to Expunge from the Records Accused's Motion for Reconsideration."[20]

In its Resolution, dated November 29, 2007, the Sandiganbayan denied the motion for being a mere scrap of paper as it did not contain a notice of hearing and disposed as follows:

> **WHEREFORE,** in view of the foregoing, *the Motion for Reconsideration* of accused Flores is considered *pro forma* which

[18] *Id.* at 36-47.

[19] *Id.* at 46-47.

[20] Annex "D" of Petition, *id.* at 71-74.

did not toll the running of the period to appeal, and thus, the assailed judgment of this Court has become **FINAL** and **EXECUTORY**.

SO ORDERED.[21]

Hence, Flores filed the present petition before this Court on the ground that the Sandiganbayan committed reversible errors involving questions of substantive and procedural laws and jurisprudence. Specifically, Flores raises the following

ISSUES

(I)

WHETHER THE SANDIGANBAYAN, FIRST DIVISION, GRAVELY ERRED IN NOT GIVING DUE CREDIT TO PETITIONER'S CLAIM OF SELF-DEFENSE

(II)

WHETHER THE SANDIGANBAYAN, FIRST DIVISION, COMMITTED SERIOUS BUT REVERSIBLE ERRORS IN ARRIVING AT ITS FINDINGS AND CONCLUSIONS

(III)

WHETHER THE SANDIGANBAYAN, FIRST DIVISION, COMMITTED A GRAVE ERROR IN NOT ACQUITTING PETITIONER OF THE CRIME CHARGED[22]

The Court will first resolve the procedural issue raised by Flores in this petition.

Flores claims that the outright denial of his motion for reconsideration by the Sandiganbayan on a mere technicality amounts to a violation of his right to due process. The dismissal rendered final and executory the assailed decision which was replete with baseless conjectures and conclusions that were contrary to the evidence on record. He points out that a relaxation of procedural rules is justified by the merits of this case as the facts, viewed from the proper and objective perspective, indubitably demonstrate self-defense on his part.

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[21] *Id.* at 49.

[22] *Id.* at 14; *see* also p. 127.

Flores argues that he fully complied with the requirements of Section 2 of Rule 37 and Section 4 of Rule 121 of the Rules of Court when the motion itself was served upon the prosecution and the latter, in fact, admitted receiving a copy. For Flores, such judicial admission amounts to giving due notice of the motion which is the intent behind the said rules. He further argues that a hearing on a motion for reconsideration is not necessary as no further proceeding, such as a hearing, is required under Section 3 of Rule 121.

Flores' argument fails to persuade this Court.

Section 5, Rule 15 of the Rules of Court reads:

> SECTION 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.

Section 2, Rule 37 provides:

> SEC. 2. *Contents of motion for new trial or reconsideration and notice thereof*. — The motion shall be made in writing stating the ground or grounds therefore, a written notice of which shall be served by the movant on the adverse party.
>
> x x x x x x x x x
>
> A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal.

Section 4, Rule 121 states:

> SEC. 4. *Form of motion and notice to the prosecutor*. — The motion for a new trial or reconsideration shall be in writing and shall state the grounds on which it is based. X x x. Notice of the motion for new trial or reconsideration shall be given to the prosecutor.

As correctly stated by the Office of the Special Prosecutor (*OSP*), Sec. 2 of Rule 37 and Sec. 4 of Rule 121 should be read in conjunction with Sec. 5 of Rule 15 of the Rules of Court. Basic is the rule that every motion must be set for hearing by the movant except for those motions which the court may act

upon without prejudice to the rights of the adverse party.[23] The notice of hearing must be addressed to all parties and must specify the time and date of the hearing, with proof of service.

This Court has indeed held, time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, the requirement is mandatory. Failure to comply with the requirement renders the motion defective. "As a rule, a motion without a notice of hearing is considered *pro forma* and does not affect the reglementary period for the appeal or the filing of the requisite pleading."[24]

In this case, as Flores committed a procedural lapse in failing to include a notice of hearing, his motion was a worthless piece of paper with no legal effect whatsoever. Thus, his motion was properly dismissed by the Sandiganbayan.

Flores invokes the exercise by the Court of its discretionary power to review the factual findings of the Sandiganbayan. He avers that the *ponente* as well as the other members of the First Division who rendered the assailed decision, were not able to observe the witnesses or their manner of testifying as they were not present during the trial.[25] He, thus, argues that there was palpable misapprehension of the facts that led to wrong conclusions of law resulting in his unfounded conviction.

His contention is likewise devoid of merit.

"It is often held that the validity of a decision is not necessarily impaired by the fact that the *ponente* only took over from a colleague who had earlier presided at the trial, unless there is a showing of grave abuse of discretion in the factual findings reached by him."[26]

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[23] Section 4, Rule 15 of the Rules of Court.

[24] *Preysler, Jr. v. Manila Southcoast Development Corporation*, G.R. No. 171872, June 28, 2010, 621 SCRA 636, 643.

[25] *Rollo*, p. 17.

[26] *People v. Radam, Jr.*, 434 Phil. 87, 99 (2002), citing *Quinao v. People*, 390 Phil. 1092, 1100 (2000).

"Moreover, it should be stressed that the Sandiganbayan, which functions in divisions of three Justices each, is a collegial body which arrives at its decisions only after deliberation, the exchange of view and ideas, and the concurrence of the required majority vote."[27]

In the present case, Flores has not convinced the Court that there was misapprehension or misinterpretation of the material facts nor was the defense able to adduce evidence to establish that the factual findings were arrived at with grave abuse of discretion. Thus, the Court sustains the Sandiganbayan's conclusion that Flores shot Jesus and continued riddling his body with bullets even after he was already lying helpless on the ground.

Flores insists that the evidence of this case clearly established all the elements of self-defense. According to him, there was an unlawful aggression on the part of Jesus. He was just at the entrance of Jesus' terrace merely advising him and his guests to reserve their shooting for the fiesta when Jesus approached him, drew a magnum pistol and fired at him. The attack by Jesus was sudden, unexpected and instantaneous. The intent to kill was present because Jesus kept pointing the gun directly at him. As he tried to parry Jesus' hand, which was holding the gun, the latter kept firing. Left with no choice, he was compelled to use the baby armalite he was carrying to repel the attack. He asserts that there was lack of sufficient provocation on his part as he merely requested Jesus and his drinking buddies to reserve their shooting for the following day as it was already late at night and the neighbors were already asleep.

In effect, Flores faults the Sandiganbayan in not giving weight to the justifying circumstance of self-defense interposed by him and in relying on the testimonies of the prosecution witnesses instead.

His argument deserves scant consideration.

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[27] *Cabuslay v. People*, 508 Phil. 236, 250 (2005), citing *Mejorada v. Sandiganbayan,* 235 Phil. 400, 410 (1987); *Consing v. Court of Appeals*, 257 Phil. 851, 859 (1989).

The issue of whether Flores indeed acted in self-defense is basically a question of fact. In appeals to this Court, only questions of law may be raised and not issues of fact. The factual findings of the Sandiganbayan are, thus, binding upon this Court.[28] This Court, nevertheless, finds no reason to disturb the finding of the Sandiganbayan that Flores utterly failed to prove the existence of self-defense.

Generally, "the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent." If the accused, however, admits killing the victim, but pleads self-defense, the burden of evidence is shifted to him to prove such defense by clear, satisfactory and convincing evidence that excludes any vestige of criminal aggression on his part. To escape liability, it now becomes incumbent upon the accused to prove by clear and convincing evidence all the elements of that justifying circumstance.[29]

In this case, Flores does not dispute that he perpetrated the killing of Jesus by shooting him with an M16 armalite rifle. To justify his shooting of Jesus, he invoked self-defense. By interposing self-defense, Flores, in effect, admits the authorship of the crime. Thus, it was incumbent upon him to prove that the killing was legally justified under the circumstances.

To successfully claim self-defense, the accused must satisfactorily prove the concurrence of the elements of self-defense. Under Article 11 of the Revised Penal Code, any person who acts in defense of his person or rights does not incur any criminal liability provided that the following circumstances concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

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[28] *Sazon v. Sandiganbayan*, *(Fourth Division),* G.R. No. 150873, February 10, 2009, 578 SCRA 211, 219, citing *Baldebrin v. Sandiganbayan*, 547 Phil. 522, 533 (2007).

[29] *Galang v. Court of Appeals*, 381 Phil. 145, 150-151 (2000).

The most important among all the elements is unlawful aggression. "There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense."[30] "Unlawful aggression is defined as an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It presupposes actual, sudden, unexpected or imminent danger—not merely threatening and intimidating action. It is present only when the one attacked faces real and immediate threat to one's life."[31] "Aggression, if not continuous, does not constitute aggression warranting self-defense."[32]

In this case, Flores failed to discharge his burden.

The Court agrees with the Sandiganbayan's assessment of the credibility of witnesses and the probative value of evidence on record. As correctly noted by the Sandiganbayan, the defense evidence, both testimonial and documentary, were crowded with flaws which raised serious doubt as to its credibility, to wit:

> *First*, the accused claims that Jesus Avenido shot him on his right shoulder with a magnum handgun from a distance of about one (1) meter. With such a powerful weapon, at such close range, and without hitting any hard portion of his body, it is quite incredible that the bullet did not exit through the accused's shoulder. On the contrary, if he were hit on the part where the ball and socket were located, as he tried to make it appear later in the trial, it would be very impossible for the bullet not to have hit any of the bones located in that area of his shoulder.

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[30] *People of the Philippines v. Dolorido,* G.R. No. 191721, January 12, 2011, 639 SCRA 496, 503, citing *People v. Catbagan*, 467 Phil. 1044, 1054 (2004).

[31] *People of the Philippines v. Maningding*, G.R. No. 195665, September 14, 2011, 657 SCRA 804, 814, citing *People v. Gabrino*, G.R. No. 189981, March 9, 2011, 645 SCRA 187, 201.

[32] *Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176, 195, citing *People of the Philippines v. Saul*, 423 Phil. 924, 934 (2001).

Second, Simon Flores executed an affidavit on September 2, 1989. Significantly, he did not mention anything about a bullet remaining on his shoulder. If indeed a bullet remained lodged in his shoulder at the time he executed his affidavit, it defies logic why he kept mum during the preliminary investigation when it was crucial to divulge such fact if only to avoid the trouble of going through litigation. To wait for trial before finally divulging such a very material information, as he claimed, simply stretches credulity.

Third, in his feverish effort of gathering evidence to establish medical treatment on his right shoulder, the accused surprisingly did not bother to secure the x-ray plate or any medical records from the hospital. Such valuable pieces of evidence would have most likely supported his case of self-defense, even during the preliminary investigation, if they actually existed and had he properly presented them. The utter lack of interest of the accused in retrieving the alleged x-ray plate or any medical record from the hospital militate against the veracity of his version of the incident.

Fourth, the T-shirt presented by the accused in court had a hole, apparently from a hard object, such as a bullet, that pierced through the same. However, the blood stain is visibly concentrated only on the area around the hole forming a circular shape. Within five (5) hours and a half from 12:00 o'clock midnight when he was allegedly shot, to 5:35 a.m. in the early morning of August 16, 1989, when his wounds were treated, the blood would naturally have dripped down to the hem. The blood on the shirt was not even definitively shown to be human blood.

Fifth, Jesus Avenido arrived at his house and joined his visitors who were drinking only at 11:00 o'clock in the evening. Both parties claim that the shooting incident happened more or less 12:00 midnight. Hence, it is very possible that Jesus Avenido was not yet drunk when the incident in question occurred. Defense witnesses themselves noted that the victim Jesus Avenido was bigger in built and taller than the accused. Moreover, the victim was familiar and very much experienced with guns, having previously worked as a policeman. In addition, the latter was relatively young, at the age of 41, when the incident happened. The Court therefore finds it difficult to accept how the victim could miss when he allegedly shot the accused at such close range if, indeed, he really had a gun and intended to harm the accused. We find it much less acceptable to believe how the accused allegedly overpowered the victim so easily and wrestled

the gun from the latter, despite allegedly having been hit earlier on his right shoulder.

Finally, it hardly inspires belief for the accused to have allegedly unlocked, with such ease, the armalite rifle (M16) he held with one hand, over which he claims to have no experience handling, while his right shoulder was wounded and he was grappling with the victim.[33] (Underscoring supplied citations omitted)

The foregoing circumstances indeed tainted Flores' credibility and reliability, his story being contrary to ordinary human experience. "Settled is the rule that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself. Hence, the test to determine the value or credibility of the testimony of a witness is whether the same is in conformity with common knowledge and is consistent with the experience of mankind."[34]

The Court also sustains the finding that the testimony of Dr. Bagamasbad, adduced to prove that Flores was shot by Jesus, has no probative weight for being hearsay. As correctly found by the Sandiganbayan:

The testimony of defense witness Dr. Bagamasbad, cannot be of any help either since the same is in the nature of hearsay evidence. Dr. Bagamasbad's testimony was a mere re-statement of what appeared as entries in the hospital logbook (EXH. "8-a"), over which he admitted to possess no personal knowledge. The photocopy of the logbook itself does not possess any evidentiary value since it was not established by the defense that such evidence falls under any of the exceptions enumerated in Section 3, Rule 130, which pertain to the rules on the admissibility of evidence.[35] x x x

Granting for the sake of argument that unlawful aggression was initially staged by Jesus, the same ceased to exist when Jesus was first shot on the shoulder and fell to the ground. At

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[33] *Rollo*, pp. 42-44.

[34] *People v. Orias*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 427.

[35] *Rollo*, p. 44.

that point, the perceived threat to Flores' life was no longer attendant. The latter had no reason to pump more bullets on Jesus' abdomen and buttocks.

Indeed, the nature and number of the gunshot wounds inflicted upon Jesus further negate the claim of self-defense by the accused. Records show that Jesus suffered four (4) gunshot wounds in the different parts of his body, specifically: on the medial portion of the left shoulder, between the clavicle and the first rib; on the left hypogastric region through the upper right quadrant of the abdomen; on the tip of the left buttocks to the tip of the sacral bone or hip bone; and on the right flank towards the umbilicus. According to Dr. Ruben Escueta, who performed the autopsy on the victim, the latter died of massive intra-abdominal hemorrhage due to laceration of the liver.[36] If there was any truth to Flores' claim that he merely acted in self-defense, his first shot on Jesus' shoulder, which already caused the latter to fall on the ground, would have been sufficient to repel the attack allegedly initiated by the latter. But Flores continued shooting Jesus. Considering the number of gunshot wounds sustained by the victim, the Court finds it difficult to believe that Flores acted to defend himself to preserve his own life. "It has been held in this regard that the location and presence of several wounds on the body of the victim provide physical evidence that eloquently refutes allegations of self-defense."[37]

"When unlawful aggression ceases, the defender no longer has any justification to kill or wound the original aggressor. The assailant is no longer acting in self-defense but in retaliation against the original aggressor."[38] Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by

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[36] *Id.* at 38-39.

[37] *People of the Philippines v. Villa, Jr.*, G.R. No. 179278, March 28, 2008, 550 SCRA 480, 498, citing *People v. Saragina*, 388 Phil. 1, 23-24 (2000).

[38] *Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176, 195, citing *People of the Philippines v. Tagana*, 468 Phil. 784, 802 (2004).

the injured party already ceased when the accused attacked him, while in self-defense the aggression still existed when the aggressor was injured by the accused.[39]

The Court quotes with approval the following findings of the Sandiganbayan, thus:

> x x x. The difference in the location of the entry and exit points of this bullet wound was about two to three inches. From the entry point of the bullet, the shooting could not have taken place when accused and his victim were standing and facing each other. Another bullet entered through the medial portion of the victim's buttocks and exited through his abdominal cavity. A third bullet entered through the left hypogastric region and exited at the upper right quadrant of the victim's abdomen. The respective trajectory of these wounds are consistent with the testimony of prosecution witnesses Elisa B. Avenido and Arvin B. Avenido that the accused shot Jesus Avenido while the latter was already lying on the ground. Moreover, according to Arvin Avenido, the first shot hit his father on the right shoulder making him fall to the ground. **Hence, even on the assumption that unlawful aggression initially existed, the same had effectively ceased after the victim was first shot and fell to the ground.** There was no more reason for the accused to pull the trigger, at least three times more, and continue shooting at the victim.[40] (Emphasis in the original)

The means employed by a person claiming self-defense must be commensurate to the nature and the extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression.[41] In this case, the continuous shooting by Flores which caused the fatal gunshot wounds were not necessary and reasonable to prevent the claimed unlawful aggression from Jesus as the latter was already lying flat on the ground after he was first shot on the shoulder.

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[39] *Belbis, Jr. v. People of the Philippines*, G.R. No. 181052, November 14, 2012, citing *People v. Vicente*, 452 Phil. 986, 998 (2003).

[40] *Rollo*, pp. 44-45.

[41] *Belbis, Jr. v. People of the Philippines, supra* note 39.

In fine, the Sandiganbayan committed no reversible error in finding accused Flores guilty beyond reasonable doubt of the crime of homicide.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Villarama, Jr.,[*] and *Leonen, JJ.,* concur.

SPECIAL FIRST DIVISION

[G.R. No. 182431. February 27, 2013]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **ESTHER ANSON RIVERA, ANTONIO G. ANSON and CESAR G. ANSON,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; LAND REFORM LAW UNDER PD 27; JUST COMPENSATION; 12% INTEREST AS DAMAGES FOR DELAY IN PAYMENT THEREOF.—** In many cases decided by this Court, it has been repeated time and again that the award of 12% interest is imposed in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance. This is to ensure prompt payment of the value of the land and limit the opportunity loss of the owner that can drag from days to decades.

2. **ID.; ID.; ID.; ID.; APPROPRIATE FOR DELAY TRACEABLE TO THE GOVERNMENT'S UNDERVALUATION OF SUBJECT PROPERTY.—** It is true that LBP approved the amount of ₱265,494.20 (for an 18-hectares property) in favor

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[*] Designated additional member in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated February 20, 2013.

of the landowners on 23 August 2004. However, that amount is way below the amount that should have been received by the landowners based on the valuations adjudged by the agrarian court, CA and this Court. To be considered as just compensation, it must be fair and equitable and the landowners must have received it without any delay. x x x [T]he delay in this case is traceable to the undervaluation of the property of the government. x x x It must be noted that the landowners, since the deprivation of their property, have been waiting for four decades to get the just compensation due to them.

3. **ID.; ID.; ID.; ID.; ID.; PROPER COMPUTATION IN CASE AT BAR.—** Following A.O. 13-94, the 6% yearly interest compounded annually shall be reckoned from 21 October 1972 x x x up to the time of actual payment x x x extended until 31 December 2009 (A.O. 06-08). It must be noted that the term "actual payment" in the administration orders is to be interpreted as "full payment" pursuant to the ruling in *Land Bank of the Philippines v. Obias* and *Land Bank of the Philippines v. Soriano.* x x x We add a simple interest of 12% to the compounded amount from 31 December 2009 until the promulgation of this decision due to the delay incurred by LBP in not paying the full just compensation to the Spouses. x x x [Then,] final just compensation plus interest at the rate of 12% per annum from the finality of this decision until full payment.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Fe Rosario Pejo-Buelva for respondents.

R E S O L U T I O N

PEREZ, *J.*:

The Case

Before the Court is a Motion for Reconsideration[1] filed by the Land Bank of the Philippines (LBP) alleging error on the

[1] *Rollo*, pp. 392-409.

part of this Court in affirming the award of 12% interest on just compensation due to the landowner.

The Facts

We reiterate the facts from the assailed 17 November 2010 Decision:

The respondents are the co-owners of a parcel of agricultural land embraced by Original Certificate of Title No. P-082, and later transferred in their names under Transfer Certificate of Title No. T-95690 that was placed under the Operation Land Transfer pursuant to Presidential Decree No. 27 in 1972. Only 18.8704 hectares of the total area of 20.5254 hectares were subject of the coverage.

After the Department of Agrarian Reform (DAR) directed payment, LBP approved the payment of ₱265,494.20, exclusive of the advance payments made in the form of lease rental amounting to ₱75,415.88 but inclusive of 6% increment of ₱191,876.99 pursuant to DAR Administrative Order No. 13, series of 1994.

On 1 December 1994, the respondents instituted Civil Case No. 94-03 for determination and payment of just compensation before the Regional Trial Court (RTC), Branch 3 of Legaspi City, claiming that the landholding involved was irrigated with two cropping seasons a year with an average gross production per season of 100 *cavans* of 50 kilos/hectare, equivalent of 200 *cavans*/year/hectare; and that the fair market value of the property was not less than ₱130,000.00/ hectare, or ₱2,668,302.00 for the entire landholding of 20.5254 hectares.

LBP filed its Answer, stating that rice and corn lands placed under the coverage of Presidential Decree No. 27 [PD 27][2] were governed and valued in accordance with the provisions of Executive Order No. 228 [EO 228][3] as implemented by DAR Administrative

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[2] Presidential Decree No. 27, October 21, 1972, DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR.

[3] EXECUTIVE ORDER NO. 228, July 17, 1987, DECLARING FULL LAND OWNERSHIP TO QUALIFIED FARMER BENEFICIARIES

Order No. 2, Series of 1987 and other statutes and administrative issuances; that the administrative valuation of lands covered by [PD 27] and [EO 228] rested solely in DAR and LBP was the only financing arm; that the funds that LBP would use to pay compensation were public funds to be disbursed only in accordance with existing laws and regulations; that the supporting documents were not yet received by LBP; and that the constitutionality of [PD 27] and [EO 228] was already settled.[4]

The Trial Court's Ruling

On 6 October 2004, the trial court rendered its decision which reads:

> **ACCORDINGLY,** the just compensation of the land partly covered by TCT No. T-95690 is fixed at **Php1,297,710. 63**. Land Bank of the Philippines is hereby ordered to pay Esther Anson, Cesar Anson and Antonio Anson the aforesaid value of the land, plus interest of 12% per annum or Php194.36 per day effective October 7, 2004, until the value is fully paid, in cash or in bond or in any other mode of payment at the option of the landowners in accordance with Sec. 18, R.A. 6657.[5]

Discontented, LBP filed an appeal before the Court of Appeals (CA). It argued that the trial court erred in disregarding the lease rentals already paid by the farmer beneficiaries as part of the just compensation as well as the imposition of 12% interest despite the increment of 6% interest allowed under the EO 228 and DAR Administrative Order (A.O.) No. 13 Series of 1994 (A.O. 13-94).

The Court of Appeals' Ruling

The appellate court partly granted the petition of the LBP, the *fallo* of the decision reading:

COVERED BY PRESIDENTIAL DECREE NO. 27: DETERMINING THE VALUE OF REMAINING UNVALUED RICE AND CORN LANDS SUBJECT TO PRESIDENTIAL DECREE NO. 27; AND PROVIDING FOR THE MANNER OF PAYMENT BY THE FARMER BENEFICIARY AND MODES OF COMPENSATION TO THE LANDOWNERS.

[4] *Rollo*, pp. 379-380.

[5] *Id.* at 122.

WHEREFORE, the **DECISION DATED OCTOBER 6, 2004 is MODIFIED,** ordering petitioner **LAND BANK OF THE PHILIPPINES** to pay to the respondents just compensation (inclusive of interests as of October 6, 2004) in the amount of ₱823, 957.23, plus interest of 12% per annum in the amount of ₱515,777.57 or ₱61,893.30 per annum, beginning October 7, 2004 until just compensation is fully paid in accordance with this decision.

Costs of suit to be paid by the petitioner.[6]

In its petition[7] before this Court, LBP alleged error in the imposition of 12% interest per annum beginning from 7 October 2004 until full payment of just compensation for subject property and the liability of the bank for costs of suit.

17 November 2010 Decision

In its argument, LBP cited the applicability of the DAR A.O. No. 2, Series of 2004 (A.O. 02-04) which provides for the 6% interest imposition to the just compensation until actual payment. Further, it added that the 12% interest finds application in cases of undue delay, which is not present in the case. As to the payment of costs, the bank argued that it was performing a governmental function when it disbursed the Agrarian Reform Fund (ARF) as the financial intermediary of the agrarian program of the government.

In our *17 November 2010 Decision,* this Court partly granted the prayers of LBP and deleted the costs adjudged. We agreed that the bank was indeed performing a governmental function in agrarian reform proceeding pursuant to Section 1, Rule 142[8]

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[6] *Id.* at 59.

[7] Petition for Review on *Certiorari*. *Id.* at 25-49.

[8] Section 1. *Cost ordinarily follow results of suit*. — Unless otherwise provided in these rules, cost shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. **No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law.** (Emphasis supplied)

of the Rules of Court.[9] However, we upheld the imposition of 12% interest on the just compensation beginning 7 October 2004 until full payment. We anchored our decision following the ruling in *Republic of the Philippines v. Court of Appeals.*[10]

As a conclusion, the Court rendered the assailed decision which reads:

> **WHEREFORE,** premises considered, the petition is **GRANTED**. The decision of the Court of Appeals in C.A. G.R. SP No. 87463 dated 9 October 2007 is **AFFIRMED** with the **MODIFICATION** that LBP is hereby held exempted from the payment of costs of suit. In all other respects, the Decision of the Court of Appeals is **AFFIRMED**. No costs.[11]

Aggrieved, LBP filed this present Motion for Reconsideration and argued once again the erroneous imposition of 12% interest. The bank reiterated its previous argument that the imposition is justifiable only in case of undue delay in the payment of just compensation.[12] It argued[13] against the application of the A.O. No. 6, Series of 2008 (A.O. 06-08)[14] to the instant case because it claims that the 6% interest does not apply to agricultural lands valued under R.A. 6657, such as the subject properties, following the Court's ruling in *Land Bank of the Philippines v. Chico*.[15]

We deny the prayers of LBP.

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[9] *Rollo*, p. 390.

[10] 433 Phil. 106 (2002).

[11] *Rollo*, p. 390.

[12] *Id.* at 393-395.

[13] Paragraph 2.34, Motion for Reconsideration. *Id.* at 402.

[14] This extended application is through an administrative order better known as A.O. No. 6, Series of 2008 which provides that a grant of six percent (6%) increment shall be reckoned from 21 October 1972 up to the time of actual payment but not later than 31 December 2009.

[15] G.R. No. 168453, 13 March 2009, 581 SCRA 226.

In many cases[16] decided by this Court, it has been repeated time and again that the award of 12% interest is imposed in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance. This is to ensure prompt payment of the value of the land and limit the opportunity loss of the owner that can drag from days to decades.

In this case, LBP is adamant in contending that the landowners were promptly paid of their just compensation. It argues that, "there is no factual finding whatsoever indicating undue delay on the part of LBP."[17]

We disagree.

It is true that LBP approved the amount of ₱265,494.20 in favor of the landowners on 23 August 2004.[18] However, that amount is way below the amount that should have been received by the landowners based on the valuations adjudged by the agrarian court, CA and this Court. To be considered as just compensation, it must be fair and equitable and the landowners must have received it without any delay.[19]

The contention that there can be no delay when there is a deposit of the amount of the government valuation in favor of the landowners was also the same argument raised in the second Motion for Reconsideration addressing the 12 October 2010 and 23 November 2010 Resolutions in *Apo Fruits*[20] case. LBP contended then that landowners APO Fruits and Hijo Plantation did not suffer from any delay in payment since the LBP made

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[16] *Land Bank of the Philippines v. Celada,* 515 Phil. 467, 484 (2006) citing *Land Bank of the Philippines v. Wycoco,* G.R. No. 140160, 13 January 2004, 419 SCRA 67, 80 further citing *Reyes v. National Housing Authority,* G.R. No. 147511, 20 January 2003, 395 SCRA 494.

[17] Paragraph 2.15, Motion for Reconsideration. *Rollo*, p. 397.

[18] *Id.* at 175.

[19] *Apo Fruits Corporation v. Land Bank of the Philippines*, G.R. No. 164195, 5 April 2011, 647 SCRA 207, 222.

[20] *Id.*

partial payments prior to the taking of the parcels of land. The Court there ruled that twelve years passed after the Government took the properties, before full payment was settled. The Court took into account that the partial payment made by LBP only amounted to 5% of the actual value of property.[21]

Similar to *Apo Fruits*, the delay in this case is traceable to the undervaluation of the property of the government. Had the landholdings been properly valued, the landowners would have accepted the payment and there would have been no need for a judicial determination of just compensation.[22] The landowners could not possibly accept ₱265,494.20 as full payment for their entire 18 hectare-property. It must be noted that the landowners, since the deprivation of their property, have been waiting for four decades to get the just compensation due to them.

As in several other just compensation cases, respondents faced the difficult problem whether to accept a low valuation or file a case for determination of just compensation before the court. Before the choice is made, and for a longer period if the judicial course is taken, the landowners already are deprived of the income that could have been yielded by their lands.

The *Imperial case*[23] is an applicable precedent.

Juan H. Imperial (Imperial) was the owner of five parcels of land with a total land area of 151.7168 hectares. Upon the effectivity of P.D. No. 27 and EO 228, the parcels of land were placed under the Land Reform Program and distributed to the farmer-beneficiaries on 21 October 1972. On 20 July 1994, Imperial filed a complaint for determination and payment of just compensation before the Agrarian Court of Legazpi City, Albay. As the amount fixed by the agrarian court was found to be inacceptable by the parties, the case went up all the way to the Supreme Court. Before this Court, LBP claimed that a

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[21] *Id.* at 222-223.

[22] *Apo Fruits Corporation v. Land Bank of the Philippines*, G.R. No. 164195, 10 October 2012, 632 SCRA 727, 749.

[23] *Land Bank of the Philippines v. Imperial*, G.R. No. 157753, 12 February 2007, 515 SCRA 449.

6% annual interest in the concept of damages should not be imposed because (1) the delay in the payment of the just compensation was not its fault, and (2) DAR A.O. No. 13 already provides for the payment of a 6% annual interest, compounded annually, provided that the just compensation is computed in accordance with its prescribed formula.[24] The Court partly granted the claim of LBP and directed the trial court to re-compute the just compensation by using the formula prescribed by DAR A.O. No. 13, as amended, which imposed a 6% interest compounded annually from the date of the compensable taking on 21 October 1972 until 31 December 2006; and thereafter, at the rate of 12% per annum, until full payment is made.[25] This is to mean that from 1 January 2007 onwards, there shall be an imposition of 12% interest per annum until full payment in the nature of damages for the delay. The reason given was that it would be inequitable to determine the just compensation based solely on the formula provided by DAR A.O. No. 13, as amended. Just compensation does not only pertain to the amount to be paid to the owners of the land, but also its payment within a reasonable time from the taking of the land; hence the imposition of interest in the nature of damages for the delay.[26]

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[24] *Id.* at 456.

[25] **WHEREFORE**, the instant petition is DENIED for lack of merit. The assailed Decision dated November 23, 2001, of the Court of Appeals in CA-G.R. CV No. 68980 which set aside the Decision dated August 4, 2000, of the Regional Trial Court of Legazpi City, Branch 3, acting as a Special Agrarian Court in Agrarian Case No. 94-01, is AFFIRMED WITH MODIFICATION.

Let the records of this case be immediately REMANDED to the trial court forrecomputation of the correct just compensation for the lands taken, including the portions identified as feeder road, right of way, and barrio site, but excluding the portion or portions retained by respondent as owner-cultivator. The trial court is hereby DIRECTED to use the formula prescribed by DAR A.O. No. 13, as amended, which imposed a 6% interest, compounded annually, from the date of the compensable taking on October 21, 1972, until December 31, 2006; and thereafter, at the rate of 12% *per annum*, until full payment is made.

Id. at 459-460.

[26] *Id.* at 458.

In this case, LBP pointed out the error made by this Court in *Imperial* in determining the extent of the period of applicability of the 6% compounded interest.[27] It asserts that:

> "Based on the foregoing, this Court deemed the day after the expiration of DAR A.O. No. 13, meaning 1 January 2007, as the date of finality, constraining it to impose the 12% interest per annum.
>
> However, beyond the knowledge of the Supreme Court, a subsequent DAR A.O. extended the applicability of the imposition of 6% interest compounded annually from 1 January 2007 until [31] December 2009.
>
> Following the new DAR A.O., only 6% interest compounded annually would have been the correct interest to be imposed. This was not imposed, however, simply because the day after 31 December 2006 or 01 January 2007 was deemed by the Supreme Court as the date of finality, leading to the imposition of 12% interest."[28]

Contrary to the position of LBP, this Court did not commit a mistake in not applying the extension thru A.O. 06-08 of the 6% interest until 31 December 2009. It must be understood that at the time of the promulgation of the *Imperial* Decision on 12 February 2007, A.O. 06-08 was not yet effective, as it was signed only on 30 July 2008.

Likewise, it is erroneous for LBP to anchor its motion on the contention that the 6% interest compounded annually does not apply to agricultural lands valued under R.A. 6657 such as the subject properties.[29] The fact is that the valuation in the instant case was under P.D. 27 and E.O. 228, as adjudged by the trial court, because even if at the time of valuation R.A. 6657 was already effective, the respondents failed to present any evidence on the valuation factors under Section 17 of R.A. 6657.

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[27] *Rollo*, pp. 401-402.

[28] *Id.*

[29] Paragraph 2.34, Motion for Reconsideration. *Id.* at 402.

The Computation

The purpose of A.O. No. 13 is to compensate the landowners for unearned interests. Had they been paid in 1972 when the Government Support Price (GSP) for rice and corn was valued at ₱35.00 and ₱31.00, respectively, and such amounts were deposited in a bank, they would have earned a compounded interest of 6% per annum. Thus, if the [Provincial Agrarian Reform Adjudicator] [(]PARAD[)] used the 1972 GSP, then the product of (2.5 x Average Gross Production (AGP) x ₱35.00 or ₱31.00) could be multiplied by (1.06) to determine the value of the land plus the additional 6% compounded interest it would have earned from 1972.[30]

Following A.O. 13-94, the 6% yearly interest compounded annually shall be reckoned from 21 October 1972 up to the effectivity date of this Order which was on 21 October 1994. However, A.O. 02-04[31] extended the period of application of 6% interest from 21 October 1972 up to the time of actual payment but not later than December 2006. Then, under A.O. 06-08,[32]

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[30] *Gabatin v. Land Bank of the Philippine*s, 486 Phil. 366, 384-385 (2004).

[31] Item III, No. 03 of A.O. No. 13, Series of 1994, is hereby amended to read as follows:

The grant of six percent (6%) yearly interest compounded annually shall be reckoned as follows:

3.1 Tenanted as of 21 October 1972 and covered under OLT

- From 21 October 1972 up to the *time of actual payment but not later* ***than December 2006***

[32] AMENDMENT

1. The grant of six percent (6%) increment shall be reckoned as follows:

FROM	TO
3.1 Tenanted as of 21 October 1972 and covered under OLT — From 21 October 1972 up to the time of actual payment *but not later than 31 December 2006*	3.1 Tenanted as of 21 October 1972 and covered under OLT — From 21 October 1972 up to the time of actual payment *but not later* ***than 31 December 2009***

the application of 6% interest was further until 31 December 2009. It must be noted that the term "actual payment" in the administrative orders is to be interpreted as "full payment" pursuant to the ruling in *Land Bank of the Philippines v. Obias*[33] and *Land Bank of the Philippines v. Soriano.*[34]

The amount of land value of ₱164,059.26 was already settled before the lower courts.[35] There is no need for a new computation.

Applying the rules under A.O. 13-94, A.O. 02-04 and A.O. 06-08 the formula to determine the increment of 6% interest per annum compounded annually beginning 21 October 1972 up to 31 December 2009 is:

$$\mathbf{CI = P\ (1+R)^{n}}$$

(CI as compounded interest; P as the Principal; R is the Rate of 6% and n = number of years from date of tenancy starting from.)

Where:

P = ₱164,059. 26

R = 6%

n = 37 years

COMPUTATION:

CI	=	$P\ (1+R)^{n}$
	=	₱164,059.26 $(1+6\%)^{37\ years}$
	=	₱164,059. 26 $(1.06)^{37\ years}$
	=	₱1,252,770.80

Then we add the compounded interest to the land value ₱164,059.26:

[33] G.R. No. 184406, 14 March 2012, 668 SCRA 265.

[34] G.R. Nos. 180772 and 180776, 6 May 2010, 620 SCRA 347.

[35] *Rollo*, pp. 57 and 121.

Compounded Amount = Land Value + Compounded Interest

= ₱164,059.26 + ₱1,252,770.80

= ₱1,416,830.06

To compute the compounded amount to be paid, we subtract the amount of lease rental of ₱75,415.88 as adjudged by the appellate court to the compounded amount:[36]

Compounded Amount = ₱1,416,830.06 less ₱75,415.88

= ₱1,341,414.18

We add a simple interest of 12% to the compounded amount from 31 December 2009 until the promulgation of this decision due to the delay incurred by LBP in not paying the full just compensation to the Spouses:

I = P x R x T

(I = Interest, R = Rate, T = Time)

Where:

P = Compounded Amount

R = 12%

T = 31 December 2009 to 31 December 2012

1. COMPUTATION: 31 December 2009 to 31 December 2012

I = P x R x T

I = (Compounded Amount) (.12) (3 years)

I = ₱1,341,414.18 (.12) (3years)

I = ₱482,909.1048

2. COMPUTATION: 31 December 2012 to 20 February 2013

I = P x R x T

$= \frac{\text{(Compounded Amount) (12\% interest)}}{\text{365 days}} \times \text{No. of Days}$

[36] *Id.* at 58.

= (Compounded Amount) (.12) x 50 days
365 days

= (₱1,341,414.18) (.12) x 50 days
365 days

= ₱160,969.69 x 50 days
365

= ₱441.01 x 50 days

= **₱ 22,050.50**

Final Just Compensation = Compounded Amount + Interest

= ₱1,341,414.18 + ₱482,909.1048+ ₱22,050.50

= ₱1,846,373.70

WHEREFORE, premises considered, we **PARTIALLY GRANT** the petitioner's Motion for Reconsideration. The Decision dated 17 November 2010 of the Court's First Division is hereby **MODIFIED.**

The petitioner Land Bank of the Philippines is hereby **ORDERED** to pay Esther Anson Rivera, Antonio G. Anson and Cesar G. Anson **₱1,846,373.70** as final just compensation plus interest at the rate of 12% per annum from the finality of this decision until full payment.

SO ORDERED.

Carpio,[*] *Velasco, Jr., Leonardo-de Castro (Acting Chairperson),* and *Peralta, JJ.,* concur.

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[*] Additional member per raffle dated 7 November 2012.

FIRST DIVISION

[G.R. No. 183102. February 27, 2013]

MACARIO DIAZ CARPIO, *petitioner, vs.* **COURT OF APPEALS, SPOUSES GELACIO G. ORIA and MARCELINA PRE ORIA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DECISION OF THE COURT MUST BE MULLED IN WHOLE TO GET ITS TRUE INTENT AND MEANING. —** This Court has said that it does not sanction the piecemeal interpretation of its decisions. Much less does it sanction the carelessly and absolutely incorrect interpretation and application of its rulings. To understand our ruling in *Hulst* — or in any other decision for that matter — and get its true intent and meaning, no specific portion of our Decision should be read in isolation, but must be mulled in the context of the whole.
2. **ID.; ID.; ID.; WRIT OF EXECUTION; AS TO A VOID WRIT, ALL ACTIONS PURSUANT THERETO ARE WITHOUT LEGAL EFFECT.—** Since the writ of execution was manifestly void for having been issued without compliance with the rules, it is without any legal effect. In other words, it is as if no writ was issued at all. Consequently, all actions taken pursuant to the void writ of execution must be deemed to have not been taken and to have had no effect. Otherwise, the Court would be sanctioning a violation of the right to due process of the judgment debtors — respondent-spouses herein.
3. **ID.; ID.; ID.; EXECUTION OF RTC JUDGMENT DOES NOT RENDER PENDING APPEAL MOOT AND ACADEMIC.—** [T]he execution of the RTC judgment cannot be considered as a supervening event that would automatically moot the issues in the appealed case for *accion publiciana*, which is pending before the CA. Otherwise, there would be no use appealing a judgment, once a writ of execution is issued and satisfied. That situation would be absurd. On the contrary, the Rules of Court in fact provides for cases of reversal or annulment of an executed judgment. Section 5 of Rule 39

provides that in those cases, there should be restitution or reparation as warranted by justice and equity. Therefore, barring any supervening event, there is still the possibility of the appellate court's reversal of the appealed decision — even if already executed — and, consequently, of a restitution or a reparation.

APPEARANCES OF COUNSEL

Christine P. Carpio for petitioner.
Vicente M. Carambas for private respondents.

D E C I S I O N

SERENO, *C.J.*:

In this Petition for *Certiorari* under Rule 65 of the Rules of Court, we are asked to rule whether a case for *accion publiciana* on appeal with the Court of Appeals (CA) has been rendered moot and academic by an intervening implementation of a writ of execution pursuant to a Regional Trial Court (RTC) Omnibus Order in Civil Case no. 97-148 later voided with finality by this Court.

The Petition seeks to annul and set aside the CA Resolutions[1] dated 4 October 2007 and 28 May 2008. These Resolutions denied petitioner's Manifestation/Motion praying for the dismissal of respondents' appeal, docketed as CA-G.R. CV No. 87256. The Manifestation/Motion was anchored on the above-mentioned ground that the appeal had become moot and academic.

FACTS

In 1978, petitioner Macario Carpio (Carpio) informed respondent-spouses Gelacio and Marcelina Oria (respondents Oria) of their alleged encroachment on his property to the extent of 137.45 square meters. He demanded that respondents return

[1] In CA-G.R. CV No. 87256, both penned by CA Associate Justice Myrna D. Vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Noel G. Tijam.

the allegedly encroached portion and pay monthly rent therefor. However, the spouses refused.[2]

Thus, petitioner filed an action for unlawful detainer before the Metropolitan Trial Court (MeTC) of Muntinlupa City, Branch 80, which dismissed the case for lack of jurisdiction.[3] The case was appealed to the RTC of Muntinlupa City, Branch 256, which affirmed the MeTC's Decision *in toto*. However, in a Petition for Review before it, the CA held that the RTC should not have dismissed the case, but should have tried it as one for *accion publiciana*, as if it had originally been filed with the RTC, pursuant to paragraph 1 of Section 8, Rule 40 of the 1997 Rules of Court.[4]

Consequently, the case was remanded to the RTC pursuant to the CA ruling. The trial court rendered a Decision dated 11 November 2003 finding that respondents Oria had encroached on the property of Carpio by an area of 132 square meters; and requiring respondents to vacate the property and pay monthly rentals to petitioner from the time he made the demand in 1978 until they would vacate the subject property. It also awarded attorney's fees to petitioner and ordered respondents to pay the costs of suit.[5]

On 24 November 2003, petitioner filed a Motion for Immediate Execution. Thereafter, on 2 December 2003, respondents filed a Motion for Reconsideration of the Decision. On 17 March 2004, the RTC issued its assailed Omnibus Order denying the Motion for Reconsideration and simultaneously granting the

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[2] CA *rollo*, p. 100.

[3] *Id.*

[4] SECTION 8. *Appeal from orders dismissing case without trial; lack of jurisdiction*. — If an appeal is taken from an order of the lower court dismissing the case without a trial on the merits, the Regional Trial Court may affirm or reverse it, as the case may be. In case of affirmance and the ground of dismissal is lack of jurisdiction over the subject matter, the Regional Trial Court, if it has jurisdiction thereover, shall try the case on the merits as if the case was originally filed with it. In case of reversal, the case shall be remanded for further proceedings.

[5] CA *rollo*, p. 100.

Motion for Immediate Execution of the judgment.[6]

On 6 April 2004, respondents filed their Notice of Appeal of the RTC Decision and filed, as well, a Petition for *Certiorari* questioning the RTC's Omnibus Order.[7]

In their appeal of the RTC Decision, docketed as CA-G.R. No. 87256, respondents contended that the trial court erred in finding that they had encroached on the land of petitioner, as well as in finding that he had a right to recover possession of the subject lot. They also questioned the award of attorney's fees.[8] The appeal is still pending with the CA Special Eighth Division and petitioner is now, in the instant Petition, seeking its dismissal on the ground of mootness.

Meanwhile, in their Petition for *Certiorari* docketed as CA-G.R. SP No. 84632, respondents imputed grave abuse of discretion to the RTC for granting the Motion for Immediate Execution of the RTC Decision and for failing to act on their appeal.[9]

In CA-G.R. SP No. 84632, the CA First Division ruled that, on the matter of the grant of the writ of execution of the RTC Decision pending appeal, the governing rule was Section 2 of Rule 39 of the Rules of Court, since the RTC in its original jurisdiction had tried the case as one for *accion publiciana*. The aforementioned provision requires that before a writ of execution pending appeal may issue at the discretion of the trial court, the following requisites have to be met:

1. The trial court still has jurisdiction over the case and is in possession of either the original record or the record on appeal.
2. There is a motion filed by the prevailing party with notice to the adverse party.

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[6] *Id.* at 100-101.

[7] *Id.* at 101.

[8] *Id.* at 88.

[9] *Id.* at 101.

3. **There is a good reason for issuing the writ of execution.**
4. **The good reason is stated in a special order.**[10]

The CA found that while the RTC still had jurisdiction to grant the Motion for Immediate Execution, the latter stated no reason at all for the issuance of the writ.[11] The statement of a good reason in a special order is strictly required by the Rules of Court, because execution before a judgment has become final and executory is the exception rather than the rule.

The CA also ruled that the failure of the RTC to act on the appeal likewise constituted grave abuse of discretion, considering that respondents had correctly availed themselves of the proper mode of appealing the main case for *accion publiciana* to the CA.[12]

Thus, in a Decision[13] in CA-G.R. SP No. 84632 dated 14 April 2005, the CA First Division set aside the portion of the Omnibus Order granting the Motion for Immediate Execution. The dispositive portion of the Decision reads:

> WHEREFORE, the petition is hereby GRANTED. **The portion in the Omnibus Order granting the motion for immediate execution is hereby ANNULLED AND SET ASIDE**. The Regional Trial Court of Muntinlupa City, Branch 256, is hereby ordered to act on the appeal of petitioners and to forthwith elevate the case to this Court.
>
> SO ORDERED.[14] (Emphasis supplied)

Petitioner's Motion for Reconsideration of the CA Decision was denied in a Resolution dated 30 May 2005. Petitioner then filed before this Court a Petition for Review on *Certiorari*, which was docketed as G.R. No. 168226. His Petition was denied

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[10] *Id.* at 105.

[11] *Id.* at 105-106.

[12] *Id.* at 106.

[13] Penned by Presiding Justice Romeo A. Brawner and concurred in by Associate Justices Edgardo P. Cruz and Jose C. Mendoza (now a member of this Court).

[14] CA *rollo*, p. 106.

in a Resolution dated 12 December 2005 for failure to show reversible error on the part of the CA.[15] His Motion for Reconsideration was also denied with finality in a Resolution dated 13 March 2006. With the issuance of an Entry of Judgment, the Resolution of this Court became final and executory on 4 April 2006.

On 26 April 2007, petitioner filed with the CA Special Eighth Division a Manifestation/Motion praying for the dismissal of the appeal of respondents in CA-G.R. CV No. 87256, the main case for *accion publiciana*. He argued that while the issue of the validity of the grant of immediate execution was being litigated, the sheriff, in the meantime, executed the RTC Decision pursuant to the Omnibus Order. Petitioner explained that the writ of execution had been satisfied by the levying of the property of respondents. Thus, the judgment debt had been partially paid through a public auction sale of the property. Consequently, Transfer Certificate of Title (TCT) No. S-43053 covering the levied property of respondents Oria was cancelled and a new one entered in the name of petitioner, who was the highest bidder at the auction sale. Hence, the latter asserted that the appealed case had become moot and academic.

In a Resolution dated 4 October 2007, the CA Special Eighth Division denied the Manifestation/Motion. It reasoned that the Omnibus Order, pursuant to which the writ of execution had been invalidly issued, was annulled by the CA First Division, and that the annulment was in fact affirmed by the Supreme Court. Therefore, as the RTC Decision was not yet deemed executed, the CA Special Eighth Division ruled that the appeal pending before the latter had not yet become moot and academic:

> This resolves the Manifestation/Motion filed by Defendant-Appellee MACARIO DIAZ CARPIO (hereinafter Appellee) praying for the dismissal of the instant appeal for being moot and academic. In the main, Appellee alleges that the writ of execution of the Decision of the Regional Trial Court of Muntinlupa City, Branch 256 dated 11 November 2003, the subject of the present appeal, had been complied with, implemented and partially paid upon a public auction,

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[15] *Rollo*, p. 20.

thereby canceling Transfer Certificate of Title No. S-43053 under the name of Plaintiffs-Appellants Spouses GELACIO and MARCELINA ORIA (hereinafter Appellants) and a new one was entered in the name of the Appellee.

On 2 July 2007, the Appellants filed an Opposition To The Motion To Dismiss seeking the denial of the Manifestation/Motion, *supra*, considering that the Omnibus Order of the RTC which allowed the immediate execution of the Decision, thru the writ of execution, *supra*, was annulled by this Court.

After a judicious perusal of the instant motion, We find that the ground relied upon by the Appellee deserves scant consideration. It bears noting that this Court's Decision dated 14 April 2005 annulling the Omnibus order, *supra*, was affirmed by the Supreme Court on 12 December 2005.

In the light of the foregoing factual backdrop and the law applicable on the matter, **We hold that the Decision being challenged in the instant appeal has not yet been executed. Accordingly, instant motion is hereby DENIED.**

SO ORDERED.[16] (Emphases supplied; citations omitted)

Petitioner's Motion for Reconsideration was likewise denied by the CA in its Resolution dated 28 May 2008.

Hence, the instant Petition.

Petitioner merely rehashes his argument before the CA Special Eighth Division. He says that since the writ of execution of the RTC Decision in the case for *accion publiciana* has been implemented, the case is now moot and academic. He explains that, pursuant to the writ, the property of the spouses Oria adjoining his own has been levied and sold to him. In fact, a Sheriff's Final Deed of Sale has been executed in his favor, and the property has already been merged and transferred to his name under a new TCT. Thus, he now contends that the spouses have no more proprietary right or practical relief that can be further protected or adversely affected by their appeal.[17]

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

[17] *Id.* at 9.

ISSUE

The issue to be resolved in this case is whether the case for *accion publiciana* on appeal with the CA Special Eighth Division has been rendered moot and academic by the intervening implementation of the writ of execution of the RTC Decision dated 11 November 2013 pursuant to the trial court's Omnibus Order, although the Order was later annulled with finality by this Court.

THE COURT'S RULING

We dismiss the Petition.

Discussion

I

The writ of execution is void; consequently, all actions pursuant to the void writ are of no legal effect.

Petitioner argues that the sheriff, whose duty was merely ministerial, properly implemented the writ of execution issued by the RTC. Thus, the implementation of the writ should be respected. Petitioner cites *Hulst v. P.R. Builders,*[18] in which this Court ruled that the sheriff properly proceeded with the auction sale despite the objection of the judgment debtor. The latter had objected that the property being sold had a value higher than that of the judgment debt that had to be satisfied. We held in that case that because the duty of the sheriff was ministerial, he had no discretion to postpone the conduct of the auction sale of the levied properties. Applying that ruling, petitioner herein is now similarly asserting in this case that the sheriff properly proceeded with the ministerial duty of the latter, whose implementation of the writ of execution should therefore be respected. Thus, petitioner now asserts that the auction sale pursuant to the execution was valid and cannot be undone. Consequently, the issue in the main case has supposedly become moot and academic.

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[18] G.R. No. 156364, 3 September 2007, 532 SCRA 74.

The reliance of petitioner on *Hulst* is utterly off the mark. In that case, there was no question about the validity of the issuance of the writ. The issue therein was whether the sheriff, whose duty was merely ministerial, should have postponed the auction sale. In that case, a motion to stop the auction had been filed on the ground that the value of the property to be sold was more than that of the judgment debt to be satisfied. In the present case, what is involved is a writ of execution that this Court has declared void with finality; and what is in issue is the legal effect of the actions done pursuant to the writ. There is no question as to the ministerial nature of the duty of the sheriff or the propriety of his proceeding to implement the writ.

More important, we never said in *Hulst* that since it was the ministerial duty of the sheriff to implement the writ of execution, all his actions pursuant thereto were valid and could not be undone; that is, even if the writ itself was later invalidated when the Omnibus Order for its issuance was later set aside as a nullity. Nothing in jurisprudence says that if the sheriff has in the meantime executed an otherwise invalid writ of execution pending appeal, the appealed case becomes moot and academic. That would be an absurd conclusion.

This Court has said that it does not sanction the piecemeal interpretation of its decisions.[19] Much less does it sanction the carelessly and absolutely incorrect interpretation and application of its rulings. To understand our ruling in *Hulst* — or in any other decision for that matter — and get its true intent and meaning, no specific portion of our Decision should be read in isolation, but must be mulled in the context of the whole. While we understand that the ethics of the profession requires that lawyers do their best in advocating the cause of their clients, we frown upon the clear misapplication and misuse of our rulings, as in the present case, whether deliberate or not.

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[19] *Telefunken Semiconductors Employees Union v. Court of Appeals*, 401 Phil. 776, 800 (2000); *Valderrama v. National Labor Relations Commission*, 326 Phil. 477, 484 (1996); *Policarpio v. Philippine Veterans Board*, 106 Phil. 125, 131 (1959).

In any case, we proceed to rule that because the writ of execution was void, all actions and proceedings conducted pursuant to it were also void and of no legal effect. To recall, this Court affirmed the Decision of the CA in CA-G.R. SP No. 84632, annulling the RTC's Omnibus Order granting the Motion for Immediate Execution pending appeal. We affirmed the CA Decision because of the RTC's failure to state any reason, much less good reason, for the issuance thereof as required under Section 2, Rule 39. In the exercise by the trial court of its discretionary power to issue a writ of execution pending appeal, we emphasize the need for strict compliance with the requirement for the statement of a good reason, because execution pending appeal is the exception rather than the rule.[20]

Since the writ of execution was manifestly void for having been issued without compliance with the rules, it is without any legal effect.[21] In other words, it is as if no writ was issued at all.[22] Consequently, all actions taken pursuant to the void writ of execution must be deemed to have not been taken and to have had no effect. Otherwise, the Court would be sanctioning a violation of the right to due process of the judgment debtors — respondent-spouses herein.[23]

Therefore, there is no basis for the claim of petitioner that since a levy and an auction sale of respondents' property have been held and a new TCT issued in his name, respondents have therefore automatically and permanently lost any further proprietary right to their auctioned property. Hence, his argument that their appeal is moot and academic, because what they seek to prevent has been executed, does not hold water. On the contrary, the practical effect of the voidness of the writ of execution is that it would be as if the levy, and the auction held pursuant to it, never happened. That the void writ has already been satisfied

[20] *Planters Products, Inc. v. Court of Appeals*, 375 Phil. 615, 624 (1999).

[21] *David v. Judge Velasco*, 418 Phil. 643 (2001). See also *Continental Watchman and Security Agency, Inc. v. National Food Authority*, G.R. No. 171015, 25 August 2010, 629 SCRA 238.

[22] *Id.* at 654.

[23] *Id.*

does not perforce clothe it, and all actions taken pursuant to it, with validity.

II

The execution of the RTC judgment does not automatically mean that the issues on appeal have become moot and academic.

Moreover, even assuming that the writ of execution in the instant case were not void, the execution of the RTC judgment cannot be considered as a supervening event that would automatically moot the issues in the appealed case for *accion publiciana,* which is pending before the CA. Otherwise, there would be no use appealing a judgment, once a writ of execution is issued and satisfied. That situation would be absurd. On the contrary, the Rules of Court in fact provides for cases of reversal or annulment of an executed judgment. Section 5 of Rule 39 provides that in those cases, there should be restitution or reparation as warranted by justice and equity. Therefore, barring any supervening event, there is still the possibility of the appellate court's reversal of the appealed decision — even if already executed — and, consequently, of a restitution or a reparation.

In any case, the issues in the appealed case for *accion publiciana* cannot, in any way, be characterized as moot and academic. In *Osmeña III v. Social Security System of the Philippines*,[24] we defined a moot and academic case or issue as follows:

> A case or issue is considered moot and academic when it **ceases to present a justiciable controversy** by virtue of supervening events, so that an adjudication of the case or **a declaration on the issue would be of no practical value or use**. In such instance, there is **no actual substantial relief which a petitioner would be entitled to**, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it

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[24] G.R. No. 165272, 13 September 2007, 533 SCRA 313, citing *Province of Batangas v. Romulo*, G.R. No. 152774, 27 May 2004, 429 SCRA 736, 754; *Olanolan v. Comelec*, 494 Phil. 749,759 (2005); *Paloma v. CA*, 461 Phil. 269, 276-277 (2003).

on the ground of mootness — save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review.[25] (Emphasis supplied; citations omitted)

Applying the above definition to the instant case, it is obvious that there remains an unresolved justiciable controversy in the appealed case for *accion publiciana*. In particular, did respondent-spouses Oria really encroach on the land of petitioner? If they did, does he have the right to recover possession of the property? Furthermore, without preempting the disposition of the case for *accion publiciana* pending before the CA, we note that if respondents built structures on the subject land, and if they were builders in good faith, they would be entitled to appropriate rights under the Civil Code. This Court merely points out that there are still issues that the CA needs to resolve in the appealed case before it.

Moreover, there are also the questions of whether respondents should be made to pay back monthly rentals for the alleged encroachment; and whether the reward of attorney's fees, which are also being questioned, was proper. The pronouncements of the CA on these issues would certainly be of practical value to the parties. After all, should it find that there was no encroachment, for instance, respondents would be entitled to substantial relief. In view of all these considerations, it cannot be said that the main case has become moot and academic.

WHEREFORE, premises considered, the instant Petition for *Certiorari* is **DISMISSED.** The Court of Appeals Resolutions dated 4 October 2007 and 28 May 2008, which denied petitioner's Motion praying for the dismissal of respondents' appeal in CA-G.R. CV No. 87256, are hereby **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[25] *Id.* at 327.

FIRST DIVISION

[G.R. No. 184487. February 27, 2013]

HON. MEDEL ARNALDO B. BELEN, in his official capacity as Presiding Judge of the Regional Trial Court, Branch 36, 4th Judicial Region, Calamba City, *petitioner, vs.* **JOSEF ALBERT T. COMILANG,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; JUDGMENT OF DISMISSAL FROM SERVICE IN ADMINISTRATIVE CASE WILL NOT BAR REVIEW OF CONVICTION FOR INDIRECT CONTEMPT.—** It must be stressed that Judge Belen's dismissal from service as adjudged in A.M. No. RTJ-10-2216 cannot serve to bar a review of his conviction for indirect contempt. A single act may offend against two or more distinct and related provisions of law and thus give rise to criminal as well as administrative liability. A.M. No. RTJ-10-2216 was the administrative aspect while the instant case is the criminal facet of Judge Belen's act of issuing the Orders dated September 6, 2007 and September 26, 2007. Both proceedings are distinct and independent from the other such that the disposition in one case does not inevitably govern the resolution of the other case/s and vice versa.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; DUE PROCESS VIOLATED WHEN EXPLANATION TO THE CHARGES WAS UNJUSTIFIABLY IGNORED.—** [T]he Court finds that [the] conviction [of Judge Belen] for indirect contempt was procedurally defective because he was not afforded an opportunity to rebut the contempt charges against him. x x x While the essence of due process consists in giving the parties an opportunity to be heard, it also entails that when the party concerned has been so notified and thereafter complied with such notification by explaining his side, it behooves the court to admit the explanation and duly consider it in resolving the case. Despite the patent evidence, however, that the petitioner submitted his Comment and that it has been incorporated in the rollo of CA-G.R. SP No. 101081, the CA unjustifiably ignored the same.

APPEARANCES OF COUNSEL

Nelson Loyola for respondent.

R E S O L U T I O N

REYES, *J.*:

This petition for review on *certiorari*, under Rule 45 of the Rules of Court, seeks to reverse and set aside the Decision[1] dated July 3, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 101081 finding petitioner Medel Arnaldo Belen (Judge Belen) guilty of indirect contempt in his capacity as the Presiding Judge of the Regional Trial Court (RTC) of Calamba City, Laguna, Branch 36, and imposing upon him the penalty of fine in the amount of ₱30,000.00.

Likewise assailed is the CA Resolution dated August 27, 2008[2] denying reconsideration.

The Facts

The antecedents of the instant controversy are the same as the ensuing factual milieu that gave rise to A.M. No. RTJ-10-2216,[3] an administrative case filed by respondent State Prosecutor Josef Albert Comilang (State Prosecutor Comilang) against Judge Belen, *viz:*

> State Prosecutor Comilang, by virtue of Office of the Regional State Prosecutor (ORSP) Order No. 05-07 dated February 7, 2005, was designated to assist the Office of the City Prosecutor of Calamba City in the prosecution of cases. On February 16, 2005, he appeared before Judge Belen of the RTC of Calamba City, Branch 36,

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[1] Penned by Associate Justice Noel C. Tijam, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Teresita Dy-Liacco Flores, concurring; *rollo*, pp. 45-52.

[2] *Id.* at 53.

[3] *State Prosecutors II Josef Albert T. Comilang and Ma. Victoria Suñega-Lagman v. Judge Medel Arnaldo B. Belen, Regional Trial Court*, *Branch 36, Calamba City*, June 26, 2012, 674 SCRA 477.

manifesting his inability to appear on Thursdays because of his inquest duties in the Provincial Prosecutor's Office of Laguna. Thus, on February 21, 2005, he moved that all cases scheduled for hearing on February 24, 2005 before Judge Belen be deferred because he was set to appear for preliminary investigation in the Provincial Prosecutor's Office on the same day.

Instead of granting the motion, Judge Belen issued his February 24, 2005 Order in Criminal Case No. 12654-2003-C entitled *People of the Philippines v. Jenelyn Estacio ("Estacio Case")* requiring him to (1) explain why he did not inform the court of his previously-scheduled preliminary investigation and (2) pay a fine of ₱500.00 for the cancellation of all the scheduled hearings.

In response, State Prosecutor Comilang filed his Explanation with Motion for Reconsideration, followed by a Reiterative Supplemental Motion for Reconsideration with Early Resolution. **On May 30, 2005, Judge Belen directed him to explain why he should not be cited for contempt for the unsubstantiated, callous and reckless charges extant in his Reiterative Supplemental Motion, and to pay the postponement fee in the amount of ₱1,200.00 for the 12 postponed cases during the February 17, 2005 hearing.**

In his comment/explanation, State Prosecutor Comilang explained that the contents of his Reiterative Supplemental Motion were based on "his personal belief made in good faith and with grain of truth." Nonetheless, Judge Belen rendered a **Decision dated December 12, 2005 finding State Prosecutor Comilang liable for contempt of court and for payment of ₱20,000.00 as penalty. His motion for reconsideration having been denied on February 16, 2006, he filed a motion to post a supersedeas bond to stay the execution of the said Decision, which Judge Belen granted and fixed in the amount of ₱20,000.00.**

On April 12, 2006, State Prosecutor Comilang filed with the Court of Appeals (CA) a petition for *certiorari* and prohibition with prayer for temporary restraining order and/or writ of preliminary injunction docketed as CA-G.R. SP No. 94069 assailing Judge Belen's May 30, 2005 Order and December 12, 2005 Decision in the *Estacio Case*. On April 24, 2006, the CA issued a temporary restraining order (TRO) enjoining Judge Belen from executing and enforcing his assailed Order and Decision for a period of 60 days, which was subsequently extended with the issuance of a writ of preliminary injunction.

Notwithstanding the TRO, Judge Belen issued an Order **on September 6, 2007 requiring State Prosecutor Comilang to explain his refusal to file the supersedeas bond and to appear on September 26, 2007 to explain why he should not be cited indirect contempt of court.** In his Compliance, State Prosecutor Comilang cited the CA's injunctive writ putting on hold all actions of the RTC relative to its May 30, 2005 Order and December 12, 2005 Decision during the pendency of CA-G.R. SP No. 94069. He also manifested that he was waiving his appearance on the scheduled hearing for the indirect contempt charge against him.

Nevertheless, Judge Belen issued an **Order dated September 26, 2007 directing State Prosecutor Comilang to explain his defiance of the *subpoena* and why he should not be cited for indirect contempt. Judge Belen likewise ordered the Branch Clerk of Court to issue a *subpoena* for him to appear in the October 1, 2007 hearing** regarding his failure to comply with previously-issued *subpoenas* on September 18, 2007, and on October 8, 2007 for the hearing on the non-filing of his supersedeas bond. State Prosecutor Comilang moved to quash the *subpoenas* for having been issued without jurisdiction and in defiance to the lawful order of the CA, and for the inhibition of Judge Belen.

In an Order dated October 1, 2007, Judge Belen denied the motion to quash *subpoenas*, held State Prosecutor Comilang guilty of indirect contempt of court for his failure to obey a duly served *subpoena*, and sentenced him to pay a fine of ₱30,000.00 and to suffer two days' imprisonment. He was also required to post a supersedeas bond amounting to ₱30,000.00 to stay the execution of the December 12, 2005 Decision.

Aggrieved, State Prosecutor Comilang filed a complaint-affidavit on October 18, 2007 before the Office of the Court Administrator (OCA) charging Judge Belen with manifest partiality and malice, evident bad faith, inexcusable abuse of authority, and gross ignorance of the law in issuing the show cause orders, *subpoenas* and contempt citations, in grave defiance to the injunctive writ issued by the CA. x x x.[4] (Citations omitted and emphasis ours)

On June 26, 2012, the Court resolved A.M. No. RTJ-10-2216 finding Judge Belen guilty of grave abuse of authority

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[4] *Id.* at 479-482.

and gross ignorance of the law, and meting upon him the penalty of dismissal from service.[5]

Simultaneous with the filing of the administrative case, State Prosecutor Comilang also filed before the CA a petition to cite Judge Belen in contempt of court docketed as CA-G.R. SP No. 101081. State Prosecutor Comilang averred that by issuing the Orders dated September 6, 2007, requiring him to explain his failure to post a supersedeas bond, and September 26, 2007, requiring him to explain why he should not be cited for contempt for such refusal, Judge Belen openly defied the CA's injunctive writ restraining him from implementing the RTC issuances of May 30, 2005 and December 12, 2005 which cited State Prosecutor Comilang for contempt.

On July 3, 2008, the CA found Judge Belen guilty of indirect contempt for his disobedience of or resistance to lawful court orders as sanctioned in Section 3, Rule 71 of the Rules of Court. Judge Belen moved for reconsideration, but the motion was denied. Hence, the present recourse.

Judge Belen asserts that he was deprived of his right to due process because the CA proceeded to rule on the petition for contempt without considering his Comment thereon.

He further argues that he did not intend to disrespect the authority of the CA as he merely misinterpreted the import of

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[5] The dispositive portion of the Decision reads:

WHEREFORE, respondent Judge Medel Arnaldo B. Belen, having been found guilty of grave abuse of authority and gross ignorance of the law, is DISMISSED from the service, with forfeiture of all benefits except accrued leave credits, if any, and with prejudice to reemployment in the government or any subdivision, agency or instrumentality thereof, including government-owned and controlled corporations and government financial institutions. He shall forthwith CEASE and DESIST from performing any official act or function appurtenant to his office upon service on him of this Decision.

Let a copy of this Decision be attached to the records of Judge Medel Arnaldo B. Belen with the Court.

SO ORDERED. (*Id.* at 490-491.)

the injunctive writ. According to him, the writ enjoined him from enforcing, executing and implementing the RTC Order dated May 30, 2005 and Decision dated December 12, 2005; it did not prohibit or restrain him from asking an explanation from State Prosecutor Comilang for his non-compliance with the order for the posting of a supersedeas bond which he himself sought in order to hold in abeyance the RTC Decision of December 12, 2005 pending appellate review.

The Court's Ruling

The petition has partial merit.

It must be stressed that Judge Belen's dismissal from service as adjudged in A.M. No. RTJ-10-2216 cannot serve to bar a review of his conviction for indirect contempt.

A single act may offend against two or more distinct and related provisions of law and thus give rise to criminal as well as administrative liability.[6] A.M. No. RTJ-10-2216 was the administrative aspect while the instant case is the criminal facet of Judge Belen's act of issuing the Orders dated September 6, 2007 and September 26, 2007. Both proceedings are distinct and independent from the other such that the disposition in one case does not inevitably govern the resolution of the other case/s and vice versa.[7]

Nonetheless, the Court stands by its pronouncement in A.M. No. RTJ-10-2216 that the subject act of Judge Belen was contemptuous, for the reason that:

> (I)n requiring State Prosecutor Comilang to explain his non-filing of a supersedeas bond, in issuing *subpoenas* to compel his attendance before court hearings relative to the contempt proceedings, and finally, in finding him guilty of indirect contempt for his non-compliance with the issued *subpoenas*, Judge Belen effectively defeated the *status quo* which the writ of preliminary injunction aimed to preserve.

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[6] *People v. Sandiganbayan (First Division)*, G.R. No. 164577, July 5, 2010, 623 SCRA 147, 161.

[7] *Id.*

x x x x x x x x x

x x x Moreover, refusal to honor an injunctive order of a higher court constitutes contempt, x x x.[8] (Citations omitted)

However, the Court finds that his conviction for indirect contempt was procedurally defective because he was not afforded an opportunity to rebut the contempt charges against him.

Under Sections 3[9] and 4[10] of Rule 71 of the Rules of Court, the following procedural requisites must be satisfied before the accused may be punished for indirect contempt: (1) there must be an order requiring the respondent to show cause why he should not be cited for contempt; (2) the respondent must be given the opportunity to comment on the charge against him; and (3) there must be a hearing and the court must investigate the charge and consider respondent's answer. Of these requisites, the law accords utmost importance to the third as it embodies one's right to due process. Hence, it is essential that the alleged

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[8] *Supra* note 3, at 487-488.

[9] Sec. 3. *Indirect contempt to be punished after charge and hearing.*— After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

x x x x x x x x x.

[10] Sec. 4. *How proceedings commenced.*— Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

contemner be granted an opportunity to meet the charges against him and to be heard in his defenses.[11]

Prior to the issuance of its Decision dated July 3, 2008 convicting Judge Belen of indirect contempt, the CA issued a Resolution on February 15, 2008, which succinctly reads: *"Considering the report of the Judicial Records Division dated February 07, 2008 that no comment has been filed as per docket book entry, the Court RESOLVES to consider the Petition to Cite for Contempt SUBMITTED for resolution*."[12]

The records, however, reveal the contrary. As certified by CA Clerk of Court, Atty. Teresita R. Marigomen, the Comment of Judge Belen is appended in the *rollo* of CA-G.R. SP No. 101081 commencing on page 56 thereof.[13] Registry Receipt No. 140 of the Calamba Post Office further shows that the Comment was filed on January 29, 2008.[14] In fact, upon receipt of the CA Resolution dated February 15, 2008, Judge Belen submitted on March 3, 2008 a Manifestation to the CA clarifying that he has already filed his Comment.[15]

Even if the Resolution dated February 15, 2008 can be justified by the fact that the Comment reached the CA's receiving section only on February 28, 2008,[16] the CA judgment convicting Judge Belen was rendered on July 3, 2008 or at a time when the Comment was already at the Court's wherewithal. There was thus no reason for the CA to disregard the Comment by reiterating in its Decision dated July 3, 2008 that "[o]n February 15, 2008, the instant Petition was considered submitted for decision without [Judge Belen's] comment."[17]

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[11] *Esperida v. Jurado, Jr.,* G.R. No. 172538, April 25, 2012, 671 SCRA 66, 72-73.

[12] *Rollo*, p. 63.

[13] *Id.* at 65-66.

[14] *Id.* at 54-62.

[15] *Id.* at 64.

[16] *Id.* at 66.

[17] *Id.* at 49.

While the essence of due process consists in giving the parties an opportunity to be heard, it also entails that when the party concerned has been so notified and thereafter complied with such notification by explaining his side, it behooves the court to admit the explanation and duly consider it in resolving the case. Despite the patent evidence, however, that the petitioner submitted his Comment and that it has been incorporated in the *rollo* of CA-G.R. SP No. 101081, the CA unjustifiably ignored the same.

The conclusive declaration in A.M. RTJ-10-2216 that Judge Belen's disobedience to the CA's injunctive writ constitutes indirect contempt of court cannot serve as a basis for the Court to be indifferent to or ignore the obvious violation of his right to be heard, state his defenses and explain his side. The power to punish for contempt is not limitless; it must be used sparingly with caution, restraint, judiciousness, deliberation, and due regard to the provisions of the law and the constitutional rights of the individual.[18]

All told, based on the circumstances disclosed in the records, the CA failed to dutifully afford Judge Belen his right to be heard. Such failure consists of a serious procedural defect that effectively nullifies the indirect contempt proceedings.

WHEREFORE, premises considered, the instant Petition is *GRANTED*. The Decision dated July 3, 2008 and Resolution dated August 27, 2008 of the Court of Appeals in CA-G.R. SP No. 101081 are hereby **REVERSED** and **SET ASIDE.**

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Bersamin, and *Abad,*[*] *JJ.,* concur.

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[18] *Regalado v. Go,* G.R. No. 167988, February 6, 2007, 514 SCRA 616, 632.

[*] Additional member per Raffle dated February 15, 2010 *vice* Associate Justice Martin S. Villarama, Jr.

FIRST DIVISION

[G.R. No. 188363. February 27, 2013]

ALLIED BANKING CORPORATION, *petitioner, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. **CIVIL LAW; DAMAGES; DOCTRINE OF LAST CLEAR CHANCE; ASSUMES NEGLIGENCE ON THE PART OF THE DEFENDANT AND CONTRIBUTORY NEGLIGENCE ON THE PART OF THE PLAINTIFF.—** The doctrine of last clear chance, stated broadly, is that the negligence of the plaintiff does not preclude a recovery for the negligence of the defendant where it appears that the defendant, by exercising reasonable care and prudence, might have avoided injurious consequences to the plaintiff notwithstanding the plaintiff's negligence. The doctrine necessarily assumes negligence on the part of the defendant and contributory negligence on the part of the plaintiff, and does not apply except upon that assumption.

2. **ID.; DAMAGES; CONTRIBUTORY NEGLIGENCE; PRESENCE THEREOF WARRANTS SHARE IN THE LOSS.—** "Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection." Admittedly, petitioner's acceptance of the subject check for deposit despite the one year postdate written on its face was a clear violation of established banking regulations and practices. In such instances, payment should be refused by the drawee bank and returned through the PCHC within the 24-hour reglementary period. As aptly observed by the CA, petitioner's failure to comply with this basic policy regarding post-dated checks was "a telling sign of its lack of due diligence in handling checks coursed through it." x x x While it is true that respondent's liability for its negligent clearing of the check is greater, petitioner cannot take lightly its own violation of the long-standing rule against encashment of post-dated

checks and the injurious consequences of allowing such checks into the clearing system. x x x [T]he Court thus finds no error committed by the CA in allocating the resulting loss from the wrongful encashment of the subject check on a 60-40 ratio.

APPEARANCES OF COUNSEL

Allied Banking Corporation for petitioner.
Benedicto Verzosa Felipe & Burkley for respondent.

D E C I S I O N

VILLARAMA, JR., ***J.*:**

A collecting bank is guilty of contributory negligence when it accepted for deposit a post-dated check notwithstanding that said check had been cleared by the drawee bank which failed to return the check within the 24-hour reglementary period.

Petitioner Allied Banking Corporation appeals the Decision[1] dated March 19, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 97604 which set aside the Decision[2] dated December 13, 2005 of the Regional Trial Court (RTC) of Makati City, Branch 57 in Civil Case No. 05-418.

The factual antecedents:

On October 10, 2002, a check in the amount of ₱1,000,000.00 payable to "Mateo Mgt. Group International" (MMGI) was presented for deposit and accepted at petitioner's Kawit Branch. The check, post-dated "**Oct. 9, 2003,**" was drawn against the account of Marciano Silva, Jr. (Silva) with respondent Bank of the Philippine Islands (BPI) Bel-Air Branch. Upon receipt, petitioner sent the check for clearing to respondent through the Philippine Clearing House Corporation (PCHC).[3]

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[1] *Rollo,* pp. 27-33-A. Penned by Associate Justice Edgardo P. Cruz with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario concurring.

[2] *Id.* at 56-61. Penned by Judge Reinato G. Quilala.

[3] *Id.* at 27, 270, 276-279, 314.

The check was cleared by respondent and petitioner credited the account of MMGI with ₱1,000,000.00. On October 22, 2002, MMGI's account was closed and all the funds therein were withdrawn. A month later, Silva discovered the debit of ₱1,000,000.00 from his account. In response to Silva's complaint, respondent credited his account with the aforesaid sum.[4]

On March 21, 2003, respondent returned a photocopy of the check to petitioner for the reason: "Postdated." Petitioner, however, refused to accept and sent back to respondent a photocopy of the check. Thereafter, the check, or more accurately, the Charge Slip, was tossed several times from petitioner to respondent, and back to petitioner, until on May 6, 2003, respondent requested the PCHC to take custody of the check. Acting on the request, PCHC directed the respondent to deliver the original check and informed it of PCHC's authority under Clearing House Operating Memo (CHOM) No. 279 dated 06 September 1996 to split 50/50 the amount of the check subject of a "*Ping-Pong*" controversy which shall be implemented thru the issuance of Debit Adjustment Tickets against the outward demands of the banks involved. PCHC likewise encouraged respondent to submit the controversy for resolution thru the PCHC Arbitration Mechanism.[5]

However, it was petitioner who filed a complaint[6] before the Arbitration Committee, asserting that respondent should solely bear the entire face value of the check due to its negligence in failing to return the check to petitioner within the 24-hour reglementary period as provided in Section 20.1[7] of the Clearing

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

[5] *Id.* at 28, 240-242, 360.

[6] *Id.* at 233-239.

[7] SEC. 20 - REGULAR RETURN ITEM PROCEDURE

20.1. Any cheque/item sent for clearing through the PCHC on which payment should be refused by the Drawee Bank in accordance with long standing and accepted banking practices, such as but not limited to the fact that:

House Rules and Regulations[8] (CHRR) 2000. Petitioner prayed that respondent be ordered to reimburse the sum of ₱500,000.00 with 12% interest per annum, and to pay attorney's fees and other arbitration expenses.

In its Answer with Counterclaims,[9] respondent charged petitioner with gross negligence for accepting the post-dated check in the first place. It contended that petitioner's admitted negligence was the sole and proximate cause of the loss.

On December 8, 2004, the Arbitration Committee rendered its Decision[10] in favor of petitioner and against the respondent. First, it ruled that the situation of the parties does not involve a "Ping-Pong" controversy since the subject check was neither returned within the reglementary time or through the PCHC return window, nor coursed through the clearing facilities of the PCHC.

As to respondent's direct presentation of a photocopy of the subject check, it was declared to be without legal basis because Section 21.1[11] of the CHRR 2000 does not apply to post-dated

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a) it bears the forged or unauthorized signature of the drawer(s); or
b) it is drawn against a closed account; or
c) it is drawn against insufficient funds; or
d) payment thereof has been stopped; or
e) ***it is post-dated*** or stale-dated or out-of-date; or
f) it is a cashier's/manager's/treasurer's cheque of the drawee which has been materially altered; and
g) it is a counterfeit/spurious cheque shall be returned through the PCHC not later than the next regular clearing for local exchanges and the acceptance of said return by the Sending Bank shall be mandatory. (*Rollo*, p. 165-A.)

[8] Effective October 2, 2000. (Board Resolution No. 10-2000).

[9] *Rollo*, pp. 246-248.

[10] *Id.* at 325-337.

[11] SEC. 21 - SPECIAL RETURN ITEMS BEYOND THE REGLEMENTARY CLEARING PERIOD

21.1. Items which have been the subject of a material alteration or items bearing a forged endorsement and/or lack of endorsement

checks. The Arbitration Committee further noted that respondent not only failed to return the check within the 24-hour reglementary period, it also failed to institute any formal complaint within the contemplation of Section 20.3[12] and it appears that respondent was already contented with the 50-50 split initially implemented by the PCHC. Finding both parties negligent in the performance of their duties, the Committee applied the doctrine of "Last Clear Chance" and ruled that the loss should be shouldered by respondent alone, thus:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Allied Banking Corporation and against defendant Bank of the Philippine Islands, ordering the latter to pay the former the following:

(a) The sum of ₱500,000.00, plus interest thereon at the rate of 12% per annum counted from the date of filing of the complaint;

(b) Attorney's fees in the amount of ₱25,000.00;

(c) The sum of ₱2,090.00 as and by way of reimbursement of filing fees, plus the cost of suit.

SO ORDERED.[13]

Respondent filed a motion for reconsideration[14] but it was denied by the PCHC Board of Directors under Board Resolution No. 10-2005[15] dated April 22, 2005. The Board pointed out

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x x x shall be returned by direct presentation or demand to the Presenting Bank and not through the regular clearing house facilities within five (5) years from date of presentation in clearing. (*Rollo*, p. 166.)

[12] SEC. 20. REGULAR RETURN ITEM PROCEDURE

x x x x x x x x x

20.3. However, the right of the Drawee Bank to recover the amount of the item(s) returned shall remain to be governed by the general principles of law when the defect(s) are discovered after the "reglementary period." (*Id.* at 165-A.)

[13] *Rollo,* p. 335.

[14] *Id.* at 338-344.

[15] *Id.* at 351-359.

that what actually transpired was a "ping-pong" "not of a check but of a Charge Slip (CS) enclosed in a carrier envelope that went back and forth through the clearing system in apparent reaction by [petitioner] to the wrongful return via the PCHC clearing system." Respondent's conduct was held as a "gross and unmistakably deliberate violation" of Section 20.2,[16] in relation to Section 20.1(e) of the CHRR 2000.[17]

On May 13, 2005, respondent filed a petition for review[18] in the RTC claiming that PCHC erred in constricting the return of a post-dated check to Section 20.1, overlooking the fact that Section 20.3 is also applicable which provision necessarily contemplates defects that are referred to in Section 20.1 as both sections are subsumed under the general provision (Section 20) on the return of regular items. Respondent also argued that assuming it to be liable, the PCHC erred in holding it solely responsible and should bear entirely the consequent loss considering that while respondent may have the "last" opportunity in proximity, it was petitioner which had the longest, fairest and clearest chance to discover the mistake and avoid the happening of the loss. Lastly, respondent assailed the award of attorney's fees, arguing that PCHC's perception of "malice" against it and misuse of the clearing machinery is clearly baseless and unfounded.

In its Decision dated December 13, 2005, the RTC affirmed with modification the Arbitration Committee's decision by deleting the award of attorney's fees. The RTC found no merit in respondent's stance that through inadvertence it failed to discover that the check was post-dated and that confirmation within 24 hours is often "elusive if not outright impossible" because a

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[16] SEC. 20. REGULAR RETURN ITEM PROCEDURE

x x x x x x x x x

20.2. Failure of the Drawee Bank to return such items within said "reglementary period" shall deprive the Bank of its right to return the items thru the PCHC. (*Rollo*, p. 165-A.)

[17] *Rollo*, p. 356.

[18] Records, pp. 1-24.

drawee bank receives hundreds if not thousands of checks in an ordinary clearing day. Thus:

> Petitioner admitted par. 4 in its Answer with Counterclaim and in its Memorandum, further adding that upon receipt of the subject check "through inadvertence," it did not notice that the check was postdated, hence, petitioner did not return the same to respondent."
>
> These contradict petitioner's belated contention that it discovered the defect only after the lapse of the reglementary period. What the evidence on record discloses is that petitioner received the check on October 10, 2002, that it was promptly sent for clearing, that through inadvertence, it did not notice that the check was postdated. Petitioner did not even state when it discovered the defect in the subject check.
>
> Likewise, petitioner's contention that its discovery of the defect was a non-issue in view of the admissions made in its Answer is unavailing. The Court has noted the fact that the PCHC Arbitration Committee conducted a clarificatory hearing during which petitioner admitted that its standard operating procedure as regards confirmation of checks was not followed. No less than petitioner's witness admitted that BPI tried to call up the drawer of the check, as their procedure dictates when it comes to checks in large amounts. However, having initially failed to contact the drawer, no follow up calls were made nor other actions taken. Despite these, petitioner cleared the check. **Having admitted making said calls, it is simply impossible for petitioner to have missed the fact that the check was postdated**.[19] (Emphasis supplied)

With the denial of its motion for partial reconsideration, respondent elevated the case to the CA by filing a petition for review under Rule 42 of the 1997 Rules of Civil Procedure, as amended.

By Decision dated March 19, 2009, the CA set aside the RTC judgment and ruled for a 60-40 sharing of the loss as it found petitioner guilty of contributory negligence in accepting what is clearly a post-dated check. The CA found that petitioner's failure to notice the irregularity on the face of the check was

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[19] *Rollo,* p. 59.

a breach of its duty to the public and a telling sign of its lack of due diligence in handling checks coursed through it. While the CA conceded that the drawee bank has a bigger responsibility in the clearing of checks, it declared that the presenting bank cannot take lightly its obligation to make sure that only valid checks are introduced into the clearing system. According to the CA, considerations of public policy and substantial justice will be served by allocating the damage on a 60-40 ratio, as it thus decreed:

WHEREFORE, the decision of the Regional Trial Court of Makati City (Branch 57) dated December 13, 2005 is ANNULLED and SET ASIDE and judgment is rendered ordering petitioner to pay respondent Allied Banking Corporation the sum of ₱100,000.00 plus interest thereon at the rate of 6% from July 10, 2003, which shall become 12% per annum from finality hereof, until fully paid, aside from costs.

SO ORDERED.[20]

Its motion for reconsideration having been denied by the CA, petitioner is now before the Court seeking a partial reversal of the CA's decision and affirmance of the December 13, 2005 Decision of the RTC.

Essentially, the two issues for resolution are: (1) whether the doctrine of last clear chance applies in this case; and (2) whether the 60-40 apportionment of loss ordered by the CA was justified.

As well established by the records, both petitioner and respondent were admittedly negligent in the encashment of a check post-dated one year from its presentment.

Petitioner argues that the CA should have sustained PCHC's finding that despite the antecedent negligence of petitioner in accepting the post-dated check for deposit, respondent, by exercising reasonable care and prudence, might have avoided injurious consequences had it not negligently cleared the check in question. It pointed out that in applying the doctrine of last

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[20] *Id.* at 33 to 33-A.

clear chance, the PCHC cited the case of *Philippine Bank of Commerce v. Court of Appeals*[21] which ruled that assuming the bank's depositor, private respondent, was negligent in entrusting cash to a dishonest employee, thus providing the latter with the opportunity to defraud the company, it cannot be denied that petitioner bank had the last clear opportunity to avert the injury incurred by its client, simply by faithfully observing their self-imposed validation procedure.

Petitioner underscores respondent's failure to observe clearing house rules and its own standard operating procedure which, the PCHC said constitute further negligence so much so that respondent should be solely liable for the loss. Specifically, respondent failed to return the subject check within the 24-hour reglementary period under Section 20.1 and to institute any formal complaint within the contemplation of Section 20.3 of the CHRR 2000. The PCHC likewise faulted respondent for not making follow-up calls or taking any other action after it initially attempted, without success, to contact by telephone the drawer of the check, and clearing the check despite such lack of confirmation from its depositor in violation of its own standard procedure for checks involving large amounts.

The doctrine of last clear chance, stated broadly, is that the negligence of the plaintiff does not preclude a recovery for the negligence of the defendant where it appears that the defendant, by exercising reasonable care and prudence, might have avoided injurious consequences to the plaintiff notwithstanding the plaintiff's negligence.[22] The doctrine necessarily assumes negligence on the part of the defendant and contributory negligence on the part of the plaintiff, and does not apply except upon that assumption.[23] Stated differently, the antecedent negligence of the plaintiff does not preclude him from recovering damages caused by the supervening negligence of the defendant, who

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[21] 336 Phil. 667, 681 (1997).

[22] *Bustamante v. Court of Appeals,* 271 Phil. 633, 641-642 (1991).

[23] J. Cezar S. Sangco, PHILIPPINE LAW ON TORTS AND DAMAGES, 1993 Edition, Vol. I, p. 77.

had the last fair chance to prevent the impending harm by the exercise of due diligence.[24] Moreover, in situations where the doctrine has been applied, it was defendant's failure to exercise such ordinary care, having the last clear chance to avoid loss or injury, which was the proximate cause of the occurrence of such loss or injury.[25]

In this case, the evidence clearly shows that the proximate cause of the unwarranted encashment of the subject check was the negligence of respondent who cleared a post-dated check sent to it thru the PCHC clearing facility without observing its own verification procedure. As correctly found by the PCHC and upheld by the RTC, if only respondent exercised ordinary care in the clearing process, it could have easily noticed the glaring defect upon seeing the date written on the face of the check "Oct. 9, 2003." Respondent could have then promptly returned the check and with the check thus dishonored, petitioner would have not credited the amount thereof to the payee's account. Thus, notwithstanding the antecedent negligence of the petitioner in accepting the post-dated check for deposit, it can seek reimbursement from respondent the amount credited to the payee's account covering the check.

What petitioner omitted to mention is that in the cited case of *Philippine Bank of Commerce v. Court of Appeals,*[26] while the Court found petitioner bank as the culpable party under the doctrine of last clear chance since it had, thru its teller, the last opportunity to avert the injury incurred by its client simply by faithfully observing its own validation procedure, it nevertheless ruled that the plaintiff depositor (private respondent) must share in the loss on account of its *contributory negligence.* Thus:

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[24] *The Consolidated Bank & Trust Corporation v. Court of Appeals,* 457 Phil. 688, 712 (2003), citing *Philippine Bank of Commerce v. Court of Appeals, supra* note 21, at 680.

[25] *Supra* note 23, at 76.

[26] *Supra* note 21.

The foregoing notwithstanding, it cannot be denied that, indeed, private respondent was likewise negligent in not checking its monthly statements of account. Had it done so, the company would have been alerted to the series of frauds being committed against RMC by its secretary. The damage would definitely not have ballooned to such an amount if only RMC, particularly Romeo Lipana, had exercised even a little vigilance in their financial affairs. **This omission by RMC amounts to contributory negligence which shall mitigate the damages that may be awarded to the private respondent under Article 2179 of the New Civil Code,** to wit:

> "x x x. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. *But if his negligence was only contributory*, the immediate and proximate cause of the injury being the defendant's lack of due care, *the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded*."

In view of this, we believe that the demands of substantial justice are satisfied by **allocating the damage on a 60-40 ratio.** Thus, 40% of the damage awarded by the respondent appellate court, except the award of ₱25,000.00 attorney's fees, shall be borne by private respondent RMC; only the balance of 60% needs to be paid by the petitioners. The award of attorney's fees shall be borne exclusively by the petitioners.[27] (Italics in the original; emphasis supplied)

In another earlier case,[28] the Court refused to hold petitioner bank solely liable for the loss notwithstanding the finding that the proximate cause of the loss was due to its negligence. Since the employees of private respondent bank were likewise found negligent, its claim for damages is subject to mitigation by the courts. Thus:

Both banks were negligent in the selection and supervision of their employees resulting in the encashment of the forged checks by an impostor. Both banks were not able to overcome the presumption of negligence in the selection and supervision of their employees. It was the gross negligence of the employees of both banks which

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[27] *Id.* at 682-683.

[28] *Bank of the Philippine Islands v. Court of Appeals,* G.R. No. 102383, November 26, 1992, 216 SCRA 51.

resulted in the fraud and the subsequent loss. **While it is true that petitioner BPI's negligence may have been the proximate cause of the loss, respondent CBC's negligence contributed equally to the success of the impostor in encashing the proceeds of the forged checks.** Under these circumstances, we apply Article 2179 of the Civil Code to the effect that while respondent CBC may recover its losses, such losses are subject to mitigation by the courts. x x x

Considering the comparative negligence of the two (2) banks, we rule that the demands of substantial justice are satisfied by allocating the loss of ₱2,413,215.16 and the costs of the arbitration proceedings in the amount of ₱7,250.00 and the costs of litigation on a 60-40 ratio. Conformably with this ruling, no interests and attorney's fees can be awarded to either of the parties.[29] (Emphasis supplied)

Apportionment of damages between parties who are both negligent was followed in subsequent cases involving banking transactions notwithstanding the court's finding that one of them had the last clear opportunity to avoid the occurrence of the loss.

In *Bank of America NT & SA v. Philippine Racing Club*,[30] the Court ruled:

In the case at bar, petitioner cannot evade responsibility for the loss by attributing negligence on the part of respondent because, even if we concur that the latter was indeed negligent in pre-signing blank checks, the former had the last clear chance to avoid the loss. To reiterate, petitioner's own operations manager admitted that they could have called up the client for verification or confirmation before honoring the dubious checks. Verily, petitioner had the final opportunity to avert the injury that befell the respondent. x x x Petitioner's negligence has been undoubtedly established and, thus, pursuant to Art. 1170 of the NCC, it must suffer the consequence of said negligence.

In the interest of fairness, however, we believe it is proper to consider respondent's own negligence to mitigate petitioner's liability. Article 2179 of the Civil Code provides:

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[29] *Id.* at 77.

[30] G.R. No. 150228, July 30, 2009, 594 SCRA 301.

x x x x x x x x x

Explaining this provision in *Lambert v. Heirs of Ray Castillon*, the Court held:

> "The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence. The defendant must thus be held liable only for the damages actually caused by his negligence. xxx xxx xxx"

x x x x x x x x x

Following established jurisprudential precedents, we believe the allocation of sixty percent (60%) of the actual damages involved in this case (represented by the amount of the checks with legal interest) to petitioner is proper under the premises. **Respondent should, in light of its contributory negligence, bear forty percent (40%) of its own loss.**[31] (Emphasis supplied)

In *Philippine National Bank v. F.F. Cruz and Co., Inc.*,[32] the Court made a similar disposition, thus:

Given the foregoing, we find no reversible error in the findings of the appellate court that PNB was negligent in the handling of FFCCI's combo account, specifically, with respect to PNB's failure to detect the forgeries in the subject applications for manager's check which could have prevented the loss. x x x PNB failed to meet the high standard of diligence required by the circumstances to prevent the fraud. In *Philippine Bank of Commerce v. Court of Appeals* and *The Consolidated Bank & Trust Corporation v. Court of Appeals,* where the bank's negligence is the proximate cause of the loss and the depositor is guilty of contributory negligence, we allocated the damages between the bank and the depositor on a 60-40 ratio. We apply the same ruling in this case considering that, as shown above, PNB's negligence is the proximate cause of the loss while the issue as to FFCCI's contributory negligence has been settled with finality in G.R. No. 173278. Thus, the appellate court properly adjudged PNB to bear the greater part of the loss consistent with these rulings.[33]

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[31] *Id.* at 313-316.

[32] G.R. No. 173259, July 25, 2011, 654 SCRA 333.

[33] *Id.* at 340-341.

"Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection."[34] Admittedly, petitioner's acceptance of the subject check for deposit despite the one year postdate written on its face was a clear violation of established banking regulations and practices. In such instances, payment should be refused by the drawee bank and returned through the PCHC within the 24-hour reglementary period. As aptly observed by the CA, petitioner's failure to comply with this basic policy regarding post-dated checks was "a telling sign of its lack of due diligence in handling checks coursed through it."[35]

It bears stressing that "the diligence required of banks is more than that of a Roman *pater familias* or a good father of a family. The highest degree of diligence is expected,"[36] considering the nature of the banking business that is imbued with public interest. While it is true that respondent's liability for its negligent clearing of the check is greater, petitioner cannot take lightly its own violation of the long-standing rule against encashment of post-dated checks and the injurious consequences of allowing such checks into the clearing system.

Petitioner repeatedly harps on respondent's transgression of clearing house rules when the latter resorted to direct presentment way beyond the reglementary period but glosses over its own negligent act that clearly fell short of the conduct expected of it as a collecting bank. Petitioner must bear the consequences

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[34] *Philippine National Bank v. Cheah Chee Chong,* G.R. Nos. 170865 & 170892, April 25, 2012, 671 SCRA 49, 64, citing *Valenzuela v. Court of Appeals,* 323 Phil. 374, 388 (1996).

[35] *Rollo*, p. 32.

[36] *Philippine National Bank v. Cheah Chee Chong, supra* note 34, at 62, citing *Philippine Savings Bank v. Chowking Food Corporation,* G.R. No. 177526, July 4, 2008, 557 SCRA 318, 330; *Bank of the Philippine Islands v. Court of Appeals*, 383 Phil. 538, 554 (2000); *Philippine Bank of Commerce v. Court of Appeals, supra* note 21, at 681; and *Philippine Commercial International Bank v. Court of Appeals,* 403 Phil. 361, 388 (2001).

of its omission to exercise extraordinary diligence in scrutinizing checks presented by its depositors.

Assessing the facts and in the light of the cited precedents, the Court thus finds no error committed by the CA in allocating the resulting loss from the wrongful encashment of the subject check on a 60-40 ratio.

WHEREFORE, the petition for review on *certiorari* is **DENIED.** The Decision dated March 19, 2009 of the Court of Appeals in CA-G.R. SP No. 97604 is hereby **AFFIRMED.**

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 188551. February 27, 2013]

EDMUNDO ESCAMILLA *y* JUGO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSAILANT SUFFICIENTLY IDENTIFIED.—** [T]he identity of the assailant was proved with moral certainty by the prosecution, which presented three witnesses who all positively identified him as the shooter. We have held that a categorical and consistently positive identification of the accused, without any showing of ill motive on the part of the eyewitnesses, prevails over denial. All the three witnesses were unswerving in their testimonies pointing to him as the shooter. None of them had any ulterior motive to testify against him.

2. **CRIMINAL LAW; HOMICIDE; INTENT TO KILL; MANIFESTED BY THE CONTINUOUS FIRING AT THE VICTIM EVEN AFTER HE WAS HIT; CASE AT BAR.—** The intent to kill, as an essential element of homicide at whatever stage, may be before or simultaneous with the infliction of injuries. The evidence to prove intent to kill may consist of, *inter alia*, the means used; the nature, location and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of, or immediately after the killing of the victim. Petitioner's intent to kill was simultaneous with the infliction of injuries. Using a gun, he shot the victim in the chest. x x x [P]etitioner continued to shoot at him three more times, albeit unsuccessfully. x x x The doctor said that the victim would have died if the latter were not brought immediately to the hospital. All these facts belie the absence of petitioner's intent to kill the victim.

3. **REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; REQUISITE CONDITIONS.—** In order for alibi to prosper, petitioner must establish by clear and convincing evidence that, first, he was in another place at the time of the offense; **and**, *second*, it was physically impossible for him to be at the scene of the crime.

APPEARANCES OF COUNSEL

U.P. Office of Legal Aid for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari*[1] dated 20 August 2009. It seeks a review of the 10 June 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR. No. 30456, which denied the Motion for Reconsideration[3] of the 10 November 2008 CA

[1] *Rollo,* pp. 3-17.

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

[3] *Id.* at 36-42.

Decision[4] affirming the conviction of Edmundo Escamilla (petitioner) for frustrated homicide.

BACKGROUND

The facts of this case, culled from the records, are as follows:

Petitioner has a house with a *sari-sari* store along Arellano Street, Manila.[5] The victim, Virgilio Mendol (Mendol), is a tricycle driver whose route traverses the road where petitioner's store is located.[6]

Around 2:00 a.m. of 01 August 1999, a brawl ensued at the corner of Estrada and Arellano Streets, Manila.[7] Mendol was about to ride his tricycle at this intersection while facing Arellano Street.[8] Petitioner, who was standing in front of his store, 30 meters away from Mendol,[9] shot the latter four times, hitting him once in the upper right portion of his chest.[10] The victim was brought to *Ospital ng* Makati for treatment[11] and survived because of timely medical attention.[12]

The Assistant City Prosecutor of Manila filed an Information[13] dated 01 December 1999 charging petitioner with frustrated homicide. The Information reads:

> That on or about August 1, 1999, in the City of Manila, Philippines, the said accused, with intent to kill, did then and there wilfully,

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[4] *Id.* at 22-35.

[5] *Id.* at 24.

[6] *Id.*

[7] *Id.* at 24-26.

[8] TSN, 31 October 2000, p. 4.

[9] *Rollo,* p. 57.

[10] *Id.* at 31.

[11] *Id.* at 24.

[12] Records, p. 1.

[13] *Rollo,* p. 23.

unlawfully and feloniously attack, assault and use personal violence upon the person of one Virgilio Mendol, by then and there shooting the latter with a .9mm Tekarev pistol with Serial No. 40283 hitting him on the upper right portion of his chest, thereby inflicting upon him gunshot wound which is necessarily fatal and mortal, thus performing all the acts of execution which should have produced the crime of Homicide as a consequence, but nevertheless did not produce it by reason of causes, independent of his will, that is, by the timely and able medical assistance rendered to said Virgilio Mendol which prevented his death.

CONTRARY TO LAW.

Upon arraignment, petitioner pleaded not guilty.[14] During trial, the prosecution presented the testimonies of Mendol, Joseph Velasco (Velasco) and Iluminado Garcelazo (Garcelazo), who all positively identified him as the shooter of Mendol.[15] The doctor who attended to the victim also testified.[16] The documentary evidence presented included a sketch of the crime scene, the Medical Certificate issued by the physician, and receipts of the medical expenses of Mendol when the latter was treated for the gunshot wound.[17] In the course of the presentation of the prosecution witnesses, the defense requested an ocular inspection of the crime scene, a request that was granted by the court.[18] On the other hand, the defense witnesses are petitioner himself, his wife, Velasco and *Barangay Tanod* George Asumbrado (Asumbrado).[19] The defense offered the results of the paraffin test of petitioner and the transcript of stenographic notes taken during the court's ocular inspection of the crime scene.[20]

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[14] *Id.*

[15] *Id.* at 23-25.

[16] *Id.*

[17] *Id.* at 25.

[18] TSN, 10 July 2001, p. 10.

[19] *Rollo,* pp. 23-29.

[20] *Id.* at 29.

The Regional Trial Court (RTC) held that the positive testimonies of eyewitnesses deserve far more weight and credence than the defense of alibi.[21] Thus, it found petitioner guilty of frustrated homicide.[22] The dispositive portion reads:

> WHEREFORE, the Court finds the accused Edmund Escamilla *Y* Jugo GUILTY beyond reasonable doubt of the crime of Frustrated Homicide under Articles 249 and 50 [sic] of the Revised Penal Code, and hereby sentences the accused to suffer an indeterminate sentence of six (6) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum. Accused is hereby ordered to indemnify complainant Virgilio Mendol the sum of ₱34,305.16 for actual damages, ₱30,000.00 for moral damages.
>
> SO ORDERED.[23]

Petitioner filed a Notice of Appeal dated 14 July 2006.[24] In the brief that the CA required him to file,[25] he questioned the credibility of the prosecution witnesses over that of the defense.[26] On the other hand, the Appellee's Brief[27] posited that the prosecution witnesses were credible, because there were no serious discrepancies in their testimonies.[28] Petitioner, in his Reply brief,[29] said that the prosecution witnesses did not actually see him fire the gun.[30] Furthermore, his paraffin test yielded a negative result.[31]

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[21] *Id.*

[22] *Id.*

[23] CA *rollo*, pp. 29 and 39.

[24] *Id.* at 41.

[25] *Id.* at 57.

[26] *Rollo*, pp. 30-31.

[27] CA *rollo*, pp. 117-128.

[28] *Id.* at 122-124.

[29] *Id.* at 131-142.

[30] *Id.* at 133-136.

[31] *Id.* at 137.

The CA, ruling against petitioner, held that the issue of the credibility of witnesses is within the domain of the trial court, which is in a better position to observe their demeanor.[32] Thus, the CA upheld the RTC's appreciation of the credibility of the prosecution witnesses in the present case.[33] Also, the CA ruled that the victim's positive and unequivocal identification of petitioner totally destroyed his defense of alibi. Hence, it found no reason to disbelieve Mendol's testimony.[34] In addition, it said that a paraffin test is not a conclusive proof that a person has not fired a gun and is inconsequential when there is a positive identification of petitioner.[35]

A Motion for Reconsideration[36] dated 08 December 2008 was filed by petitioner, who asserted that the defense was able to discredit the testimony of the victim.[37]

In its 10 June 2009 Resolution,[38] the CA denied petitioner's Motion for Reconsideration for being without merit, because the matters discussed therein had already been resolved in its 10 November 2008 Decision.[39]

Hence, this Petition[40] assailing the application to this case of the rule that the positive identification of the accused has more weight than the defense of alibi.[41] This Court resolved to require the prosecution to comment on the Petition.[42] In his

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[32] *Rollo*, p. 31.

[33] *Id.* at 32-33.

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

[35] *Id.* at 31.

[36] *Id.* at 36-42.

[37] *Id.* at 37-39.

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

[39] *Id.* at 45.

[40] *Id.* at 3-17.

[41] *Id.* at 8.

[42] *Id.* at 100.

Comment[43] dated 15 December 2009, the victim said that his positive identification of petitioner was a direct evidence that the latter was the author of the crime.[44] Furthermore, what petitioner raised was allegedly a question of fact, which is proscribed by a Rule 45 petition.[45] Thus, the victim alleged, there being no new or substantial matter or question of law raised, the Petition should be denied.[46]

We then obliged petitioner to file a reply.[47] In his Reply dated 01 March 2010,[48] he assigned as an error the application by the CA of the rule that the positive identification of the accused has more weight than the defense of alibi.[49] He posits that the lower court manifestly overlooked relevant facts not disputed by the parties, but if properly considered would justify a different conclusion.[50] This Court, he said, should then admit an exception to the general rule that the findings of fact of the CA are binding upon the Supreme Court.[51]

ISSUES

The questions before us are as follows:

I. Whether the prosecution established petitioner's guilt beyond reasonable doubt.[52]

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[43] *Id.* at 106-114.

[44] *Id.* at 110.

[45] *Id.* at 112.

[46] *Id.*

[47] *Id.* at 115.

[48] *Id.* at 118-124.

[49] *Id.* at 119.

[50] *Id.* at 121.

[51] *Id.* at 120-122.

[52] *Id.*

II. Whether a defense of alibi, when corroborated by a disinterested party, overcomes the positive identification by three witnesses.[53]

COURT'S RULING

We deny the Petition.

I. The prosecution proved petitioner's guilt beyond reasonable doubt.

A. Petitioner was positively identified by three witnesses.

Petitioner argues that there was reasonable doubt as to the identity of the shooter.[54] He is wrong. As correctly held by the RTC and affirmed by the CA, the identity of the assailant was proved with moral certainty by the prosecution, which presented three witnesses — the victim Mendol, Velasco, and Garcelazo — who all positively identified him as the shooter.[55] We have held that a categorical and consistently positive identification of the accused, without any showing of ill motive on the part of the eyewitnesses, prevails over denial.[56] All the three witnesses were unswerving in their testimonies pointing to him as the shooter. None of them had any ulterior motive to testify against him.

Mendol said that he was about to ride his tricycle at the corner of Arellano and Estrada Streets, when petitioner, who was in front of the former's store, shot him.[57] The first shot hit its target, but petitioner continued to fire at the victim three more times, and the latter then started to run away.[58]

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[53] *Id.* at 8.

[54] *Rollo,* p. 10.

[55] *Id.* at 32-33.

[56] *Anilao v. People,* G.R. No. 149681, 15 October 2007, 536 SCRA 98.

[57] TSN, 31 October 2000, p. 4.

[58] TSN, 02 April 2002, p. 8.

Velasco, who was also at the corner of Estrada and Arellano Streets, heard the first shot, looked around, then saw petitioner firing at Mendol three more times.[59]

Lastly, Garcelazo testified that while he was buying bread from a bakery at that same street corner, he heard three shots before he turned his head and saw petitioner pointing a gun at the direction of the victim, who was bloodied in the right chest.[60] Garcelazo was just an arm's length away from him.[61]

The three witnesses had a front view of the face of petitioner, because they were all facing Arellano Street from its intersection with Estrada Street, which was the *locus criminis*.[62] Although the crime happened in the wee hours of the morning, there was a street lamp five meters from where petitioner was standing when he shot the victim, thus allowing a clear view of the assailant's face.[63] They all knew petitioner, because they either bought from or passed by his store.[64]

B. The intent to kill was shown by the continuous firing at the victim even after he was hit.

Petitioner claims that the prosecution was unable to prove his intent to kill.[65] He is mistaken. The intent to kill, as an essential element of homicide at whatever stage, may be before or simultaneous with the infliction of injuries.[66] The evidence to prove intent to kill may consist of, *inter alia,* the means used;

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[59] TSN, 08 March 2004, p. 13.

[60] TSN, 11 August 2003, pp. 5-9.

[61] *Id.* at 10.

[62] TSN, 31 October 2000, pp. 4-6; 22 April 2002, pp. 5-6; and 11 August 2003, pp. 5-6.

[63] *Rollo,* p. 57.

[64] TSN, 31 October 2000, p. 6; 22 April 2002, p. 9; and 11 August 2003, p. 7.

[65] *Rollo,* p. 12.

[66] *Mahawan v. People*, G.R. No. 176609, 18 December 2008, 574 SCRA 737.

the nature, location and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of, or immediately after the killing of the victim.[67]

Petitioner's intent to kill was simultaneous with the infliction of injuries. Using a gun,[68] he shot the victim in the chest. [69] Despite a bloodied right upper torso, the latter still managed to run towards his house to ask for help. [70] Nonetheless, petitioner continued to shoot at him three more times,[71] albeit unsuccessfully.[72] While running, the victim saw his nephew in front of the house and asked for help.[73] The victim was immediately brought to the hospital on board an owner-type jeep.[74] The attending physician, finding that the bullet had no point of exit, did not attempt to extract it; its extraction would just have caused further damage.[75] The doctor further said that the victim would have died if the latter were not brought immediately to the hospital.[76] All these facts belie the absence of petitioner's intent to kill the victim.

II. Denial and alibi were not proven.

In order for alibi to prosper, petitioner must establish by clear and convincing evidence that, *first,* he was in another place at the time of the offense; **and**, *second,* it was physically impossible for him to be at the scene of the crime.[77] The

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[67] *Id.*

[68] TSN, 02 April 2002, p. 9.

[69] *Id.* at 8.

[70] *Id.*

[71] *Id.*

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

[73] TSN, 31 October 2000, p.10.

[74] TSN, 02 April 2002, p.10.

[75] TSN, 14 January 2003, p. 13.

[76] *Id.* at 13-14.

[77] *People v. Erguiza,* G.R. No. 171348, 26 November 2008, 571 SCRA 634.

appreciation of the defense of alibi is pegged against this standard and nothing else. Petitioner, as found by both the RTC and CA, failed to prove the presence of these two requisite conditions. Hence, he was wrong in asserting that alibi, when corroborated by other witnesses, succeeds as a defense over positive identification.[78]

A. Petitioner was unable to establish that he was at home at the time of the offense.

The alibi of petitioner was that he was at home asleep with his wife when Mendol was shot.[79] To support his claim, petitioner presented the testimonies of his wife and Asumbrado.[80]

1. The wife of petitioner did not know if he was at home when the shooting happened.

The wife of petitioner testified that both of them went to sleep at 9:00 p.m. and were awakened at 3:00 a.m. by the banging on their door.[81] However, she also said that she did not know if petitioner stayed inside their house, or if he went somewhere else during the entire time she was asleep.[82] Her testimony does not show that he was indeed at home when the crime happened. At the most, it only establishes that he was at home before and after the shooting. Her lack of knowledge regarding his whereabouts between 1:00 a.m. and 3:00 a.m. belies the credibility of his alibi. Even so, the testimonies of relatives deserve scant consideration, especially when there is positive identification[83] by three witnesses.

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[78] *Rollo,* p. 9.

[79] *Id.*

[80] *Id.*

[81] TSN, 08 March 2004, pp. 4-5.

[82] *Id.* at 6.

[83] *People v. Lucas*, 260 Phil. 334 (1990).

2. Asumbrano did not see the entire face of the shooter.

Petitioner is questioning why neither the RTC nor the CA took into account the testimony of Asumbrado, the *Barangay Tanod* on duty that night.[84] Both courts were correct in not giving weight to his testimony.

Asumbrado said that he was there when the victim was shot, not by appellant, but by a big man who was in his twenties.[85] This assertion was based only on a back view of the man who fired the gun 12 meters away from Asumbrado.[86] The latter never saw the shooter's entire face.[87] Neither did the witness see the victim when the latter was hit.[88] Asumbrado also affirmed that he was hiding when the riot took place.[89] These declarations question his competence to unequivocally state that indeed it was not petitioner who fired at Mendol.

B. Petitioner's home was just in front of the street where the shooting occurred.

Physical impossibility refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[90] Petitioner failed to prove the physical impossibility of his being at the scene of the crime at the time in question.

Both the prosecution and the defense witnesses referred to the front of appellant's house or store whenever they testified

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[84] *Rollo,* p. 9.

[85] TSN, 18 May 2004, pp. 4-5.

[86] *Rollo,* p. 72.

[87] TSN, 18 May 2004, p. 14.

[88] *Rollo,* p. 65.

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

[90] *Esqueda v. People*, G.R. No. 170222, 18 June 2009, 589 SCRA 489.

on the location of the shooter. Petitioner was in front of his house when he shot the victim, according to Velasco's testimony.[91] Meanwhile the statement of Asumbrado that the gate of the store of the petitioner was closed when the shooting happened[92] can only mean that the latter's house and store were both located in front of the scene of the crime.

Petitioner proffers the alibi that he was at home, instead of showing the impossibility of his authorship of the crime. His alibi actually bolsters the prosecution's claim that he was the shooter, because it placed him just a few steps away from the scene of the crime. The charge is further bolstered by the testimony of his wife, who could not say with certainty that he was at home at 2:00 a.m. — the approximate time when the victim was shot.

Based on the foregoing, it cannot be said that the lower courts overlooked any fact that could have justified a different conclusion. Hence, the CA was correct in affirming the RTC's Decision that petitioner, beyond reasonable doubt, was the assailant.

WHEREFORE, in view of the foregoing, the Petition is **DENIED.** The 10 June 2009 Resolution[93] and 10 November 2008 Decision[94] of the Court of Appeals in CA-G.R. CR. No. 30456 are hereby **AFFIRMED *in toto.***

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[91] TSN, 22 April 2002, p. 4.

[92] TSN, 18 May 2004, p. 10.

[93] *Rollo,* pp. 44-45.

[94] *Id.* at 22-35.

FIRST DIVISION

[G.R. No. 188969. February 27, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOHN ALVIN PONDIVIDA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; PROPER EVENTS POSITIVELY IDENTIFIED APPELLANT.—** In *People v. Caliso*, the Court stated: x x x 'There may be instances where, **although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime.** This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others.' x x x Thus, while witness Rodelyn admittedly failed to see the actual shooting, x x x She last witnessed her common-law husband held at gunpoint in their own house by the accused and his companions, a fact admitted by accused-appellant himself. Direct evidence is not the only means to prove commission of the crime.

2. **CRIMINAL LAW; CONSPIRACY; APPRECIATED IN CASE AT BAR.—** Conspiracy may be deduced from the mode, method, and manner in which the offense was perpetrated; or inferred from the acts of the accused when those acts point to a joint purpose and design, concerted action, and community of interests. Proof of a previous agreement and decision to commit the crime is not essential, but the fact that the malefactors acted in unison pursuant to the same objective suffices.

3. **ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT AFFIRMED ON APPEAL, RESPECTED.—** Jurisprudence dictates that "when the credibility of a witness

is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on the findings are accorded high respect, if not conclusive effect. This dictum would be more true if the findings were affirmed by the CA, since it is settled that when the trial court's findings have been affirmed by the appellate court, these findings are generally binding upon this Court."

4. ID.; MURDER; PROPER PENALTY AND DAMAGES.— Appellant is found guilty beyond reasonable doubt of the crime of murder, for which he is sentenced to suffer the penalty of *reclusion perpetua* and to pay complainant Rodelyn Buenavista ₱50,000 as civil indemnity *ex delicto*, ₱50,000 as moral damages, and ₱10,000 as actual damages. To conform to recent jurisprudence, exemplary damages in the amount of ₱25,000 awarded by the CA are hereby increased to ₱30,000.

APPEARANCES OF COUNSEL

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

D E C I S I O N

SERENO, *C.J.*:

Before this Court is the 26 June 2009 Decision[1] of the Court of Appeals (CA), which affirmed the 10 January 2008 judgment of conviction[2] of the Regional Trial Court (RTC) of Bulacan in Criminal Case No. 2678-M-2005. The RTC found accused John Alvin Pondivida, *alias* "Scarface," guilty beyond reasonable doubt of the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua,* as well as to pay civil indemnity and damages.

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[1] In CA G.R. H.C. No. 03237, penned by Associate Justice Isaias Dicdican concurred in by Associate Justices Bienvenido L. Reyes and Marlene Gonzales-Sison; *rollo,* pp. 2-11.

[2] Penned by Judge Gregorio S. Sampaga; CA *rollo,* pp. 14-23.

On 6 October 2005, the assistant provincial prosecutor of Malolos, Bulacan, charged accused-appellant Pondivida under the following Information:[3]

That on or about the 8th day of July 2005, in the municipality of Obando, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, armed with firearm, and with intent to kill one Gener Bondoc *y* Cudia, with evident premeditation, abuse of superior strength and treachery, did then and there, wilfully, unlawfully, and feloniously, attack, assault and shoot with their firearm the said Gener Bondoc *y* Cudia, hitting the latter on his body and head, thereby inflicting upon him mortal wounds which directly caused his death.

Contrary to law.

Rodelyn Buenavista, witness for the prosecution, testified that at 3:30 a.m. of 8 July 2005, she was roused from sleep by incessant knocking and the sound of someone kicking the front door of their house. She immediately woke her common-law partner, Gener Bondoc. His brother, Jover Bondoc (nicknamed Udoy), was also awake and was peeping through the door of one of the rooms. Outside he saw accused George Reyes, John Alvin Pondivida, and Glen Alvarico who was carrying an armalite rifle.

When Rodelyn answered the door, the three men asked for the whereabouts of "Udoy" and "Bagsik," both brothers of Gener. One of the men, later identified as accused George Reyes, searched the house and asked her who Gener was. Rodelyn merely replied that he was neither Udoy nor Bagsik, and that the persons they were looking for were not inside the house. In response, the men fired four shots, prompting her to plead that her children were sleeping upstairs.

Rodelyn recounted that the three men seemed to be discussing something near the well outside their house for a considerable period, before Reyes again approached them. He asked Gener

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[3] *Id.* at 7.

to step outside the house to "have a conversation" with them, but Gener declined, stating that they were armed. Rodelyn again reminded Reyes that there were children inside the house and tried to prevent him from entering and going up the stairs.[4]

While Reyes was talking to Rodelyn, Pondivida and Alvarico suddenly entered through the window of the house and chased Gener. Both Reyes and Alvarico shot at Gener. Rodelyn heard the gunshots, but when she approached Gener to investigate, he was already sprawled on the floor with blood oozing from a wound in his head. Police later ascertained that both Pondivida and Alvarico had climbed the guava tree outside the house to gain access to the window located at the second floor. Jover further testified that both he and his brother Bagsik had an earlier altercation with a gasoline station employee who happened to be a friend of the assailants.[5]

Pondivida fled to Olongapo City for five months, but was apprehended upon returning to Obando, Bulacan. Co-accused Alvarico and Reyes were never located and are currently at large. The RTC found accused-appellant Pondivida guilty beyond reasonable doubt of murder; imposed the penalty of *reclusion perpetua;* and ordered him to pay ₱50,000 as civil indemnity, ₱50,000 as moral damages, ₱25,000 as exemplary damages, ₱10,000 as actual damages, and the costs of suit.[6] On intermediate appellate review, the CA affirmed the findings of the trial court, but clarified that the aggravating circumstance of abuse of superior strength was absorbed in the element of treachery in murder.[7]

Accused-appellant comes before this Court arguing that the prosecution's case was not proven beyond reasonable doubt, and that there was insufficient evidence to establish conspiracy among the accused. Both he and the Solicitor General manifested

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[4] *Id.* at 4.

[5] *Rollo,* pp. 4-5.

[6] Dispositive portion, RTC Decision, pp. 9-10; CA *rollo,* pp. 22-23.

[7] Dispositive portion, CA Decision p. 8; *rollo,* p. 9.

that their respective positions were already thoroughly discussed in the Briefs they had filed with the appellate court, and that they were thus no longer filing supplemental briefs.

After a judicious review of the records, this Court finds no cogent reason to disturb the findings of either the RTC or the CA. Accused-appellant Pondivida admitted in the Brief he submitted to the CA that on the evening of 8 July 2005, he went with Glen Alvarico and George Reyes to the house of Gener Bondoc; that he, Pondivida, was the one who knocked on the door; that he and his companions were able to enter the house; and that both Glen Alvarico and George Reyes shot the victim.[8] Thus, his argument – that Rodelyn Buenavista's failure to witness the actual shooting constituted reasonable doubt of his guilt – is unconvincing. His admissions place him at the scene of the crime and confirm that he was with Reyes and Alvarico when they shot the victim. The RTC may still take cognizance of Rodelyn's eyewitness testimony on all the events, except the actual shooting, and properly appreciate it as positive identification through circumstantial evidence.

In *People v. Caliso,*[9] the Court stated:

> The identification of a malefactor, to be positive and sufficient for conviction, does not always require direct evidence from an eyewitness; otherwise, no conviction will be possible in crimes where there are no eyewitnesses. Indeed, trustworthy circumstantial evidence can equally confirm the identification and overcome the constitutionally presumed innocence of the accused. Thus, the Court has distinguished two types of positive identification in *People v. Gallarde,* to wit: (*a*) that by direct evidence, through an eyewitness to the very commission of the act; and (*b*) that by circumstantial evidence, such as where the accused is last seen with the victim immediately before or after the crime. The Court said:
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> > x x x. **Positive identification pertains essentially to proof of identity and not *per se* to that of being an eyewitness to the very act of commission of the crime**. There are two types

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[8] CA *rollo,* p. 41.

[9] G.R. No. 183830, 19 October 2011, 659 SCRA 666.

> of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, **although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime.** This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others. If the actual eyewitnesses are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.[10] (Emphases in the original)

Thus, while witness Rodelyn admittedly failed to see the actual shooting, her account properly falls under the second type of positive identification described above. To require her positive identification of accused-appellant as the actual shooter is absurd. She last witnessed her common-law husband held at gunpoint in their own house by the accused and his companions, a fact admitted by accused-appellant himself. Direct evidence is not the only means to prove commission of the crime.

In any case, accused-appellant conflates the purported lack of an eyewitness testimony with his own contention that conspiracy was not established by the prosecution. The pivotal question remains: whether it was sufficiently shown that accused Pondivida

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[10] *Id.* at 677-678.

conspired with Reyes and Alvarico. He insists that the trial court erroneously convicted him on the basis of the weakness of the defense evidence, and not the strength of the prosecution's.[11] Before the shooting on 8 July 2005, Glen Alvarico and George Reyes had allegedly passed by his house and prevailed upon him to visit the house of Gener Bondoc. Alvarico poked a gun at him to force him to knock at the door. He saw Alvarico and Reyes kill Gener, but still complied with all the instructions of his companions, only because he was afraid for his life.[12]

Conspiracy may be deduced from the mode, method, and manner in which the offense was perpetrated; or inferred from the acts of the accused when those acts point to a joint purpose and design, concerted action, and community of interests.[13] Proof of a previous agreement and decision to commit the crime is not essential, but the fact that the malefactors acted in unison pursuant to the same objective suffices.[14] In a long line of cases, we have held thus:

> To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.[15]

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[11] CA *rollo,* pp. 48-49.

[12] *Id.* at 41.

[13] *Aquino v. Paiste*, G.R. No. 147782, 25 June 2008, 555 SCRA 255, 260.

[14] *People v. Amodia*, G.R. No. 173791, 7 April 2009, 584 SCRA 518, 541.

[15] *People v. Medice,* G.R. No. 181701, 18 January 2012, 66 SCRA 334, 345-346; *People v. Anticamara*, G.R. No. 178771, 8 June 2011, 651 SCRA 489, 507, citing *People v. PO3 Tan,* 411 Phil. 813, 838 (2001); *People v. De Jesus,* 473 Phil. 405, 429 (2004).

In this case, the prosecution decisively established a community of criminal design among Alvarico, Reyes, and appellant Pondivida. While there is no evidence of any previous agreement among the assailants to commit the crime, their concerted acts before, during and after the incident establish a joint purpose and intent to kill.

As attested to by accused-appellant, they all went to the intended victim's house bearing firearms. Accused-appellant himself knocked on the door. After failing to locate "Udoy" and "Bagsik," and discovering that Gener was the latter's brother, they then engaged in a lengthy conversation, as they circled around a nearby well outside the house.[16] Accused even admitted to shouting the name "Bagsik" over and over.[17] They all asked Gener to step outside and speak with them. Upon his refusal, appellant Pondivida, together with Alvarico, entered the house through an upstairs window. Alvarico fired at George who was at the stairs. Reyes, from his vantage point at the front door, also shot at George.[18] After fleeing the scene, appellant Pondivida admitted that he met with Alvarico in Novaliches. Alvarico gave him money, and the latter thereafter boarded a bus headed to Olongapo City.[19]

The trial court correctly rejected Pondivida's claim that he feared for his life. His account of being held at gunpoint and forced to commit murder is incredible, considering that he accompanied the other assailants to the victim's house without resistance; banged and shouted at the front door without any prompting; willingly climbed the guava tree to enter the house and chase the victim; and accepted the money from Alvarico in order to escape. Most telling is the fact that accused himself banged at the front door and shouted the name "Bagsik" over and over. At no urging from his companions, he climbed a tree located right beside the second-floor window to gain entry.

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[16] CA *rollo,* p. 16.

[17] *Id.* at 19.

[18] *Id.* at 16.

[19] *Id.* at 21.

These were not the acts of a man who purportedly "feared for his life." He was shown to have performed precisely those specific acts incidental to the commission of the crime with such closeness and coordination with his other co-accused. Their acts together were indicative of a common purpose, which was murder. We also concur with the trial court in finding that the actuations of the accused *after the murder* did not indicate in the slightest that he had been coerced. That he was able to tidy his things, pack a getaway bag, and even meet with his co-conspirators to receive money were not the acts of a scared, innocent man.

Jurisprudence dictates that "when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on the findings are accorded high respect, if not conclusive effect. This dictum would be more true if the findings were affirmed by the CA, since it is settled that when the trial court's findings have been affirmed by the appellate court, these findings are generally binding upon this Court."[20]

In sum, we find no cogent reason to reject the Decision of the CA. Appellant is found guilty beyond reasonable doubt of the crime of murder, for which he is sentenced to suffer the penalty of *reclusion perpetua* and to pay complainant Rodelyn Buenavista ₱50,000 as civil indemnity *ex delicto*, ₱50,000 as moral damages, and ₱10,000 as actual damages. To conform to recent jurisprudence,[21] exemplary damages in the amount of ₱25,000 awarded by the CA are hereby increased to ₱30,000.

WHEREFORE, we **AFFIRM** the 26 June 2009 Decision of the Court of Appeals in CA-G.R. H.C. No. 03237, with the

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[20] *People v. Adallom,* G.R. No. 182522, 7 May 2012; *Decasa v. Court of Appeals*, G.R. No. 172184, 10 July 2007, 527 SCRA 267, 287.

[21] *People v. Dones,* G.R. No. 188329, 20 June 2012; *People v. Gonzales,* G.R. No. 195534, 13 June 2012; *People v. Villamor,* G.R. No. 187497, 12 October 2011, 659 SCRA 44, 55.

modification that the award of exemplary damages is increased from ₱25,000 to ₱30,000.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Leonen,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 192826. February 27, 2013]

PHILIPPINE PLAZA HOLDINGS, INC., *petitioner, vs.* **MA. FLORA M. EPISCOPE,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM THE COURT OF APPEALS TO THE SUPREME COURT; ERRORS OF FACT NOT ALLOWED; EXCEPTION; IN CASE OF CONTRARY FINDINGS BY THE COURT OF APPEALS AND QUASI-JUDICIAL AGENCIES.—** [T]he jurisdiction of the Supreme Court in cases brought before it from the CA *via* Rule 45 of the Rules of Court is generally limited to reviewing errors of law. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the trial court or quasi-judicial agency, as in this case. There is therefore a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.

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[*] Additional member in lieu of Associate Justice Bienvenido L. Reyes per raffle dated 25 February 2013.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE; ELUCIDATED.—** Among the just causes for termination is the employer's loss of trust and confidence in its employee. Article 296 (c) (formerly Article 282 [c]) of the Labor Code provides that an employer may terminate the services of an employee for fraud or willful breach of the trust reposed in him. But in order for the said cause to be properly invoked, certain requirements must be complied with namely, **(1) the employee concerned must be holding a position of trust and confidence** and **(2) there must be an act that would justify the loss of trust and confidence**. It is noteworthy to mention that there are two classes of positions of trust: *on the one hand*, there are managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; *on the other hand*, there are fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.

3. **ID.; ID.; ID.; ONLY SUBSTANTIAL EVIDENCE IS REQUIRED; CASE AT BAR.—** Primarily, it is apt to point out that proof beyond reasonable doubt is not required in dismissing an employee on the ground of loss of trust and confidence; it is sufficient that there lies some basis to believe that the employee concerned is responsible for the misconduct and that the nature of the employee's participation therein rendered him absolutely unworthy of trust and confidence demanded by his position. x x x [I]t must be observed that only substantial evidence is required in order to support a finding that an employer's trust and confidence accorded to its employee had been breached. x x x In the present case, records would show that Episcope committed acts of dishonesty which resulted to monetary loss on the part of PPHI and more significantly, led to the latter's loss of trust and confidence in her.

APPEARANCES OF COUNSEL

Tan Acut Lopez & Pison for petitioner.
Rolleto Arce for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the March 26, 2010 Decision[1] and July 5, 2010 Resolution[2] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 102188. The CA reversed and set aside the Resolutions[3] of the National Labor Relations Commission (NLRC) dated May 30, 2007 and November 14, 2007 in NLRC NCR CA No. 047187-06/NLRC NCR-12-13621-04 and thereby declared respondent to have been illegally dismissed.

The Facts

Petitioner Philippine Plaza Holdings, Inc. (PPHI) is the owner and operator of the Westin Philippine Plaza Hotel (Hotel). Respondent Ma. Flora M. Episcope (Episcope) was employed by PPHI since July 24, 1984 until she was terminated on November 4, 2004 for dishonesty, willful disobedience and serious misconduct amounting to loss of trust and confidence.

In order to check the performance of the employees and the services in the different outlets of the Hotel, PPHI regularly employed the services of independent auditors and/or professional shoppers. For this purpose, Sycip, Gorres and Velayo auditors dined at the Hotel's Café Plaza on August 28, 2004. After dining,

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[1] *Rollo,* pp. 25-34. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Ramon R. Garcia and Elihu A. Ybañez, concurring.

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

[3] *Id.* at 117-123 and 129-130. Penned by Commissioner Angelita A. Gacutan, with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay, concurring.

the auditors were billed the total amount of ₱2,306.65, representing the cost of the food and drinks they had ordered under Check No. 565938.[4] Based on the audit report[5] submitted to PPHI, Episcope was one of those who attended to the auditors and was the one who handed the check and received the payment of ₱2,400.00. She thereafter returned Check No. 565938, which was stamp marked "paid," together with the change.

Upon verification of the foregoing check receipt with the sales report of Café Plaza, it was discovered that the Hotel's copy of the receipt bore a discount of ₱906.45[6] on account of the use of a Starwood Privilege Discount Card registered in the name of Peter A. Pamintuan, while the receipt issued by Episcope to the auditors reflected the undiscounted amount of ₱2,306.65 considering that none of the auditors had such discount card. In view of the foregoing, the amount actually remitted to the Hotel was only ₱1,400.20 thus, leaving a shortage of ₱906.45.

On September 30, 2004, the Hotel issued a Show-Cause Memo[7] directing Episcope to explain in writing why no disciplinary action should be taken against her for the questionable and invalid discount application on the settlement check issued to the auditors on August 28, 2004.

In her handwritten letter,[8] Episcope admitted that she was on duty on the date and time in question but alleged that she could no longer recall if the concerned guests presented a Starwood Privilege Discount Card.

On October 4, 2004, Episcope was placed on preventive suspension without pay.[9] During the administrative hearing on October 6, 2004, Episcope, who was therein assisted by the

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[4] *Id.* at 66.

[5] *Id.* at 64.

[6] *Id.* at 67.

[7] *Id.* at 78.

[8] *Id.* at 69.

[9] *Id.* at 80.

Union President and four union representatives from National Union of Workers in Hotel Restaurant and Allied Industries (NUWHRAIN)-Philippine Plaza Hotel Chapter, confirmed the fact that she was the one who presented the subject check and received the corresponding payment from the guests. She, however, denied stamping the said check as "paid" or that she gave any discount without a discount card, explaining that she could not have committed such acts given that all receipts and discount applications were handled by the cashier. But when asked why the discounted receipt was not given to the guests, she merely replied that she could no longer remember. In a separate inquiry, the cashier of Café Plaza, however, maintained that a Starwood Privilege Discount Card must have been presented during the said incident given that there was a Discount Slip[10] and a stamped receipt indicating such discounted payment.[11]

Finding Episcope to have failed to sufficiently explain the questionable discount application on the settlement bill of the auditors, her employment was terminated for committing acts of dishonesty, which was classified as a Class D offense under the Hotel's Code of Discipline, as well as for willful disobedience, serious misconduct and loss of trust and confidence.[12]

Aggrieved, Episcope filed a complaint[13] for illegal dismissal with prayer for payment of damages and attorney's fees against PPHI before the NLRC docketed as NLRC-NCR Case No. 00-12-13621-04.

Rulings of the LA and the NLRC

On October 20, 2005, the Labor Arbiter (LA) rendered a Decision in favor of PPHI and thus, dismissed Episcope's complaint for illegal dismissal.[14] The LA found that there was

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[10] *Id.* at 68.

[11] *Id.* at 70-73.

[12] *Id.* at 81-83.

[13] *Id.* at 48-49.

[14] *Id.* at 102-108. Penned by Labor Arbiter Roma C. Asinas.

substantial evidence to support the charge of improper discount application and observed that the said act resulted to a loss on the part of the Hotel. Accordingly, the LA held that Episcope's actions rendered her unworthy of the trust and confidence demanded by her position which thus, warranted her dismissal.

On appeal,[15] the NLRC affirmed the LA's decision in the May 30, 2007 Resolution.[16] Episcope's motion for reconsideration[17] was likewise denied in the November 14, 2007 Resolution.[18]

Ruling of the CA

On *certiorari*, the CA gave due course to the petition and reversed the NLRC's Decision.[19] It found the report submitted by the auditors grossly insufficient to support the conclusion that Episcope was guilty of the charges imputed against her. It described the report as a mere transaction account in tabular form, bereft of any evidentiary worth. It was unsigned and bore no indication of her alleged culpability. The CA likewise did not give credence to the minutes of the administrative hearing because it was based on the same unaudited report. Hence, the CA (1) declared Episcope's dismissal illegal; (2) ordered her reinstatement to her former position without loss of seniority rights and benefits under the Labor Code; and (3) remanded the case to the NLRC for further proceedings on her money claims and other benefits. The dispositive portion of the CA's Decision reads:

WHEREFORE, in view of the foregoing, the petition is **GRANTED**. The assailed Resolutions dated May 30, 2007 and November 14, 2007 of the public respondent NLRC are **REVERSED** and **SET ASIDE**. Petitioner is hereby ordered reinstated to her

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[15] *Id.* at 109-115. Verified Notice of Appeal with Appeal Memorandum.

[16] *Id.* at 117-123.

[17] *Id.* at 124-127.

[18] *Id.* at 129-130.

[19] *Id.* at 25-34.

former position without loss of seniority rights and benefits under the Labor Code. The case is hereby remanded to the NLRC for further proceedings on her money claims and other benefits.

SO ORDERED.[20]

Dissatisfied, PPHI moved for reconsideration which was, however, denied in the assailed July 5, 2010 Resolution.[21]

Hence, the instant petition anchored on the sole ground that:

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND RULED CONTRARY TO LAW AND JURISPRUDENCE WHEN IT ACTED AS A TRIER OF FACTS AND ORDERED THE REINSTATEMENT OF THE RESPONDENT AND PAYMENT OF BACKWAGES.[22]

The Ruling of the Court

The petition is impressed with merit.

At the outset, it is settled that the jurisdiction of the Supreme Court in cases brought before it from the CA via Rule 45 of the Rules of Court is generally limited to reviewing errors of law. The Court is not the proper venue to consider a factual issue as it is not a trier of facts. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the trial court or quasi-judicial agency,[23] as in this case. There is therefore a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.[24]

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[20] *Id.* at 33-34.

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

[22] *Id.* at 11.

[23] *General Milling Corporation v. Casio*, G.R. No. 149552, March 10, 2010, 615 SCRA 13, 26-27.

[24] *Dimagan v. Dacworks United, Incorporated*, G.R. No. 191053, November 28, 2011, 661 SCRA 438, 445-446.

After a judicious review of the records, as well as the respective allegations and defenses of the parties, the Court is constrained to reverse the findings and conclusion of the CA.

Article 293 (formerly Article 279) of the Labor Code[25] provides that the employer shall not terminate the services of an employee except only for a just or authorized cause. If an employer terminates the employment without a just or authorized cause, then the employee is considered to have been illegally dismissed and is thus, entitled to reinstatement or in certain instances, separation pay in lieu thereof, as well as the payment of backwages.

Among the just causes for termination is the employer's loss of trust and confidence in its employee. Article 296 (c) (formerly Article 282 [c]) of the Labor Code provides that an employer may terminate the services of an employee for fraud or willful breach of the trust reposed in him. But in order for the said cause to be properly invoked, certain requirements must be complied with namely, **(1) the employee concerned must be holding a position of trust and confidence** and **(2) there must be an act that would justify the loss of trust and confidence**.[26]

It is noteworthy to mention that there are two classes of positions of trust: *on the one hand*, there are managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; *on the other hand*, there are fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.[27]

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

[26] *Jerusalem v. Keppel Monte Bank*, G.R. No. 169564, April 6, 2011, 647 SCRA 313, 323-324; emphasis and underscoring supplied.

[27] *M+W Zander Philippines, Inc. v. Enriquez*, G.R. No. 169173, June 5, 2009, 588 SCRA, 590, 604.

Episcope belongs to this latter class and therefore, occupies a position of trust and confidence.

As may be readily gleaned from the records, Episcope was employed by PPHI as a service attendant in its Café Plaza. In this regard, she was tasked to attend to dining guests, handle their bills and receive their payments for transmittal to the cashier. It is also apparent that whenever discount cards are presented, she maintained the responsibility to take them to the cashier for the application of discounts. Being therefore involved in the handling of company funds, Episcope is undeniably considered an employee occupying a position of trust and confidence and as such, was expected to act with utmost honesty and fidelity.

Anent the second requisite, records likewise reveal that Episcope committed an act which justified her employer's (PPHI's) loss of trust and confidence in her.

Primarily, it is apt to point out that proof beyond reasonable doubt is not required in dismissing an employee on the ground of loss of trust and confidence; it is sufficient that there lies some basis to believe that the employee concerned is responsible for the misconduct and that the nature of the employee's participation therein rendered him absolutely unworthy of trust and confidence demanded by his position.

On this point, the Court, in the case of *Bristol Myers Squibb (Phils.), Inc. v. Baban,*[28] citing *Atlas Fertilizer Corporation v. National Labor Relations Commission*,[29] ruled as follows:

> [A]s a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt. Thus, when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him.

[28] G.R. No. 167449, December 17, 2008, 574 SCRA 198, 208-209.

[29] G.R. No. 120030, June 17, 1997, 273 SCRA 551, 558.

In addition, it must be observed that only substantial evidence is required in order to support a finding that an employer's trust and confidence accorded to its employee had been breached. As explained in the case of *Lopez v. Alturas Group of Companies*:[30]

x x x, the language of Article 282(c) [now, Article 296 (c)] of the Labor Code states that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Moreover, **it must be based on substantial evidence** and not on the employer's whims or caprices or suspicions otherwise, the employee would eternally remain at the mercy of the employer. Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence or that the employee concerned is entrusted with confidence with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer. The betrayal of this trust is the essence of the offense for which an employee is penalized. (Emphasis supplied.)

In the present case, records would show that Episcope committed acts of dishonesty which resulted to monetary loss on the part of PPHI and more significantly, led to the latter's loss of trust and confidence in her. Notwithstanding the impaired probative value of the unaudited and unsigned auditor's report, the totality of circumstances supports the foregoing findings:

First, it remains unrefuted that Episcope attended to the auditors when they dined at the Café Plaza on the date and time in question. In fact, Episcope herself admitted that she tendered

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[30] G.R. No. 191008, April 11, 2011, 647 SCRA 568, 573-574,citing *Cruz, Jr. v. CA*, G.R. No. 148544, July 12, 2006, 494 SCRA 643,654-655.

Check No. 565938 bearing the amount of ₱2,306.65 and received the amount of ₱2,400.00 as payment;

Second, it is likewise undisputed that the check receipt on file with the Hotel for the same transaction reflected only the amount of ₱1,400.20 in view of the application of a certain Starwood Privilege Discount Card registered in the name of one Peter Pamintuan, while the receipt given to the auditors bore the undiscounted amount of ₱2,306.65 which thus, resulted to a ₱906.45 discrepancy. During the proceedings, both receipts were actually presented in evidence yet, Episcope never interposed any objection on the authenticity of the same; and

Third, when asked to explain the said discrepancy, Episcope merely imputed culpability on the part of the cashier, whom she claimed prepared all the receipts that were returned to the guests.

From the foregoing incidents, it is clear that Episcope was remiss in her duty to carefully account for the money she received from the café's guests. It must be observed that though the receipts were prepared by the cashier, Episcope, as a service attendant, was the one who actually handled the money tendered to her by the hotel clients. In this regard, prudence dictates that Episcope should have at least known why there was a shortage in remittance. Yet when asked, Episcope could not offer any plausible explanation but merely shifted the blame to the cashier. Irrefragably, as an employee who was routinely charged with the care and custody of her employer's money, Episcope was expected to have been more circumspect in the performance of her duties as a service attendant. This she failed to observe in the case at bar which thus, justifies PPHI's loss of trust and confidence in her as well as her consequent dismissal.

Perforce, having substantially established the actual breach of duty committed by Episcope and the due observance of due process, no grave abuse of discretion can be imputed against the NLRC in sustaining the finding of the LA that her dismissal was proper under the circumstances.

Finally, with respect to Episcope's other monetary claims, namely, service incentive leave credits and 13th month pay, the Court finds no error on the part of the LA when it denied the foregoing claims considering that Episcope failed to proffer any legitimate basis to substantiate her entitlement to the same.

WHEREFORE, premises considered, the petition is **GRANTED.** The assailed March 26, 2010 Decision and July 5, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 102188 are **REVERSED** and **SET ASIDE.** The Decision of the Labor Arbiter, as affirmed by the NLRC, dismissing respondent Ma. Flora M. Episcope's complaint for illegal dismissal and other monetary claims is **REINSTATED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 193804. February 27, 2013]

SPOUSES NILO RAMOS and ELIADORA RAMOS, *petitioners, vs.* **RAUL OBISPO and FAR EAST BANK AND TRUST COMPANY,** *respondents.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; ACCOMODATION MORTGAGE; CONSTRUED.—** The validity of an accommodation mortgage is allowed under Article

[*] Designated Acting Member per Special Order No. 1241 dated February 20, 2013.

2085 of the Civil Code which provides that "[t]hird persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property." An accommodation mortgagor, ordinarily, is not himself a recipient of the loan.

2. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN CIVIL CASES, PARTY MAKING ALLEGATIONS HAS THE BURDEN OF PROVING THEM BY A PREPONDERANCE OF EVIDENCE.—** In civil cases, basic is the rule that the party making allegations has the burden of proving them by a preponderance of evidence. Moreover, parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent. This principle equally holds true, even if the defendant had not been given the opportunity to present evidence because of a default order. The extent of the relief that may be granted can only be as much as has been alleged and proved with preponderant evidence required under Section 1 of Rule 133 of the Revised Rules on Evidence.

3. **ID.; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE; ELUCIDATED.—** Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.

4. **ID.; ID.; ID.; AS TO ALLEGATION OF FRAUD, MUST BE SUBSTANTIATED BY SUFFICIENT EVIDENCE.—** As to fraud, the rule is that he who alleges fraud or mistake affecting a transaction must substantiate his allegation, since it is presumed that a person takes ordinary care of his concerns and that private transactions have been fair and regular. The Court has stressed time and again that allegations must be proven by **sufficient evidence** because mere allegation is definitely not evidence. Moreover, fraud is not presumed — it must be proved by clear and convincing evidence.

5. **ID.; CIVIL PROCEDURE; ACTIONS; ESTOPPEL; UNJUSTIFIED FAILURE TO ACT WITHIN A**

REASONABLE TIME TO QUESTION AN INVALIDITY CONSTITUTES ESTOPPEL TO QUESTION THE INVALIDITY.— Assuming *arguendo* that the REM was invalid on the ground of vitiated consent and misrepresentation by Obispo, petitioners' unjustified failure to act within a reasonable time after Obispo repeatedly failed to turn over the mortgage documents, constitutes estoppel and waiver to question its defect or invalidity. Corollarily, mortgagors desiring to attack a mortgage as invalid should act with reasonable promptness, and unreasonable delay may amount to ratification.

6. **CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; ACCOMMODATION MORTGAGE; VALIDITY UPHELD IN THE ABSENCE OF EVIDENCE OF IRREGULARITY IN ITS EXECUTION; CASE AT BAR.—** We have held that it is not always necessary that the accommodation mortgagor be apprised beforehand of the entire amount of the loan nor should it first be determined before the execution of the Special Power of Attorney in favor of the debtor. This is especially true when the words used by the parties indicate that the mortgage serves as a continuing security for credit obtained as well as future loan availments. Here, petitioners as owners signed the REM as mortgagors and there is no evidence adduced that suggests fraud or irregularity in its execution. Petitioners are not contracting parties whom the law considers ignorant or disadvantaged but former overseas workers with sufficient education as to be well-aware of the consequences of their personal decisions, consistent with the legal presumption that a person takes ordinary care of his concerns.

SERENO, *C.J., dissenting opinion:*

1. **CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; ACCOMMODATION MORTGAGE; INTENTION NOT TO BE BOUND AS ACCOMMODATION MORTGAGORS, ESTABLISHED BY UNWAVERING TESTIMONIES.—** The disparity in our factual findings revolves around the issue of whether petitioner-spouses intended to be bound as accommodation mortgagors with respect to Obispo's credit line with Far East Bank & Trust co. (FEBTC). Intent, being

a state of mind, is rarely susceptible of direct proof and must ordinarily be inferred from the parties' circumstances, conduct and unguarded expressions. While the *ponencia* is correct in pointing out that the facts, as narrated by petitioner-spouses, are beyond the normal occurrence of events, their narration is not entirely incredible and implausible. To my mind, they have successfully painted an unfortunate but common picture of individuals who have placed their full trust in the wrong party and ended up being defrauded in the end. Finding that there is a dearth of evidence to back up their story, the *ponencia* refuses to give credence to the testimonies of petitioner-spouses. I believe, however, that their unwavering testimonies, both on direct and cross-examination, suffice to establish their claims.

2. **ID.; ID.; ID.; ID.; THAT MORTGAGE CONTRACT WAS NOT SIGNED IN THE PRESENCE OF BANK OFFICER AS REQUIRED MANIFESTS FAILURE OF THE BANK TO EXERCISE REQUIRED EXTRAORDINARY DILIGENCE.—** FEBTC failed to exercise the extraordinary diligence required from it as a banking institution. During trial, the bank officer who served as an instrumental witness to the real estate mortgage contract, and who had the duty to witness its execution, admitted that petitioner-spouses did not sign the contract in his presence. x x x Furthermore, the bank officer testified that it is the bank's standard procedure that the real estate mortgage form is presented to him for signature after the mortgagors have accomplished it, after which he forwards the document to respondent bank's legal department. x x x The signature of the bank officer as an instrumental witness to the real estate mortgage was not intended to be an idle ceremony or an empty mechanical act. By acting as witness to the instrument, he was attesting to the fact that the mortgagors actually signed the document in his presence. That he could take his role as an instrumental witness lightly leads to the conclusion that FEBTC was remiss in its duty to exercise the diligence required from it as a banking institution. That this procedure was the standard practice of respondent bank in processing loans and mortgages seals the finding of negligence on its part. x x x Had FEBTC been diligent enough, it could have prevented the unfortunate incident in question.

APPEARANCES OF COUNSEL

Surla & Surla Law Office for petitioners.

Benedicto Verzosa Gealogo & Burkley for Far East Bank and Trust Co.

D E C I S I O N

VILLARAMA, JR., ***J.*****:**

Assailed in this petition for review on *certiorari* under Rule 45 is the Decision[1] dated January 27, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 82378 which reversed and set aside the Decision[2] dated January 29, 2004 of the Regional Trial Court (RTC) of Quezon City, Branch 82 in Civil Case No. Q-99-38988.

The facts follow:

Petitioner Nilo Ramos and respondent Raul Obispo met each other and became best friends while they were working in Saudi Arabia as contract workers. After both had returned to the Philippines, Ramos continued to visit Obispo who has a hardware store. Sometime in August 1996, petitioners executed a Real Estate Mortgage (REM) in favor of respondent Far East Bank and Trust Company (FEBTC)-Fairview Branch, over their property covered by Transfer Certificate of Title (TCT) No. RT-64422 (369370) of the Registry of Deeds of Quezon City. The notarized REM secured credit accommodations extended to Obispo in the amount of ₱1,159,096.00. On even date, the REM was registered and annotated on the aforesaid title.[3]

On September 17, 1999, FEBTC received a letter from petitioners informing that Obispo, to whom they entrusted their

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[1] *Rollo,* pp. 33-42. Penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Andres B. Reyes, Jr. and Arcangelita M. Romilla-Lontok concurring.

[2] *Id.* at 76-83. Penned by Judge Severino B. De Castro, Jr.

[3] Records, pp. 164-169.

property to be used as collateral for a ₱250,000.00 loan in their behalf, had instead secured a loan for ₱1,159,096.00, and had failed to return their title despite full payment by petitioners of ₱250,000.00. Petitioners likewise demanded that FEBTC furnish them with documents and papers pertinent to the mortgage failing which they will be constrained to refer the matter to their lawyer for the filing of appropriate legal action against Obispo and FEBTC.[4]

There being no action taken by FEBTC, petitioners filed on October 12, 1999 a complaint for annulment of real estate mortgage with damages against FEBTC and Obispo. Petitioners alleged that they signed the blank REM form given by Obispo who facilitated the loan with FEBTC, and that they subsequently received the loan proceeds of ₱250,000.00 which they paid in full through Obispo. With their loan fully settled, they demanded the release of their title but Obispo refused to talk or see them, as he is now hiding from them. Upon verification with the Registry of Deeds of Quezon City, petitioners said they were surprised to learn that their property was in fact mortgaged for ₱1,159,096.00. Petitioners thus prayed that the REM be declared void and cancelled; that FEBTC be ordered to deliver to them all documents pertaining to the loan and mortgage of Obispo; and that FEBTC and Obispo be ordered to pay moral damages and attorney's fees.[5]

In its Answer With Compulsory Counterclaim and Cross-claim, FEBTC averred that petitioners agreed to execute the REM over their property as partial security for the loans obtained by Obispo with a total principal balance of ₱2,500,000.00. Since the obligation secured by the REM remains unpaid, FEBTC contended that it should not be compelled to release the mortgage on the subject property. FEBTC further asserted that petitioners are guilty of laches and their claim already barred by estoppel. Under its cross-claim, FEBTC prayed that in the event of judgment rendered in favor of petitioners, Obispo should be made liable

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[4] *Id.* at 170-171.

[5] *Id.* at 3-7.

to answer for all the claims that may be adjudged against it plus all damages it suffered.[6]

On motion of petitioners, Obispo was declared in default for failure to file any responsive pleading despite due receipt of summons which he personally received.

After trial, the RTC rendered its Decision in favor of the petitioners and against the respondents, as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendants Raul J. Obispo and Far East Banking Trust Company (now Bank of the Philippine Islands) as follows:
>
> a) Declaring the real estate mortgage in favor of defendant Far East Bank & Trust Company (now Bank of Philippine Islands) null and void;
>
> b) Ordering defendant FEBTC (now BPI) to cancel the encumbrance on Transfer Certificate of Title No. RT-64422 [369370] and release and surrender the Owners Duplicate copy thereof to the herein plaintiffs;
>
> c) Ordering defendants Obispo and FEBTC (BPI) to pay the plaintiffs jointly and severally the sum of ₱200,000.00 as and by way of moral damages;
>
> d) Ordering defendants Obispo and FEBTC (BPI) to pay the plaintiffs, jointly and severally the sum of ₱50,000.00 as and by way of attorney's fees, and the cost of suit.
>
> The cross-claim set forth by defendant FEBTC (BPI) against its co-defendant Obispo is hereby ordered dismissed for lack of merit.
>
> SO ORDERED.[7]

FEBTC appealed to the CA which reversed the trial court's decision and dismissed the complaint, holding that petitioners were third-party mortgagors under Article 2085 of the Civil

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[6] *Id.* at 17-21.

[7] *Rollo*, p. 83.

Code and that they failed to present any evidence to prove their allegations. The appellate court thus decreed:

WHEREFORE, the assailed January 29, 2004 Decision of the Regional Trial Court of Quezon City, Branch 82 in Civil Case No. Q-99-38988 is hereby REVERSED and SET ASIDE and a new one is entered DISMISSING the Complaint of plaintiffs-appellees in Civil Case No. Q-99-38988.

SO ORDERED.[8]

Petitioners filed a motion for reconsideration but it was denied by the CA.

Hence, this petition raising the following errors allegedly committed by the appellate court when:

I

IT SET ASIDE THE DECISION DATED JANUARY 29, 2004 RENDERED BY BRANCH 82 OF THE REGIONAL TRIAL COURT OF QU[E]ZON CITY BY UPHOLDING THE VALIDITY OF THE REAL ESTATE MORTGAGE AND RULING THAT THE PETITIONERS WERE ACCOMMODATION MORTGAGORS OF RESPONDENT RAUL OBISPO DESPITE THE FACT THAT NO CONSENT TO SUCH EFFECT WAS GIVEN BY THEM AND THE PREPARATION THEREOF WAS ATTENDED BY FRAUDULENT ACTS OR MISREPRESENTATIONS;

II

IT DISREGARDED EXISTING LAWS AND CURRENT JURISPRUDENCE IN NOT DECLARING THE RESPONDENT BANK AS NOT A MORTGAGEE IN GOOD FAITH DESPITE THE CONTRARY FINDING OF THE TRIAL COURT; and

III

IT DISREGARDED EXISTING LAWS AND SETTLED JURISPRUDENCE WHEN IT LIKEWISE DELETED IN ITS DISPUTED DECISION THE AWARD OF DAMAGES, ATTORNEY'S FEES AND COST OF SUIT IN FAVOR OF THE PETITIONERS.[9]

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[8] *Id.* at 41.

[9] *Id.* at 16-17.

The petition has no merit.

The validity of an accommodation mortgage is allowed under Article 2085 of the Civil Code which provides that "[t]hird persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property." An accommodation mortgagor, ordinarily, is not himself a recipient of the loan, otherwise that would be contrary to his designation as such.[10]

In this case, petitioners denied having executed an accommodation mortgage and claimed to have executed the REM to secure only their ₱250,000.00 loan and not the ₱1,159,096.00 personal indebtedness of Obispo. They claimed it was Obispo who filled up the REM form contrary to their instructions and faulted FEBTC for being negligent in not ascertaining the authority of Obispo and failing to furnish petitioners with copies of mortgage documents. Obispo initially gave them ₱100,000.00 and the balance was given a few months later. After supposedly completing payment of the amount of ₱250,000.00 to Obispo, petitioners discovered that the REM secured a bigger amount. Because of the alleged fraud committed upon them by Obispo who made them sign the REM form in blank, petitioners sought to have the REM annulled and their title over the mortgaged property released by FEBTC. In other words, since their consent to the REM was vitiated, judicial declaration of its nullity is in order. The RTC granted relief to petitioners while the CA found the subject REM as a valid third-party or accommodation mortgage due to petitioners' failure to substantiate their allegations with the requisite quantum of evidence.

We sustain the decision of the CA.

In civil cases, basic is the rule that the party making allegations has the burden of proving them by a preponderance of evidence. Moreover, parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent. This principle equally holds true, even if the defendant had not

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[10] *Sps. Belo v. Philippine National Bank,* 405 Phil. 851, 870 (2001).

been given the opportunity to present evidence because of a default order. The extent of the relief that may be granted can only be as much as has been alleged and proved with preponderant evidence required under Section 1 of Rule 133 of the Revised Rules on Evidence.[11]

Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[12]

As to fraud, the rule is that he who alleges fraud or mistake affecting a transaction must substantiate his allegation, since it is presumed that a person takes ordinary care of his concerns and that private transactions have been fair and regular.[13] The Court has stressed time and again that allegations must be proven by **sufficient evidence** because mere allegation is definitely not evidence.[14] Moreover, fraud is not presumed — it must be proved by clear and convincing evidence.[15]

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[11] *Heirs of Pedro De Guzman v.Perona*, G.R. No. 152266, July 2, 2010, 622 SCRA 653, 661-662, citing *Gajudo v. Traders Royal Bank,* G.R. No. 151098, March 21, 2006, 485 SCRA 108, 119-120.

[12] *Chua v. Westmont Bank,* G.R. No. 182650, February 27, 2012, 667 SCRA 56, 68, citing *Eulogio v. Apeles,* G.R. No. 167884, January 20, 2009, 576 SCRA 561, 571-572.

[13] REVISED RULES OF COURT, Rule 131, Sec. 3(p); *Dutch Boy Philippines, Inc. v. Seniel,* G.R. No. 170008, January 19, 2009, 576 SCRA 231, 240, citing *Memita v. Masongsong,* G.R. No. 150912, May 28, 2007, 523 SCRA 244, 256-257; and *Mangahas v. Court of Appeals,* 364 Phil. 13, 21 (1999).

[14] *Real v. Sangu Philippines, Inc.,* G.R. No. 168757, January 19, 2011, 640 SCRA 67, 85, citing *General Milling Corporation v. Casio,* G.R. No. 149552, March 10, 2010, 615 SCRA 13, 32-33.

[15] *Mindanao State University v. Roblett Industrial and Construction Corporation,* G.R. No. 138700, June 9, 2004, 431 SCRA 458, 467.

In this case, petitioners' testimonial evidence failed to convince that Obispo deceived them as to the debt secured by the REM. Petitioners' factual allegations are not firmly supported by the evidence on record and even inconsistent with ordinary experience and common sense.

While petitioners admitted they knew it was from FEBTC they will secure a loan, it was unbelievable for them to simply accept the ₱250,000.00 loan proceeds without seeing any document or voucher evidencing release of such amount by the bank containing the details of the transaction such as monthly amortization, interest rate and added charges. It is difficult to believe petitioners' simplistic explanation that they requested documents from Obispo but the latter would not give them any. Such failure of Obispo to produce any receipt or document at all coming from the bank should have, at the first instance, alerted the petitioners that something was amiss in the loan transaction for which they voluntarily executed the REM with their own property as collateral. Not only that, despite being aware of the absence of any document to ascertain if Obispo indeed filled up the REM contract form in accordance with their instructions, petitioners accepted the supposed loan proceeds in the form of personal checks issued by Obispo who claimed to have an account with FEBTC, instead of checks issued by the bank itself. These alleged checks were not submitted in evidence by the petitioners who could have easily obtained copies or record proving their issuance and encashment.

Another disturbing fact is why, despite having signed the REM contract in their name as mortgagors, petitioners did not go directly to the bank to pay their loan. One is also tempted to ask how petitioners could have possibly arrived at the amount of amortization payments without having seen any document from FEBTC pertaining to their loan account. Such conduct of petitioners in not bothering to appear before the bank or directly dealing with it regarding their outstanding obligation strongly suggests that there was no such loan account in their name and it was really Obispo who was the borrower and petitioners were merely accommodation mortgagors.

But assuming for the moment that petitioners really entrusted to Obispo the remittance of their payments to FEBTC, it is difficult to comprehend that they continued making payments to him despite the latter's not having complied at all with their repeated demands for the corresponding receipt from the bank. These demands for bank documents apparently had gone unheeded by Obispo for about **one year and three months** — the same period before petitioners were able to make full payment.[16] Such considerably long period that petitioners remained indifferent and took no prompt action against their alleged defrauder, Obispo, truly defies the normal reaction of ordinary individuals giving rise to the inference that it was indeed Obispo who was the borrower/debtor and petitioners were just accommodation mortgagors.

Assuming *arguendo* that the REM was invalid on the ground of vitiated consent and misrepresentation by Obispo, petitioners' unjustified failure to act within a reasonable time after Obispo repeatedly failed to turn over the mortgage documents, constitutes estoppel and waiver to question its defect or invalidity. Corollarily, mortgagors desiring to attack a mortgage as invalid should act with reasonable promptness, and unreasonable delay may amount to ratification.[17]

As to petitioners' assertion that they have settled their loan obligation by paying ₱250,000.00 to Obispo, we note that said amount represents only the principal loan. Does this mean petitioners assumed that FEBTC granted their loan free of interest? Or was there any special arrangement with Obispo in consideration of the mortgage for the latter's benefit? Again, why was there no evidence of such check payments allegedly made by petitioners to Obispo, presented in court? This hiatus in petitioners' evidence raises serious doubt on their principal allegation that they never consented to the third-party mortgage approved by FEBTC, leading to the conclusion that there was, in fact, an agreement between Obispo and petitioners to use the latter's property as collateral for the former's credit line with said bank.

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[16] TSN, May 16, 2002, pp. 8-9, 12-13.

[17] 59 C.J.S. § 148, p. 198.

It bears stressing that an accommodation mortgagor, ordinarily, is not himself a recipient of the loan, otherwise that would be contrary to his designation as such. We have held that it is not always necessary that the accommodation mortgagor be apprised beforehand of the entire amount of the loan nor should it first be determined before the execution of the Special Power of Attorney in favor of the debtor.[18] This is especially true when the words used by the parties indicate that the mortgage serves as a continuing security for credit obtained as well as future loan availments.

Here, petitioners *as owners* signed the REM as mortgagors and there is no evidence adduced that suggests fraud or irregularity in its execution. Petitioners are not contracting parties whom the law considers ignorant or disadvantaged but former overseas workers with sufficient education as to be well-aware of the consequences of their personal decisions, consistent with the legal presumption that a person takes ordinary care of his concerns. Hence, it can be reasonably inferred from the facts on record that it was more probable that petitioners allowed Obispo to use their property as additional collateral so as to avail of his existing credit line with FEBTC instead of petitioners directly applying for a separate loan.

With the dearth of evidence to back up petitioners' story, the CA found implausible the alleged legal infirmities in the execution of the REM. The appellate court thus aptly observed:

> x x x it was defendant Obispo who obtained credit accommodation from defendant FEBTC which he secured with the mortgage of the subject property. The property mortgaged was owned by plaintiffs-appellees, considered a third party to the loan obligations of defendant Obispo with defendant-appellant FEBTC. It was, thus, a situation recognized by the last paragraph of Article 2085 of the Civil Code x x x. The Real Estate Mortgage admittedly signed by plaintiffs-appellees, on its face, explicitly states that it is for the security of "credit accommodations <u>obtained by Raul De Jesus Obispo</u>," the principal of which is fixed at ₱1,159,096.00.

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[18] *Sps. Belo v. Philippine National Bank, supra* note 10.

While plaintiffs-appellees claim that they sought the help of defendant Obispo in securing the loan from defendant-appellant FEBTC, and not to secure the loans obtained by defendant Obispo himself, **they failed to present any evidence, except for their bare assertion**, that they indeed gave their title to defendant Obispo purportedly to facilitate their loan with defendant-appellant FEBTC. It is axiomatic that under the Rules on Evidence a party who alleges a fact has the burden of proving it. A mere allegation is not evidence, and he who alleges has the burden of proving his allegation with the requisite quantum of evidence.

It may be argued that having received the amount of ₱250,000.00, plaintiffs-appellees became parties to the principal obligation and as such, the provision of the last paragraph of Article 2085 no longer applies. While it is undisputed that plaintiffs-appellees received the amount of ₱250,000.00, the record, however, reveals that they received the said amount not from defendant FEBTC but from defendant Obispo. It could be inferred that the ₱250,000.00 given by defendant Obispo to plaintiffs-appellees was some form of remuneration in lending their title to him as security for his credit line with defendant-appellant FEBTC.

x x x x x x x x x

From all indications, the failure of defendant Obispo to pay his loan resulted to the prejudice of plaintiffs-appellee[s] which may have led them to disown the Real Estate Mortgage they executed in favor of defendant-appellant FEBTC to accommodate the loan of defendant Obispo.[19] (Emphasis supplied)

At this juncture, we underscore anew that the Court has always maintained its impartiality as early as in the case of *Vales v. Villa*,[20] and has warned litigants that:

x x x The law furnishes no protection to the inferior simply because he *is* inferior any more than it protects the strong because he *is* strong. The law furnishes protection to both alike — to one no more or less than the other. It makes no distinction between the wise and the foolish, the great and the small, the strong and the weak. The foolish may lose all they have to the wise; but that does not

[19] *Rollo,* pp. 38-40.

[20] 35 Phil. 769, 787-788 (1916).

mean that the law will give it back to them again. Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of foolish acts. x x x[21]

There being valid consent on the part of petitioners as accommodation mortgagors, no reversible error was committed by the CA in reversing the trial court's decision which declared the REM as void and awarded damages to petitioners.

A preponderance of the evidence is essential to establish the invalidity of a mortgage, and it has been said that clear and convincing proof is necessary to show fraud, duress, or undue influence.[22] Any relevant and material evidence otherwise competent is admissible on the issue of the validity of a mortgage.[23] Petitioners utterly failed to present relevant evidence to support their factual claims and offered no explanation whatsoever. Such omission is fatal to their cause.

WHEREFORE, the petition for review on *certiorari* is **DENIED** for lack of merit. The Decision dated January 27, 2010 of the Court of Appeals in CA-G.R. CV No. 82378 is hereby **AFFIRMED and UPHELD.**

With costs against the petitioners.

SO ORDERED.

Leonardo-de Castro, Bersamin, and *Reyes, JJ.,* concur.

Sereno, C.J. (Chairperson), see dissenting opinion.

DISSENTING OPINION

SERENO, *C.J.*:

I respectfully dissent. While the *ponencia* affirms the findings of fact of the Court of Appeals and concludes that petitioner-

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[21] *Ocampo v. Land Bank of the Philippines,* G.R. No. 164968, July 3, 2009, 591 SCRA 562, 577-578.

[22] 59 C.J.S. § 149, p. 199.

[23] *Id.*

spouses agreed to mortgage their property to secure Obispo's debt, I vote to uphold the trial court's factual conclusion that petitioner-spouses signed the mortgage contract in blank and were defrauded by Obispo, as they were unaware that their property would be used as collateral for his personal loan.

The disparity in our factual findings revolves around the issue of whether petitioner-spouses intended to be bound as accommodation mortgagors with respect to Obispo's credit line with Far East Bank & Trust co. (FEBTC). Intent, being a state of mind, is rarely susceptible of direct proof and must ordinarily be inferred from the parties' circumstances, conduct and unguarded expressions.[1] While the *ponencia* is correct in pointing out that the facts, as narrated by petitioner-spouses, are beyond the normal occurrence of events, their narration is not entirely incredible and implausible. To my mind, they have successfully painted an unfortunate but common picture of individuals who have placed their full trust in the wrong party and ended up being defrauded in the end.

Finding that there is a dearth of evidence to back up their story, the *ponencia* refuses to give credence to the testimonies of petitioner-spouses. I believe, however, that their unwavering testimonies, both on direct and cross-examination, suffice to establish their claims. Time and again, this Court has upheld convictions in criminal cases based on the sole, uncorroborated testimony of a single witness; there is no reason why we cannot similarly rely on clear and convincing testimonial evidence in a civil case.

In any event, while it may be argued that there may be reasonable doubt as to the actual occurrences in the instant case, a reading of the records firmly establishes that FEBTC failed to exercise the extraordinary diligence required from it as a banking institution. During trial, the bank officer who served as an instrumental witness to the real estate mortgage contract, and who had the duty to witness its execution, admitted that

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[1] *Feeder International Line, Pte., Ltd. v. Court of Appeals*, 274 Phil. 1143 (1991).

petitioner-spouses did not sign the contract in his presence, to wit:

Q: Mr. Witness, on this real estate mortgage there are two (2) signatures appearing under the words "Signed in the presence of." Do you know these two (2) signatures?

A: Yes, sir. The signature of our manager at that time, Virginia Clemeno, sir.

Q: Your signature is on the left?

A: Yes, sir.

Q: And on the right is?

A: The signature of our manager sir.

x x x x x x x x x

Q: Now, when you received the Mortgage Contract, **am I correct that Spouses Ramos did not sign the Mortgage Contract in your presence** because you had known them?

A: **Yes, sir. The signature [sic] were there already.**

Q: Just answer yes or no.

A: Yes, sir.

THE COURT:

They did not . . .

ATTY. VILLAVERT:

That Spouses Ramos did not sign in his presence, your Honor, and he answered yes.[2] (Emphases supplied)

Furthermore, the bank officer testified that it is the bank's standard procedure that the real estate mortgage form is presented to him for signature after the mortgagors have accomplished it, after which he forwards the document to respondent bank's legal department. His testimony shows:

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[2] TSN, 4 December 2003, pp. 331-332; 335-336.

Q: Mr. Witness, what is the bank procedure that is being done with respect to the execution and submission of the real estate mortgage?

A: The document has to be filled up and signed by the mortgagors before it was presented to us for our signature and then we sent it to our legal department.

Q: Is this the standard procedure that is followed?

A: Yes, sir.[3]

The signature of the bank officer as an instrumental witness to the real estate mortgage was not intended to be an idle ceremony or an empty mechanical act. By acting as witness to the instrument, he was attesting to the fact that the mortgagors actually signed the document in his presence. That he could take his role as an instrumental witness lightly leads to the conclusion that FEBTC was remiss in its duty to exercise the diligence required from it as a banking institution. That this procedure was the standard practice of respondent bank in processing loans and mortgages seals the finding of negligence on its part.

In *Philippine Trust Company v. Court of Appeals*,[4] we have ruled that because the business of banks is imbued with public interest, they are expected to exercise more care and prudence than private individuals, even in cases involving registered lands. Banks, therefore, have the duty of proving that they have exercised **extraordinary diligence** in approving the mortgage contract in question.[5]

Had FEBTC been diligent enough, it could have prevented the unfortunate incident in question. As lender and mortgagee, it had the duty to ascertain whether petitioner-spouses had really agreed to become accommodation mortgagors with respect to respondent Obispo's loan. It could have required petitioner-spouses to personally appear and sign the mortgage contract

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[3] *Id.* at 332-333.

[4] G.R. No. 150318, 22 November 2010, 635 SCRA 518, 530.

[5] *Id.*

before its representatives. It could have required Obispo to present a special power of attorney to prove that he had been authorized to constitute a third-party mortgage over petitioner-spouses' real property. It could even have made a phone call to petitioner-spouses to verify whether they did intend to mortgage their property to secure Obispo's debt. All these safeguards respondent bank failed to observe. Instead, it permitted its bank officers to act as instrumental witnesses, even if the mortgagors had not actually executed the mortgage contract in the officers' presence.[6] It chose to rely solely on the signed mortgage contract, as well as the transfer certificate of title which was in petitioner-spouses' names, which were brought to the bank by Obispo without iota of evidence that he was authorized to do so.

In situations such as these, I believe that the interests of society would best be served if the economic risk of the transaction is placed on the negligent bank. Banks play a central role in the economic life of our society, and it is not without reason that we have placed upon them the burden of exercising extraordinary diligence when dealing with other economic actors. Thus, I vote to **GRANT** the instant Petition for Review, **SET ASIDE** and **REVERSE** the assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 82378, and **REINSTATE** the Decision of the Regional Trial Court, Branch 82, Quezon City, in Civil Case No. Q-99-38988.

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[6] TSN, 4 December 2003, p. 335.

SECOND DIVISION

[G.R. No. 194253. February 27, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MAGSALIN DIWA *Y* GUTIERREZ,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED.—** [F]indings of fact of the trial court, particularly when affirmed by the Court of Appeals, are accorded great weight. This is because the trial judge has the distinct advantage of closely observing the demeanor of the witnesses, as well as the manner in which they testify, and is in a better position to determine whether or not they are telling the truth.
2. **CRIMINAL LAW; DANGEROUS DRUGS ACT (R.A. NO. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** As found by the lower courts, the prosecution proved beyond reasonable doubt the elements of illegal sale of dangerous drugs: (1) the accused sold and delivered a prohibited drug to another and (2) knew that what was sold and delivered was a prohibited drug; and illegal possession of dangerous drugs: (1) the accused is in possession of the object identified as a prohibited or regulatory drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.
3. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES; HOW DEFEATED.—** The presumption that official duty has been regularly performed, and the corresponding testimony of the arresting officers on the buy-bust transaction, can only be overcome through clear and convincing evidence showing either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive. In the face of the straightforward and direct testimony of the police officers, and absent any improper motive on their part to frame up Diwa, stacked against the bare and thin self-serving testimony of Diwa, we find no reason to overturn the lower courts' findings.

4. **CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; PENALTY.—** For the illegal sale of *marijuana,* violation of Section 5 of Republic Act No. 9165, the lower courts correctly imposed the penalty of Iife imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00). The penalty of death was deleted given the advent of Republic Act No. 9346 which prohibits the imposition of the Death Penalty. For the illegal possession of *marijuana* in the amount of 288.49 grams, violation of Section l l of Republic Act No. 9165, and applying the Indeterminate Sentence Law, the lower courts correctly imposed the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and a fine of Three Hundred Thousand Pesos (₱300,000.00).

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J*.:

Before us is an appeal *via* a Notice of Appeal of the Court of Appeals Decision[1] in CA-G.R. CR.-H.C. No. 03219 affirming the Decision[2] of the Regional Trial Court (RTC), Branch 120, Caloocan City, which, in turn, convicted accused-appellant Magsalin Diwa (Diwa) of violation of Sections 5 and 11 of Republic Act No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

Diwa was charged in two separate Informations for illegal sale and illegal possession of *marijuana*, a dangerous drug:

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[1] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Antonio L. Villamor and Rodil V. Zalameda, concurring. *Rollo*, pp. 2-20.

[2] Penned by Acting Presiding Judge Oscar P. Barrientos. CA *rollo,* pp. 17-26.

CRIM CASE NO. 68962
Violation of Section 5, Art. II, RA 9165

That on or about the 20th day of August 2003, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there, willfully, unlawfully and feloniously sell and deliver to PO3 RAMON GALVEZ, who posed as buyer ONE (1) folded newspaper print containing 72.90 grams of dried suspected marijuana fruiting tops for one (1) pc. one hundred peso bill with serial number #FJI62290 knowing the same to be a dangerous drug.[3]

CRIM CASE NO. 68963
Violation of Section 11, Art. II, RA 9165

That on or about the 20th day of August 2003, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control one (1) yellow plastic bag with one (1) folded newspaper print containing 288.49 grams of dried suspected marijuana fruiting tops, knowing [the same] to be a dangerous drug of the provisions of the above-cited law.[4]

During arraignment, Diwa pleaded not guilty to both charges.

At the pre-trial, the prosecution and defense admitted the identity of the accused (Diwa) and the jurisdiction of the RTC, and stipulated on the testimony of prosecution witness, P/Insp. Jesse Dela Rosa, Forensic Chemical Officer of the Northern Police District-Philippine National Police (PNP) Crime Laboratory Office, Caloocan City Police Station, to wit:

(1) That the witness was the one who conducted qualitative examination on the specimens submitted which gave positive results for the presence of dangerous drugs;

(2) That he reduced his findings in writing which is Physical Science Report No. D-1097-03; and

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[3] *Id.* at 17.

[4] *Id.* at 18.

(3) That under his present oath, the witness confirms that the signature above the name P/Insp. Jesse Abadilla Dela Rosa is his signature.[5]

The foregoing charges were preceded by facts contrarily presented by the parties.

The prosecution's version, initially testified to by P03 Ramon Galvez (PO3 Galvez) and corroborated by SPO1 Fernando Moran (SPO1 Moran), follows:

On 20 August 2003, an informant came to the Caloocan City Police Station and reported the rampant selling of prohibited drugs by a certain Magsalin Diwa along North Diversion Road, Service Road, *Bagong Barrio*, Caloocan City. Upon receiving the information, P/Insp. Cesar Gonzalez Cruz (P/Insp. Cruz) forthwith formed a group to conduct surveillance on the pinpointed area and to arrest possible violators of the Dangerous Drugs Act.

The police operatives were composed of PO3 Rodrigo Antonio, SPO1 Wilson Gamit, PO3 Manuel de Guzman, PO1 Rolly Montefrio, SPO1 Moran and PO3 Galvez. The team assigned PO3 Galvez as the *poseur*-buyer and agreed on a pre-arranged signal of identifying accused, *i.e.*, the informant throws his cigarette in front of Diwa. Thereafter, P/Insp. Cruz handed over to PO3 Galvez a One Hundred Peso-bill dusted with ultra-violet powder, which PO3 Galvez then marked with his initials "RG."

On the same date, at 8:30 in the evening, the police operatives proceeded to North Diversion Road, Service Road, *Bagong Barrio*, Caloocan City. The team of police operatives positioned themselves, with PO3 Galvez at a distance of about five (5) meters from the informant and the other policemen at ten (10) meters away from where PO3 Galvez was situated. Prompted by the informant's execution of the pre-arranged signal, PO3 Galvez approached Diwa and asked him, "*Pre, may chongke (*street name for *Marijuana) ka pa ba?*" to which Diwa replied "*Meron, magkano ba ang kukunin mo?*" PO3 Galvez answered

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[5] *Id.*

back "*Piso lang*," which, in street lingo, meant One Hundred Pesos (₱100.00) worth of *marijuana*.

PO3 Galvez paid Diwa with the One Hundred Peso-bill dusted with ultra-violet powder. Diwa held the marked money in his right hand, reached for a yellow "SM Supermarket" plastic bag beside him, and got a portion of a bunch of *marijuana* wrapped in a newspaper, which portion he gave to PO3 Galvez. At once, as soon as the buy-bust deal was consummated, PO3 Galvez scratched his head, the pre-arranged signal for the other policemen to approach them, and instantaneously grabbed Diwa's hands. Seeing PO3 Galvez's signal, the waiting police operatives rushed towards him. PO3 Galvez introduced himself as a policeman to Diwa, recovered the buy-bust money and marked the *marijuana* he bought from the latter, "MDG," Diwa's initials. SPO1 Moran then confiscated the yellow "SM Supermarket" plastic bag which contained more *marijuana*. After informing Diwa of his constitutional rights, the team brought Diwa to the police station for investigation.

The items confiscated from Diwa were sent to the Crime Laboratory Office of Caloocan City for examination. P/Insp. Jesse Dela Rosa conducted a laboratory test on the specimen submitted by the police operatives, and subsequently issued Physical Sciences Report No. D-1097-03 containing the following entries:

SPECIMEN SUBMITTED:

A- One (1) yellow plastic bag with markings SM Supermarket containing the following;

A-1 = One (1) folded newspaper print with markings 'MDG-1 08-20-03 BUY BUST' containing 72.90 grams of dried suspected Marijuana fruiting tops.

A-2 = One (1) folded newspaper print with markings 'MDG-2 08-20-03' containing 288.49 grams of dried suspected Marijuana fruiting tops.

x x x x x x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of a dangerous drug. x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimen A-1 and A-2 gave POSITIVE result to the test for Marijuana, a dangerous drug. x x x

CONCLUSION:

Specimen A-1 and A-2 contain Marijuana, a dangerous drug. x x x[6]

PO2 Randulfo Hipolito (PO2 Hipolito), the investigator-in-case, was likewise presented by the prosecution, but his testimony was eventually dispensed with because the prosecution and defense entered into another stipulation, that PO2 Hipolito prepared the Referral Slip, Request for Laboratory Examination and the *Pinagsamang Salaysay*.

Accused-appellant Diwa proffered an entirely different story. He claimed that on the inauspicious date of 20 August 2003, he was in front of his house, fetching water, when SPO1 Moran, whom Diwa did not know at the time, approached him and inquired about a certain Brenda. Not knowing who Brenda is, and having told SPO1 Moran so, Diwa was surprised to be whisked away by SPO1 Moran. SPO1 Moran first took Diwa to Balintawak, EDSA, where they transferred to another vehicle; thereafter, Diwa was brought to the Caloocan City police station.

At the precinct, Diwa was detained for two (2) days, and in the interim was supposedly brought to the hospital for medical examination. Further, the policemen allegedly demanded One Hundred Thousand Pesos (₱100,000.00) from Diwa in exchange for his release. When Diwa told the police that he had no money, Diwa was detained for another day, and the next day was brought to the prosecutor's office for inquest. He was then returned to the Caloocan City Jail.

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[6] Records, p. 4.

On the whole, Diwa denied all the allegations against him; he denied ownership of the *marijuana*, claiming that he only saw these when he was brought before the prosecutor's office. Diwa only admitted to the money, Forty Pesos (₱40.00) that was taken from him, which was purportedly used for his fare in going to the hospital for check-up. He claimed to have never met PO3 Galvez, and his supposed arrest by the latter during a buy-bust operation never happened.

However, on cross-examination, Diwa admitted that PO3 Galvez was present during his arrest. On re-direct examination, Diwa failed to clarify his inconsistent statements. Lastly, Diwa claimed that he was brought to a dark room in the Drug Enforcement Unit where his hands were held, rubbed and examined.

On 11 February 2008, the RTC rendered a Decision finding Diwa guilty beyond reasonable doubt for violation of Sections 5 and 11 of Republic Act No. 9165:

> Premises considered, this court finds and so holds the accused Magsalin Diwa GUILTY beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the following:
>
> (a) In Crim. Case No. C-68962, the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00); and
>
> (b) In Crim. Case No. C-68963, the penalty of imprisonment of twelve (12) years and one (1) day to Fourteen (14) years and a fine of Three Hundred Thousand Pesos (₱300,00.00).
>
> The drugs subject matter of these cases are hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.[7]

On appeal, the appellate court affirmed the conviction of accused-appellant and the penalty imposed on him by the RTC.

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[7] *Id.* at 233-234.

Gaining no reprieve before the lower courts, Diwa comes to us assigning the following errors:

I. THE [LOWER COURTS] GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE SELF-SERVING TESTIMONIES OF POLICE OFFICERS RAMON GALVEZ AND FERNANDO MORAN.

II. THE [LOWER COURTS] GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME[S] CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[8]

Accused-appellant hinges his appeal on PO3 Galvez's and SPO1 Moran's failure to follow the procedure for the custody and disposition of the *marijuana*, outlined in Section 21[9] of Republic Act No. 9165, after these were seized and confiscated. Diwa points out that, on cross-examination, PO3 Galvez and SPO1 Moran did not know what was done to the seized and confiscated *marijuana* fruiting tops. Thus, the prosecution failed

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[8] CA *rollo,* p. 65.

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

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

to establish that the seized items were *marijuana*, in short, dangerous drugs. Corollary thereto, Diwa theorizes that it was possible that, not having had the money to pay the police for his release, the actual items seized from Diwa were replaced with the *marijuana* dried fruiting tops to justify his arrest.

As the lower courts were, we are not convinced. We find no cause to disturb their factual findings that a buy-bust transaction took place between PO3 Galvez and Diwa, resulting in the latter's lawful arrest for illegal sale and illegal possession of *marijuana*.

On more than one occasion, we have ruled that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are accorded great weight.[10] This is because the trial judge has the distinct advantage of closely observing the demeanor of the witnesses, as well as the manner in which they testify, and is in a better position to determine whether or not they are telling the truth.[11] On that score alone, Diwa's appeal ought to have been dismissed outright.

As found by the lower courts, the prosecution proved beyond reasonable doubt the elements of illegal sale of dangerous drugs: (1) the accused sold and delivered a prohibited drug to another and (2) knew that what was sold and delivered was a prohibited drug;[12] and illegal possession of dangerous drugs: (1) the accused is in possession of the object identified as a prohibited or regulatory drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[13]

For the reversal of his conviction, Diwa of course relies on the presumption of innocence in his favor, and on the

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[10] *People v. Abedin*, G.R. No. 179936, 11 April 2012, 669 SCRA 322, 336.

[11] *People v. Enriquez*, 346 Phil. 84, 95 (1997).

[12] *People v. Unisa,* G.R. No. 185721, 28 September 2011, 658 SCRA 305, 324 citing *People v. Manlangit,* G.R. No. 189806, 12 January 2011, 639 SCRA 455, 463.

[13] *People v. De Leon*, G.R. No. 186471, 25 January 2010, 611 SCRA 118, 134.

corresponding argument that the details of the purported transaction between him and PO3 Galvez were not clearly and adequately shown. In this regard, we study the testimony of PO3 Galvez:

FISCAL GRAVINO:
Do you recall where were you on August 20, 2003?

A: I was in the office.

Q: And do you remember if you had an operation on that date?
A: Yes, Ma['a]m.

Q: Can you recall what is *(sic)* that operation all about?
A: We conducted buy bust operation[.]

Q: Who ordered you to conduct buy bust operation?
A: Our Chief.

Q: What is the name?
A: Police Insp. Cesar Gonzales Cruz.

Q: And how did Police Insp. Cesar Cruz got (*sic*) information which prompted him to order you tour (*sic*) team to conduct buy bust operation?
A: There was an informant who came to our office, giving information about rampant selling of Marijuana.

Q: And were you informed about the place where the rampant selling of Marijuana took place?
A: Yes, Ma['a]m.

Q: Where?
A: Along Express Way, Service Road, Caloocan City.

Q: And you said that your team was ordered by your Chief to conduct buy bust operation. Who was the subject?
A: Magsalin Diwa.

x x x x x x x x x

Q: When you arrived and parked your vehicle near the target area, what else happened?
A: We went ahead to the target area.

Q: You said "we" to whom are you referring to?
A: Me and the informant.

Q: Why do (*sic*) you went (*sic*) ahead?
A: Because we agreed in the briefing regarding the pre-arranged signal and that is the informant will (*sic*) throw cigarette in front of the person of Magsalin Diwa.

x x x x x x x x x

Q: Now Mr. Witness, what happened when you were following the informant?
A: After seeing the throwing of cigarette by the informant, I immediately approached the suspect.

Q: To whom was that cigarette thrown by the informant?
A: In front of Magsalin Diwa.

Q: Aside from you and the informant, were there other persons around?
A: None Ma['a]m.

x x x x x x x x x

Q: And how far were you when the informant threw cigarette in front of the suspect?
A: Five (5) Meters.

Q: Upon seeing that situation, throwing of cigarette in front of the suspect, what did you do?
A: I approached him.

Q: "*Siya*" you are referring to the suspect?
A: I am referring to Magsalin Diwa.

Q: What about the informant?
A: He went already, Ma['a]m.

Q: What did you do when you approach (*sic*) the suspect?
A: I told him, "*PRE, MAY CHONGKE KA PA BA*?"

Q: What do you mean by "*Chongke*?"
A: The street name of Marijuana.

A: He replied, "*Meron, magkano ba ang kukunin mo.*"

Q: What is the response?
A: I replied, "*Piso lang,*" worth ₱100.00 peso[s].

Q: What did he do after you told him that you are going to buy *Chongke* for ₱100.00?

A: He took the ₱100.00 peso [bill] from me. He held the money with his right hand.

Q: And what else happened?

A: He got a plastic bag colored yellow "SM Supermarket."

x x x x x x x x x

Q: What did he do with the yellow plastic bag?

A: The yellow plastic bag contained *Marijuana* and took *Marijuana* wrapped in a newspaper and gave it to me.

x x x x x x x x x

Q: So there were other parts of *Marijuana* left in that plastic bag, is that what you mean?

A: Yes, Ma['a]m.

x x x x x x x x x

Q: And so after the small portion of *Marijuana* was already handed to you by the suspect what did you do?

A: When I got the *Marijuana* from the suspect I scratched my head as pre-arranged signal that I already bought *Marijuana* from him.[14]

Manifest from the foregoing is that the buy-bust transaction between the police operatives and Diwa was unequivocally established by the prosecution, and it was so found by both lower courts. After being identified by the informant, Diwa was approached by PO3 Galvez for the purchase of *marijuana.* Diwa, after ascertaining the quantity to be purchased and accepting the marked money from PO3 Galvez, handed him a portion of *marijuana* from the bunch wrapped in newspaper, contained in the yellow "SM Supermarket" plastic bag. The contents thereof were sent to the Physical Sciences Division, and after examination, confirmed to be *marijuana*, a dangerous drug.

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[14] TSN, 12 September 2006, pp. 3-12.

In contrast to the presentation of the prosecution, Diwa's roughly drawn scene is that of a frame up, and that he was eventually charged with illegal sale and illegal possession of *marijuana* because he could not produce the money to obtain his release. For good measure, Diwa argues that the police operatives did not perform their duties regularly.

The presumption that official duty has been regularly performed, and the corresponding testimony of the arresting officers on the buy-bust transaction, can only be overcome through clear and convincing evidence showing either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.[15] In the face of the straightforward and direct testimony of the police officers, and absent any improper motive on their part to frame up Diwa, stacked against the bare and thin self-serving testimony of Diwa, we find no reason to overturn the lower courts' findings.

Diwa makes much of the fact that the police operatives did not follow to the letter the text of Section 21 of Republic Act No. 9165, in that they were unaware whether or not an inventory was made of the seized items, or photos taken thereof. Regrettably for Diwa, and as found by both lower courts, the chain of custody of the seized illegal drugs (*corpus delicti*) was duly accounted for and remained unbroken as demonstrated by the marking placed by PO3 Galvez on the substance, from the time it was seized from Diwa until the police turned it over to the crime laboratory for chemical analysis.

In this regard, we quote with favor the appellate court's disquisition:

> There can be no doubt that the *marijuana* bought and seized from [Diwa] was the same one examined in the crime laboratory and later, presented in court. This Court, thus, finds the integrity and the evidentiary value of the drugs coming from [Diwa] to have not been compromised. Having found the integrity and evidentiary value

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[15] *Miclat, Jr. v. People,* G.R. No. 176077, 31 August 2011, 656 SCRA 539, 555-556; *People v. Pagkalinawan*, G.R. No. 184805, 3 March 2010, 614 SCRA 202, 219-220.

of the seized items to be properly preserved, then there is no violation of Section 21 of Republic Act No. 9165. As held by the Supreme Court, non-compliance by the apprehending policemen with Section 21 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated items are properly preserved by the apprehending officer/team [citation omitted]. As provided in Section 21 (a) of the pertinent Implementing Rules of Republic Act No. 9165:

> "…Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.."

The integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. [Diwa], in the instant case, has the burden to show that the evidence was tampered, altered or meddled with to overcome the presumption of regularity in the handling of exhibits by public officers and a presumption that public officer properly discharge their duties. Having failed to discharge this burden, his conviction must be sustained [citation omitted].[16]

Turning now to the imposable penalty on accused-appellant, we sustain the penalty imposed by the RTC, and affirmed by the Court of Appeals. Sections 5 and 11 of Republic Act No. 9165 provide for the penalty for the illegal sale and illegal possession, respectively, of dangerous drugs:

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.

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[16] CA *rollo,* pp. 102-103.

x x x x x x x x x

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

x x x x x x x x x

(7) 500 grams or more of marijuana; and

x x x x x x x x x

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

x x x x x x x x x

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

For the illegal sale of *marijuana*, violation of Section 5 of Republic Act No. 9165, the lower courts correctly imposed the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00). The penalty of death was deleted given the advent of Republic Act No. 9346[17] which prohibits the imposition of the Death Penalty.

For the illegal possession of *marijuana* in the amount of 288.49 grams, violation of Section 11 of Republic Act No. 9165, and

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[17] Entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

applying the Indeterminate Sentence Law,[18] the lower courts correctly imposed the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and a fine of Three Hundred Thousand Pesos (₱300,000.00).

WHEREFORE, the appeal is **DISMISSED.** The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03219 and the RTC in Criminal Cases Nos. C-68962 and C-68963 are **AFFIRMED.** No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 195825. February 27, 2013]

SPOUSES ALFONSO AND MARIA ANGELES CUSI, *petitioners, vs.* **LILIA V. DOMINGO,** *respondent.*

[G.R. No. 195871. February 27, 2013]

RAMONA LIZA L. DE VERA, *petitioner, vs.* **LILIA V. DOMINGO and SPOUSES RADELIA AND ALFRED SY,** *respondents.*

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[18] Section 1. x x x. [A]nd if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

[*] Per Special Order No. 1421 dated 20 February 2013.

SYLLABUS

1. **CIVIL LAW; LAND TITLES; INNOCENT PURCHASER FOR VALUE; CONSTRUED.—** Under the Torrens system of land registration, the registered owner of realty cannot be deprived of her property through fraud, unless a transferee acquires the property as an innocent purchaser for value. A transferee who acquires the property covered by a reissued owner's copy of the certificate of title without taking the ordinary precautions of honest persons in doing business and examining the records of the proper Registry of Deeds, or who fails to pay the full market value of the property is not considered an innocent purchaser for value. x x x In this jurisdiction, therefore, "a person dealing in registered land has the right to rely on the Torrens certificate of title and to dispense with the need of inquiring further, *except* when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry."

2. **ID.; ID.; ID.; MUST BE PURCHASER NOT ONLY IN GOOD FAITH BUT ALSO FOR VALUE; CASE AT BAR.—** To obtain a grasp of whether a person has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry, an internal matter, necessitates an analysis of evidence of a person's conduct. x x x There is no question that the petitioners exerted some effort as buyers to determine whether the property did rightfully belong to Sy. x x x [However,] as the purchasers of the property, they also came under the clear obligation to purchase the property not only in good faith but also for value. Therein lay the problem. x x x There were other circumstances, like the almost simultaneous transactions affecting the property within a short span of time, as well as the gross undervaluation of the property in the deeds of sale, ostensibly at the behest of (seller) Sy to minimize her liabilities for the capital gains tax, that also excited suspicion, and required them to be extra-cautious in dealing with Sy on the property. x x x Good faith is the honest intention to abstain from taking unconscientious advantage of another. It means the "freedom from knowledge and circumstances which ought to put a person on inquiry." Given this notion of good faith, therefore, a purchaser in good faith is one who buys the property of another without notice that some other person has a right to, or interest in, such property and pays full and fair price for the same.

APPEARANCES OF COUNSEL

Carag Zaballero San Pablo Calica & Abiera for Ramona Liza L. De Vera.

Engelberto A. Farol for Sps. Cusi.

Padilla Asuncion Bote-Veguillas Matta Cariño Law Offices for Lilia Domingo.

Capella Law Firm for Sps. Sy.

D E C I S I O N

BERSAMIN, *J.*:

Under the Torrens system of land registration, the registered owner of realty cannot be deprived of her property through fraud, unless a transferee acquires the property as an innocent purchaser for value. A transferee who acquires the property covered by a reissued owner's copy of the certificate of title without taking the ordinary precautions of honest persons in doing business and examining the records of the proper Registry of Deeds, or who fails to pay the full market value of the property is not considered an innocent purchaser for value.

Under review in these consolidated appeals is the Decision promulgated on July 16, 2010,[1] whereby the Court of Appeals (CA) in CA-G.R. CV No. 90452 affirmed the revised decision rendered on March 1, 2007 by the Regional Trial Court in Quezon City (RTC) against the petitioners and their seller.[2]

Antecedents

The property in dispute was a vacant unfenced lot situated in White Plains, Quezon City and covered by Transfer Certificate of Title (TCT) No. N-165606 issued in the name of respondent Lilia V. Domingo by the Registry of Deeds of Quezon City. It

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[1] *Rollo* (G.R. No. 195871), pp. 9-29; penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justice Josefina Guevara-Salonga (retired) and Associate Justice Mariflor Punzalan Castillo.

[2] *Id.* at 1062-1068.

had an area of 658 square meters.[3] In July 1999, Domingo learned that construction activities were being undertaken on her property without her consent. She soon unearthed the series of anomalous transactions affecting her property.

On July 18, 1997, one Radelia Sy (Sy),[4] representing herself as the owner of the property, petitioned the RTC for the issuance of a new owner's copy of Domingo's TCT No. N-165606, appending to her petition a deed of absolute sale dated July 14, 1997 purportedly executed in her favor by Domingo;[5] and an affidavit of loss dated July 17, 1997,[6] whereby she claimed that her bag containing the owner's copy of TCT No. N-165606 had been snatched from her on July 13, 1997 while she was at the SM City in North EDSA, Quezon City. The RTC granted Sy's petition on August 26, 1997.[7] The Registry of Deeds of Quezon City then issued a new owner's duplicate copy of TCT No. N-165606, which was later cancelled by virtue of the deed of absolute sale dated July 14, 1997, and in its stead the Registry of Deeds of Quezon City issued TCT No. 186142 in Sy's name.[8]

Sy subsequently subdivided the property into two, and sold each half by way of contract to sell to Spouses Edgardo and Ramona Liza De Vera and to Spouses Alfonso and Maria Angeles Cusi. The existence of the individual contracts to sell was annotated on the dorsal portion of Sy's TCT No. 186142 as Entry No. PE-8907/N-186142,[9] stating that the consideration of the sale was ₱1,000,000.00 for each set of buyers, or for a total of ₱2,000,000.00 for the entire property that had an actual worth of not less than ₱14,000,000.00. TCT No. 186142 in the name of Sy was then cancelled by virtue of the deeds of

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[3] *Id.* at 117, reverse page not numbered.

[4] Also appears in the records as Radella Sy.

[5] *Rollo* (G.R. No. 195871), pp. 121-122.

[6] *Id.* at 127.

[7] *Id.* at 130-132.

[8] *Id.* at 133.

[9] *Id.* at 135.

sale executed between Sy and Spouses De Vera, and between Sy and Spouses Cusi, to whom were respectively issued TCT No. 189568[10] and TCT No. 189569.[11] All the while, the transactions between Sy and the De Veras, and between Sy and the Cusis were unknown to Domingo, whose TCT No. N-165606 remained in her undisturbed possession.[12]

It turned out that the construction activities taking place on the property that Domingo learned about were upon the initiative of the De Veras in the exercise of their dominical and possessory rights.

Domingo commenced this action against Sy and her spouse, the De Veras and the Cusis in the RTC, the complaint being docketed as Civil Case No. Q-99-39312 and entitled *Lilia V. Domingo v. Spouses Radelia and Alfred Sy, Spouses Alfonso G. and Maria Angeles S. Cusi, Spouses Edgardo M. and Ramona Liza L. De Vera, BPI Family Savings Bank and The Register of Deeds of Quezon City*, seeking the annulment or cancellation of titles, injunction and damages. Domingo applied for the issuance of a writ of preliminary prohibitory and mandatory injunction, and a temporary restraining order (TRO).[13] The RTC granted Domingo's application for the TRO enjoining the defendants from proceeding with the construction activities on the property. The RTC later granted her application for the writ of preliminary injunction.

Ruling of the RTC

On September 30, 2003, the RTC rendered a decision,[14] disposing:

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[10] *Id.* at 134.

[11] *Id.* at 136.

[12] *Id.* at 135.

[13] *Id.* at 108-116.

[14] *Id.* at 810-827.

WHEREFORE, in view of all the foregoing judgment is hereby rendered:

(a) declaring the sale between Lilia V. Domingo and Radella Sy void and of (sic) effect;

(b) declaring the Sps. Edgardo and Ramona Liza De Vera and Sps. Alfonso and Maria Angeles Cusi to be purchasers in good faith and for value;

(c) lifting the writ of preliminary injunction;

(d) finding defendant Radella Sy liable to the plaintiff Lilia Domingo liable (sic) for damages, as follows:

1. Fourteen Million Pesos (₱14,000,000.00) representing the value of the property covered by TCT No. 165606 plus legal rate of interest until fully paid;

2. One Million Pesos (₱1,000,000.00) representing moral damages;

3. Five Hundred Thousand Pesos (₱500,000.00) representing exemplary damages;

4. Five Hundred Thousand Pesos (₱500,000.00) representing attorney's fees;

5. Two Hundred Thousand Pesos (₱200,000.00) representing litigation expenses; and

6. Costs of Suit.

IT IS SO ORDERED.

Acting on the motions for reconsideration separately filed by Sy and Domingo,[15] the RTC reconsidered and set aside its September 30, 2003 decision, and allowed the presentation of rebuttal and sur-rebuttal evidence.

On March 1, 2007, the RTC rendered a new decision,[16] ruling:

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[15] *Id.* at 828-857 and 867-886, (Motion for Reconsideration dated October 20, 2003 filed by the Sys) and Motion for Partial Reconsideration dated October 24, 2003 filed by Domingo).

[16] *Id.* at 1062-1068.

WHEREFORE, in view of the foregoing, Judgment is hereby rendered:

(a) Declaring the sale between Lilia Domingo and Radelia Sy void and of no effect;

(b) Declaring the Sps. Edgardo and Ramona Liza De Vera and Sps. Alfonso and Maria Angeles Cusi not purchasers in good faith and for value;

(c) TCT Nos. 189568 and 189569 are hereby cancelled and declared Null and Void *Ab Initio*;

(d) Directing the Register of Deeds of Quezon City to annotate this Order on TCT Nos. 189568 and 189569;

(e) TCT No. 165606 in the name of Lilia Domingo is hereby revalidated; and,

(f) Finding defendant Radelia Sy liable to the plaintiff Lilia V. Domingo liable (sic) for damages, as follows:

1. One Million Pesos (₱1,000,000.00) representing moral damages;

2. Five Hundred Thousand Pesos (₱500,000.00) representing exemplary damages;

3. Five Hundred Thousand Pesos (₱500,000.00) representing attorney's fees;

4. Two Hundred Thousand Pesos (₱200,000.00) representing litigation expenses; and,

5. Costs of suit.

This Decision is without prejudice to whatever civil action for recovery and damages, the defendants Sps. De Vera and Sps. Cusi may have against defendant Spouses Radelia and Alfred Sy.

SO ORDERED.

Ruling of the CA

On appeal, the assignment of errors each set of appellants made was as follows:

Spouses Cusi

a) THE REGIONAL TRIAL COURT GRAVELY ERRED IN FINDING THAT DEFENDANTS SPOUSES ALFONSO AND MARIA ANGELES CUSI ARE NOT PURCHASERS IN GOOD FAITH AND FOR VALUE.

b) THE REGIONAL TRIAL COURT GRAVELY ERRED IN FAILING TO RESOLVE THE ISSUE OF WHETHER OR NOT CO-DEFENDANTS SPOUSES RADELIA SY AND ALFRED SY ARE LIABLE FOR SPOUSES CUSI'S CROSS-CLAIM.

c) THE REGIONAL TRIAL COURT ERRED IN FAILING TO AWARD DAMAGES AND ATTORNEY'S FEES TO DEFENDANTS SPOUSES CUSI.[17]

Spouses Sy

a) THE TRIAL COURT *A QUO* ERRED IN HOLDING THAT THE SALE BETWEEN LILIA DOMINGO AND RADELIA SY VOID AND OF NO EFFECT AND WAS PROCURRED (sic) THROUGH FRAUDULENT MEANS.

b) THAT THE HONORABLE COURT ERRED IN AWARDING ACTUAL MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES AND LITIGATION EXPENSES THE SAME BEING NULL AND VOID FOR BEING CONTRARY TO LAW.

c) THAT THE SAID DECISION IS CONTRARY TO LAW AND JURISPRUDENCE AND IS NOT SUPPORTED BY EVIDENCE, AS THE SAME CONTAIN SERIOUS REVERSIBLE ERRORS WHEN THE COURT *A QUO* DECLARED THAT TCT NOS. 189568 AND 189569 CANCELLED AND DECLARED NULL AND VOID *AB INITIO*.

d) THE INSTANT ASSAILED DECISION OF THE HONORABLE COURT HAVE (sic) DEPRIVED DEFENDANT[S] SPOUSES SY OF THEIR BASIC CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW.[18]

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[17] *Id.* at 16.

[18] *Id.* at 17.

Spouses De Vera

a) THE LOWER COURT ERRED IN HOLDING THAT THE DE VERA SPOUSES ARE NOT PURCHASERS IN GOOD FAITH AND NOT ENTITLED TO THE POSSESSION OF THE PROPERTY COVERED BY TCT NO. N-189568.

b) THE LOWER COURT ALSO ERRED IN NOT AWARDING DEFENDANT-APPELLANT DE VERA HER COUNTERCLAIMS AGAINST PLAINTIFF-APPELLEE.[19]

As stated, the CA promulgated its decision on July 16, 2010, affirming the RTC with modification of the damages to be paid by the Sys to Domingo, *viz*:

WHEREFORE, premises considered, the instant appeal is **denied.** Accordingly, the Decision dated March 1, 2007 of the Regional Trial Court is hereby ***AFFIRMED*** with the modification on the award of damages to be paid by defendants-appellants Spouses Radelia and Alfred Sy in favor of the plaintiff-appellee Lilia V. Domingo, to wit;

1. ₱500,000.00 by way of moral damages;
2. ₱200,000.00 by way of exemplary damages;
3. ₱100,000.00 as attorney's fees and litigation expenses.

SO ORDERED.[20]

The CA held that the sale of the property from Domingo to Sy was null and void and conveyed no title to the latter for being effected by forging the signature of Domingo; that Sy thereby acquired no right in the property that she could convey to the Cusis and De Veras as her buyers; that although acknowledging that a purchaser could rely on what appeared on the face of the certificate of title, the Cusis and De Veras did not have the status of purchasers in good faith and for value by reason of their being aware of Sy's TCT No. 186142 being a reconstituted owner's copy, thereby requiring them to conduct

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

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

an inquiry or investigation into the status of the title of Sy in the property, and not simply rely on the face of Sy's TCT No. 186142; and that the Cusis and De Veras were also aware of other facts that should further put them on guard, particularly the several nearly simultaneous transactions respecting the property, and the undervaluation of the purchase price from ₱7,000,000.00/half to only ₱1,000,000.00/half to enable Sy to pay a lesser capital gains tax.

The CA later on denied the motions for reconsideration.[21]

Issues

Hence, this appeal *via* petitions for review on *certiorari* by the Cusis (G.R. No. 195825) and Ramona Liza L. De Vera[22] (G.R. No. 195871).

In G.R. No. 195825, the Cusis submit the following issues:[23]

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT TRANSFER CERTIFICATE OF TITLE NO. 186142 REGISTERED IN THE NAME OF RADELIA SY IS A RECONSTITUTED TITLE.

II

WHETHER OR NOT THE PETITIONERS ARE BUYERS IN GOOD FAITH AND FOR VALUE.

III

GRANTING, WITHOUT ADMITTING, THAT THE DECISION OF THE HONORABLE COURT OF APPEALS IS CORRECT WITH RESPECT TO THE SECOND ISSUE, WHETHER OR NOT PETITIONERS ARE ENTITLED TO REIMBURSEMENT OF ALL THE PAYMENTS MADE BY PETITIONERS TO THEIR CO-DEFENDANTS SPOUSES ALFRED AND RADELIA SY IN ADDITION TO DAMAGES AND ATTORNEY'S FEES.

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

[22] Defendant Edgardo De Vera died pending the appeal.

[23] *Rollo* (G.R. No. 195825), pp. 25-26.

In G.R. No. 195871, De Vera asserts that the primordial issue is whether or not she was an innocent purchaser for value and in good faith.

Ruling of the Court

The petitions for review are bereft of merit.

Firstly, now beyond dispute is the nullity of the transfer of Domingo's property to Sy because both lower courts united in so finding. The unanimity in findings of both the RTC and the CA on this all-important aspect of the case is now conclusive on the Court in view of their consistency thereon as well as by reason of such findings being fully supported by preponderant evidence. We consider to be significant that the Sys no longer came to the Court for further review, thereby rendering the judgment of the CA on the issue of nullity final and immutable as to them.

Secondly, the Cusis and De Vera commonly contend that the CA gravely erred in not considering them to be purchasers in good faith and for value. They argue that Sy's TCT No. 186142 was free of any liens or encumbrances that could have excited their suspicion; and that they nonetheless even went beyond the task of examining the face of Sy's TCT No. 186142, recounting every single detail of their quest to ascertain the validity of Sy's title, but did not find anything by which to doubt her title.

The Court concurs with the finding by the CA that the Cusis and De Vera were not purchasers for value and in good faith. The records simply do not support their common contention in that respect.

Under the Torrens system of land registration,[24] the State is required to maintain a register of landholdings that guarantees

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[24] In order to resolve the deficiencies of the common law and deeds registration systems, Sir Robert Torrens, an Irish emigrant to Australia who became the first colonial Premier of South Australia, introduced the new title system in 1858, after a boom in land speculation and a haphazard grant system resulted in the loss of over 75% of the 40,000 land grants issued in the colony (now State) of South Australia. Having served as a Collector of Customs, and having a background in the practices of registering

indefeasible title to those included in the register. The system has been instituted to combat the problems of uncertainty, complexity and cost associated with old title systems that depended upon proof of an unbroken chain of title back to a good root of title. The State issues an official certificate of title to attest to the fact that the person named is the owner of the property described therein, subject to such liens and encumbrances as thereon noted or what the law warrants or reserves.[25]

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the ownership of ships, his idea was to apply the principles of registration of ownership in ships to registration in titles to and, that is, to have land ownership conclusively evidenced by certificate and thereby made determinable and transferable quickly, cheaply and safely (Powell, Richard R., *The Law of Real Property*, Volume 6, § 4405, pp. 245-246; Thomson, George W., *Commentaries on the Modern Law of Real Property*, Volume 8 (Permanent Edition), § 919, p. 302). He established a system based around a central registry of all the land in the jurisdiction of South Australia, embodied in the Real Property Act of 1886 (South Australia). All transfers of land were recorded in the register, and, most importantly, the owner of the land was established by virtue of his name being recorded in the government's register. The Torrens title also recorded easements and the creation and discharge of mortgages.

According to Powell, *op. cit.*, p. 245: "xxx It is frequently said that the system was originated by Torrens, but records, showing systems of registration of title to lands in portions of Europe, are extant, dating back as far as 1836, and there is nothing new about the fundamental principles involved. It is clear, however, that the registration system, as applied in England and generally throughout British dependencies, is the result of the work of Torrens. xxx" See also Hogg, James E., *Australian Torrens System with Statutes* (1905). However, Robinson, Stanley, *Transfer of Land in Victoria* (1979), reports that Ulrich Hübbe, a German lawyer living in South Australia in the 1850s, made the most important single contribution by adapting principles borrowed from the Hanseatic registration system in Hamburg. Nevertheless, it cannot be denied that Torrens' political activities were substantially responsible for securing acceptance of the new system in South Australia and eventually, in other Australian colonies. He oversaw the introduction of the system in the face of often vicious attack from his opponents, many of whom were lawyers, who feared loss of work in conveyancing because of the introduction of a simple scheme. The Torrens system was also a marked departure from the common law of real property and its further development has been characterized by the reluctance of common law judges to accept it.

[25] *Republic v. Guerrero*, G.R. No. 133168, March 28, 2006, 485 SCRA 424, 434-435, citing Noblejas, *Land Titles and Deeds*, 1986 ed., p. 32.

One of the guiding tenets underlying the Torrens system is the curtain principle, in that one does not need to go behind the certificate of title because it contains all the information about the title of its holder. This principle dispenses with the need of proving ownership by long complicated documents kept by the registered owner, which may be necessary under a private conveyancing system, and assures that all the necessary information regarding ownership is on the certificate of title. Consequently, the avowed objective of the Torrens system is to obviate possible conflicts of title by giving the public the right to rely upon the face of the Torrens certificate and, as a rule, to dispense with the necessity of inquiring further; on the part of the registered owner, the system gives him complete peace of mind that he would be secured in his ownership as long as he has not voluntarily disposed of any right over the covered land.[26]

The Philippines adopted the Torrens system through Act No. 496,[27] also known as the *Land Registration Act*, which was approved on November 6, 1902 and took effect on February 1, 1903. In this jurisdiction, therefore, "a person dealing in registered land has the right to rely on the Torrens certificate of title and to dispense with the need of inquiring further, *except* when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry."[28]

To obtain a grasp of whether a person has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry, an internal matter, necessitates an analysis of evidence of a person's conduct.[29] That renders the

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[26] *Republic vs. Court of Appeals*, G.R. Nos. L-46626-27, December 27, 1979, 94 SCRA 865, 874.

[27] *An Act to Provide for the Adjudication and Registration of Titles to Lands in the Philippine Islands.*

[28] *Cayana v. Court of Appeals*, G.R. No. 125607, March 18, 2004, 426 SCRA 10, 23.

[29] *Gabriel v. Mabanta*, G.R. No. 142403, March 26, 2003, 399 SCRA 573, 582-583.

determination of intent as a factual issue,[30] something that the Court does not normally involve itself in because of its not being a trier of facts. Indeed, as a rule, the review function of the Court is limited to a review of the law involved.

But the Court now delves into the facts relating to the issue of innocence of the petitioners in their purchase of the property, considering that the RTC, through its original decision, at first regarded them to have been innocent purchasers who were not aware of any flaw or defect in Sy's title based on the fact that the property had been unfenced and vacant. The RTC also regarded the petitioners' making of reasonable verifications as their exercise of the due diligence required of an ordinary buyer.[31] The RTC later completely turned around through another decision, however, and it was such decision that the CA affirmed subject to the modifications of the damages granted to Domingo.

There is no question that the petitioners exerted some effort as buyers to determine whether the property did rightfully belong to Sy. For one, they did not find any encumbrance, like a notice of *lis pendens*, being annotated on the TCT of Sy. Nonetheless, their observance of a certain degree of diligence within the context of the principles underlying the Torrens system was not their only barometer under the law and jurisprudence by which to gauge the validity of their acquisition of title. As the purchasers of the property, they also came under the clear obligation to purchase the property not only in good faith but also for value.

Therein lay the problem. The petitioners were shown to have been deficient in their vigilance as buyers of the property. It was not enough for them to show that the property was unfenced and vacant; otherwise, it would be too easy for any registered owner to lose her property, including its possession, through illegal occupation. Nor was it safe for them to simply rely on the face of Sy's TCT No. 186142 in view of the fact that they were aware that her TCT was derived from a duplicate owner's

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[30] *Ayala Land, Inc., v. Velasquez, Jr.*, G.R. No. 139449, March 25, 2004, 426 SCRA 309, 318.

[31] *Rollo* (G.R. No. 195871), pp. 810-827.

copy reissued by virtue of the loss of the original duplicate owner's copy. That circumstance should have already alerted them to the need to inquire beyond the face of Sy's TCT No. 186142. There were other circumstances, like the almost simultaneous transactions affecting the property within a short span of time, as well as the gross undervaluation of the property in the deeds of sale, ostensibly at the behest of Sy to minimize her liabilities for the capital gains tax, that also excited suspicion, and required them to be extra-cautious in dealing with Sy on the property.

To the Court, the CA's treatment of Sy's TCT No. 186142 as similar to a reconstituted copy of a Torrens certificate of title was not unwarranted. In doing so, the CA cited the ruling in *Barstowe Philippines Corporation v. Republic*,[32] where the Court, quoting from precedents, opined that "[t]he nature of a reconstituted Transfer Certificate of Title of registered land is similar to that of a second Owner's Duplicate Transfer Certificate of Title," in that "[b]oth are issued, after the proper proceedings, on the representation of the registered owner that the original of the said TCT or the original of the Owner's Duplicate TCT, respectively, was lost and could not be located or found despite diligent efforts exerted for that purpose";[33] and that both were "subsequent copies of the originals thereof," a fact that a "cursory examination of these subsequent copies would show" and "put on notice of such fact [anyone dealing with such copies who is] thus warned to be extra-careful."[34]

Verily, the Court has treated a reissued duplicate owner's copy of a TCT as merely a reconstituted certificate of title. In *Garcia v. Court of Appeals*,[35] a case with striking similarities to this one, an impostor succeeded in tricking a court of law into granting his petition for the issuance of a duplicate owner's copy of the supposedly lost TCT. The impostor then had the TCT cancelled by presenting a purported deed of sale between

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[32] G.R. No. 133110, March 28, 2007, 519 SCRA 148, 186.

[33] *Rollo* (G.R. No. 195825), p. 79.

[34] *Id.*

[35] G.R. No. 96141, October 2, 1991, 202 SCRA 228.

him and the registered owners, both of whom had already been dead for some time, and another TCT was then issued in the impostor's own name. This issuance in the impostor's own name was followed by the issuance of yet another TCT in favor of a third party, supposedly the buyer of the impostor. In turn, the impostor's transferee (already the registered owner in his own name) mortgaged the property to Spouses Miguel and Adela Lazaro, who then caused the annotation of the mortgage on the TCT. All the while, the *original* duplicate owner's copy of the TCT remained in the hands of an heir of the deceased registered owners with his co-heirs' knowledge and consent.

The inevitable litigation ensued, and ultimately ended up with the Court. The Lazaros, as the mortgagees, claimed good faith, and urged the Court to find in their favor. But the Court rebuffed their urging, holding instead that they did not deal on the property in good faith because: (*a*) "the title of the property mortgaged to the Lazaros was a second owner's duplicate TCT, which is, in effect a reconstituted title. This circumstance should have alerted them to make the necessary investigation, but they did not"; and (*b*) their argument, that "because the TCT of the property on which their mortgage lien was annotated did not contain the annotation: "Reconstituted title," the treatment of the reissued duplicate owner's copy of the TCT as akin to a reconstituted title did not apply, had no merit considering that: "The nature of a reconstituted Transfer Certificate of Title of registered land is similar to that of a second Owner's Duplicate Transfer Certificate of Title. Both are issued, after the proper proceedings, on the representation of the registered owner that the original of the said TCT or the original of the Owner's Duplicate TCT, respectively, was lost and could not be located or found despite diligent efforts exerted for that purpose. Both, therefore, are *subsequent* copies of the originals thereof. A cursory examination of these subsequent copies would show that they are not the originals. Anyone dealing with such copies are put on notice of such fact and thus warned to be extra-careful. This warning the mortgagees Lazaros did not heed, or they just ignored it."[36]

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[36] *Id* at 241-242.

The fraud committed in *Garcia* paralleled the fraud committed here. The registered owner of the property was Domingo, who remained in the custody of her TCT all along; the impostor was Sy, who succeeded in obtaining a duplicate owner's copy; and the Cusis and the De Veras were similarly situated as the Spouses Lazaro, the mortgagees in *Garcia*. The Cusis and the De Veras did not investigate beyond the face of Sy's TCT No. 186142, despite the certificate derived from the reissued duplicate owner's copy being akin to a reconstituted TCT. Thereby, they denied themselves the innocence and good faith they supposedly clothed themselves with when they dealt with Sy on the property.

The records also show that the forged deed of sale from Domingo to Sy appeared to be executed on July 14, 1997; that the affidavit of loss by which Sy would later on support her petition for the issuance of the duplicate owner's copy of Domingo's TCT No. 165606 was executed on July 17, 1997, the very same day in which Sy registered the affidavit of loss in the Registry of Deeds of Quezon City; that Sy filed the petition for the issuance of the duplicate owner's copy of Domingo's TCT No. 165606; that the RTC granted her petition on August 26, 1997; and that on October 31, 1997, a real estate mortgage was executed in favor of one Emma Turingan, with the mortgage being annotated on TCT No. 165606 on November 10, 1997.

Being the buyers of the registered realty, the Cusis and the De Veras were aware of the aforementioned several almost simultaneous transactions affecting the property. Their awareness, if it was not actual, was at least presumed, and ought to have put them on their guard, for, as the CA pointed out, the RTC observed that "[t]hese almost simultaneous transactions, particularly the date of the alleged loss of the TCT No. 165606 and the purported Deed of Sale, suffice[d] to arouse suspicion on [the part of] any person dealing with the subject property."[37] Simple prudence would then have impelled them as honest persons to make deeper inquiries to clear the suspiciousness haunting

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[37] *Rollo* (G.R. No. 195871), p. 1066.

Sy's title. But they still went on with their respective purchase of the property without making the deeper inquiries. In that regard, they were not acting in good faith.

Another circumstance indicating that the Cusis and the De Veras were not innocent purchasers for value was the gross undervaluation of the property in the deeds of sale at the measly price of ₱1,000,000.00 for each half when the true market value was then in the aggregate of at least ₱14,000,000.00 for the entire property. Even if the undervaluation was to accommodate the request of Sy to enable her to minimize her liabilities for the capital gains tax, their acquiescence to the fraud perpetrated against the Government, no less, still rendered them as parties to the wrongdoing. They were not any less guilty at all. In the ultimate analysis, their supposed passivity respecting the arrangement to perpetrate the fraud was not even plausible, because they knew as the buyers that they were not personally liable for the capital gains taxes and thus had nothing to gain by their acquiescence. There was simply no acceptable reason for them to have acquiesced to the fraud, or for them not to have rightfully insisted on the declaration of the full value of the realty in their deeds of sale. By letting their respective deeds of sale reflect the grossly inadequate price, they should suffer the consequences, including the inference of their bad faith in transacting the sales in their favor.

De Vera particularly insists that she and her late husband did not have any hand in the undervaluation; and that Sy, having prepared the deed of sale, should alone be held responsible for the undervaluation that had inured only to her benefit as the seller. However, such insistence was rendered of no consequence herein by the fact that neither she nor her late husband had seen fit to rectify the undervaluation. It is notable that the De Veras were contracting parties who appeared to have transacted with full freedom from undue influence from Sy or anyone else.

Although the petitioners argue that the actual consideration of the sale was nearly ₱7,000,000.00 for each half of the property, the Court rejects their argument as devoid of factual basis, for they did not adduce evidence of the actual payment of that amount

to Sy. Accordingly, the recitals of the deeds of sale were controlling on the consideration of the sales.

Good faith is the honest intention to abstain from taking unconscientious advantage of another. It means the "freedom from knowledge and circumstances which ought to put a person on inquiry."[38] Given this notion of good faith, therefore, a purchaser in good faith is one who buys the property of another without notice that some other person has a right to, or interest in, such property and pays full and fair price for the same.[39] As an examination of the records shows, the petitioners were not innocent purchasers in good faith and for value. Their failure to investigate Sy's title despite the nearly simultaneous transactions on the property that ought to have put them on inquiry manifested their awareness of the flaw in Sy's title. That they did not also appear to have paid the full price for their share of the property evinced their not having paid true value.[40]

Resultantly, the Court affirms the lower courts, and restores to Domingo her rights of dominion over the property.

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals promulgated on July 16, 2010; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

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

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[38] *Leung Lee v. F.L. Strong Machinery Co. and Williamson*, 37 Phil. 644, 651 (1918).

[39] *Fule v. De Legare*, No. L-17951, February 28, 1963, 7 SCRA 351, 356.

[40] *Realty Sales Enterprise Inc. v. Intermediate Appellate Court*, No. 67451, September 28, 1987, 154 SCRA 328, 345.

SECOND DIVISION

[G.R. No. 198115. February 27, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE ALEX SECRETO *y* VILLANUEVA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF *SHABU*; ELEMENTS.—** To secure a conviction for illegal sale of *shabu*, the following elements must be present: "(a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. It is material to establish that the transaction or sale actually took place, and to bring to the court the *corpus delicti* as evidence.
2. **ID.; ID.; ILLEGAL POSSESSION OF *SHABU*; ELEMENTS.—** As to the crime of illegal possession of *shabu*, it is necessary to prove the following essential elements of the crime: "(a) the accused [was] in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession [was] not authorized by law; and (c) the accused freely and consciously possessed the drug."
3. **ID.; ID.; CUSTODY OF SEIZED DANGEROUS DRUGS; WHERE THE PROCEDURE THEREON IS NOT OBSERVED, IT IS NECESSARY FOR THE PROSECUTION TO SHOW THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE CONFISCATED ITEMS ARE NONETHELESS PRESERVED.—** Obviously the steps outlined in Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 to ensure the integrity and evidentiary value of the evidence of *corpus delicti* were not followed. That being the case, it is necessary for the prosecution to show that inspite of the non-observance of the requirements in Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165, the integrity and evidentiary value of the seized items were nonetheless preserved. This was not

done in this case. The prosecution failed to show how SPO1 Pamor ensured the integrity of the seized items from the time it was entrusted to him at the place of confiscation until the team reached the police station until he eventually handed them over again to PO2 Lagmay for the marking of the sachets. Neither did the prosecution show to whom the confiscated articles were turned over and the manner they were preserved after the laboratory examination and until their final presentation in court as evidence of the *corpus delicti.* Clearly, these lapses raise doubt on the integrity and identity of the drugs presented as evidence in court.

4. **ID.; ID.; ID.; ITEMS SEIZED SHOULD BE MARKED IN THE PRESENCE OF THE APPREHENDED VIOLATOR AND IMMEDIATELY UPON CONFISCATION.—** [O]n the basis of the testimony of PO2 Lagmay, the confiscated items were not immediately marked at the scene of the crime. More significantly, although these items were allegedly marked in the police station, there was no showing that it was done in the presence of the accused-appellant or his chosen representative. x x x In *People v. Sanchez*, the Court had the occasion to emphasize the necessity of marking the evidence in the presence of the apprehended violator and immediately upon confiscation. It ratiocinated: x x x "**Consistency with the 'chain of custody' rule requires that the 'marking' of the seized items – <u>to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence</u> – should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation**."

5. **ID.; ID.; ID.; FAILURE TO CONDUCT THE REQUIRED PHYSICAL INVENTORY AND TO PHOTOGRAPH THE SEIZED ITEMS PRODUCES SERIOUS DOUBTS ON THE INTEGRITY AND IDENTITY OF THE *CORPUS DELICTI.*—** [T]he buy-bust team did not observe the procedures laid down in Section 21(a) of the Implementing Rules and Regulations of R.A. 9165. They did not conduct a physical inventory and no photograph of the confiscated item was taken in the presence of the accused-appellant, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official. In fact, the prosecution failed to present an accomplished Certificate of

Inventory. In *People v. Ancheta*, where the sole procedural lapse revolved on the failure to conduct the required physical inventory and the taking of photograph in the presence of the representatives and public officials enumerated in the law despite the fact that the accused had been under surveillance and his name already on the drugs watch list, we ruled: "x x x We further note that, before the saving clause provided under it can be invoked, Section 21(a) of the IRR requires the prosecution to prove the twin conditions of (a) existence of justifiable grounds and (b) preservation of the integrity and the evidentiary value of the seized items. In this case, the arresting officers neither presented nor explained justifiable grounds for their failure to (1) make a physical inventory of the seized items; (2) take photographs of the items; and (3) establish that a representative each from the media and the Department of Justice (DOJ), and any elected public official had been contacted and were present during the marking of the items. x x x '**These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up.'"**

6. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; OVERTURNED WHEN THERE IS A GROSS, SYSTEMATIC, OR DELIBERATE DISREGARD OF PROCEDURAL SAFEGUARDS; CASE AT BAR.—** Here, the circumstances obtaining from the time the buy-bust team was organized until the chain of custody commenced were riddled with procedural lapses and inconsistencies between the testimony and the documents presented as evidence in court so much so that even assuming, that the physical inventory contemplated in R.A. 9165 subsumes the marking of the items itself, the belated marking of the seized items at the police station sans the required presence of the accused and the witnesses enumerated under Sec. 21(a) of the Implementing Rules and Regulations of R.A. 9165, and, absent a justifiable ground to stand on, cannot be considered a minor deviation from the procedures prescribed by the law. There being a "gross, systematic, or deliberate disregard of the procedural safeguards" the presumption of regularity in the performance of official duties is overturned.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, ***J*.:**

Once again, we recite the well-settled rule that non-compliance with the procedures laid down in Republic Act No. 9165 (R.A. 9165), otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, does not necessarily warrant the acquittal of the accused,[1] provided that when there is gross disregard of the prescribed safeguards, serious doubt arises as to the identity of the seized item presented in court,[2] for which reason, the prosecution cannot simply invoke the presumption of regularity in the performance of official duties[3] to justify the omissions. For, indeed, "a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties."[4]

We review the Decision[5] dated 18 February 2011 of the Court of Appeals in CA-G.R. CR HC No. 02488, which affirmed *in toto* the Decision[6] dated 7 August 2006 of the Regional Trial Court, Branch 120, Caloocan City in Criminal Case Nos.

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[1] *People v. Ulama*, G.R. No. 186530, 14 December 2011, 662 SCRA 599, 612; *People v. Ancheta*, G.R. No. 197371, 13 June 2012 citing *People v. Umipang,* G.R. No. 190321, 25 April 2012, 671 SCRA 324, 355.

[2] *People v. Garcia*, G.R. No. 173480, 25 February 2009, 580 SCRA 259, 277.

[3] *Id.*

[4] *People v. Umipang*, G.R. No. 190321, 25 April 2012, 671 SCRA 324, 355 citing *People v. Garcia*, *supra* note 2 at 266-267.

[5] CA *rollo*, pp. 87-95. Penned by Associate Justice Manuel M. Barrios with Associate Justices Rosmari D. Carandang and Ramon R. Garcia concurring.

[6] Records, pp. 147-155. Penned by Judge Oscar P. Barrientos.

C-68520 (03) and C-68521 (03). The trial court found accused-appellant guilty beyond reasonable doubt of illegal sale and illegal possession of methamphetamine hydrochloride (*shabu*) for which he was sentenced to suffer, among others, the severe penalty of life imprisonment.[7]

The Facts

In two (2) separate Informations[8] both dated 10 July 2003, accused-appellant was charged with illegal sale and illegal possession of *shabu*[9] before the Regional Trial Court of Caloocan City.

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[7] *Id.* at 154. Decision dated 7 August 2006.

[8] The accusatory portion of the Information docketed as Criminal Case No. C-68520 (03) reads:

> "That on or about the 9th day of July 2003, in the City of Caloocan, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, [Jose Alex Secreto *y* Villanueva] being private person and without authority of law, did then and there, willfully, unlawfully and feloniously in consideration of the amount of ₱100.00, Philippines Currency, sell and distribute to a Police Agent who posed as buyer, one (1) heat-sealed transparent plastic sachets containing white crystalline substance marked RLR-1, weighing 0.06 gram, which substance when subjected to chemistry examination gave positive results for Methamphetamine Hydrochloride otherwise known as "*Shabu*" which is a dangerous drug."

Id. at 1.

The accusatory portion of the Information docketed as Criminal Case No. C-68521 (03) reads:

> "That on or about the 9th day of July 2003, in the City of Caloocan, Philippines and within the jurisdiction of this Honorable Court, [Jose Alex Secreto *y* Villanueva] being private person and without being authorized by law, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control one (1) small heat-sealed transparent sachet containing white crystalline substance weighing 0.04 gram, which substance when subjected to chemistry examination gave positive results for Methamphetamine Hydrochloride otherwise known as "*shabu*," a dangerous drug."

Id. at 11.

[9] In connection with the illegal sale of *shabu,* Section 5, Article II, R.A. 9165 provides:

On 13 August 2003, accused-appellant pleaded not guilty.[10] During pre-trial, the court dispensed with the testimony of forensic chemist Police Inspector Erickson L. Calabocal (P/Insp. Calabocal), after the parties stipulated on the following:

1. That the witness is an expert witness;
2. That on July 10, 2003, [the witness'] office received a request for laboratory examination;
3. That based on the request for laboratory examination x x x, he conducted a qualitative examination on two (2) heat-sealed transparent plastic sachets containing white crystalline substance with [the] following markings and recorded net weights: A (RLR-1) – 0.06 gram B (RLR-2 – 0.04 gram[);]
4. That he recorded his findings in writing as evidenced by Physical Science Report No. D-700-03[;]

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.

x x x x x x x x x

The illegal possession of *shabu* is covered by Section 11, Article II, R.A. 9165, which provides:

Section 11. *Possession of Dangerous Drugs*. — x x x

x x x x x x x x x

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

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x methamphetamine hydrochloride or "*shabu*," or other dangerous drugs x x x.

[10] Records, p. 26. Order dated 13 August 2003.

x x x x x x x x x

[5.] That the witness has no personal knowledge as to the facts and circumstances surrounding the arrest of the accused; and

[6.] That the witness has no personal knowledge from whom the subject specimens were confiscated. That the result of examination is not accompanied by a Certification as required under Rule Sec. 21(3) of R.A. 9165.[11]

On trial, the prosecution presented the following: PO2 Loreto Lagmay[12] (PO2 Lagmay) and PO1 Randy Llanderal[13] (PO1 Llanderal), both of the District Anti-Illegal Drugs Special Operations Group (DAID-SOG), Tanique Street, Kaunlaran Village, Caloocan City. The defense, on the other hand, presented accused-appellant[14] and his mother Marietta Secreto.[15] Their respective testimonies were summarized by the appellate court in the following manner:

x x x x x x x x x

From the prosecution's evidence, it is gathered that on 09 July 2003, a tipster gave information to the [O]ffice of the District Anti-Illegal Drugs Special Operations Group (DAID-SOG) about the drug trade of accused-appellant at Libis Espina, Caloocan City. A team went to the area and validated the report. They saw accused-appellant sell Methamphetamine Hydrochloride or "*shabu*" to three (3) persons. Consequently, a buy-bust operation was planned and immediately implemented on the same day.

At around 8:30 P.M., the team rode on tricycles and proceeded to the target area dressed in civilian clothes. Upon their arrival, the team saw accused-appellant standing in a corner near a small alley. Together with the informant, [PO2 Lagmay], acting as poseur-buyer, approached accused-appellant to buy *shabu* worth ₱100.00 and handed to the latter the marked money. Accused-appellant then gave PO2 Lagmay a small sachet of *shabu*. At once, PO2

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[11] *Id.* at 36-37. Pre-Trial Order dated 23 September 2003.

[12] TSN, 14 April 2008.

[13] *Id.* at 18-19; TSN, 25 April 2005, pp. 1-3.

[14] TSN, 3 October 2005, pp. 1-24.

[15] *Id.* at 25-35.

Lagmay introduced himself as a police officer and placed accused-appellant under arrest while apprising him of the Miranda rights. PO2 Lagmay then ordered Secreto to empty his pockets and recovered the marked money as well as another sachet of *shabu*. PO2 Lagmay presented the recovered evidences to the team leader, SPO1 Edgar Pamor. At the DAID-SOG office, the seized items were surrendered to the investigator-on-duty, [PO1 Llanderal] who then instructed PO2 Lagmay to mark the sachet of *shabu* sold by accused-appelllant as "RLR-1," and "RLR-2" for the other sachet that was confiscated from him. PO1 Llanderal took the sworn statements of the buy-bust team and likewise prepared the requests for laboratory examination of the seized items and for a drug test on accused-appellant.

At the crime laboratory, [P/Insp. Calabocal] examined the two (2) recovered sachets weighing six tenths (0.06) and four tenths (0.04) grams, respectively. Both were found positive for *shabu*, a dangerous drug. x x x

In his defense, accused-appellant denied ever having possessed, sold, or delivered *shabu* to PO2 Lagmay. He claimed that on 09 July 2003, he was drinking soft drinks with his friend, Bonet Soria when four (4) policemen suddenly arrested him. He was forcibly frisked but nothing illegal was found on him. The men also unlawfully entered his house looking for a certain Lito Ponga, a drug pusher in their area. His mother was surprised by the presence of the policemen in their house and she yelled at them. He was brought to the police station where he was manhandled and apprised of drug charges against him. Then the police demanded that he raise Twenty Thousand Pesos (₱20,000.00) in exchange for his release and the dropping of the charge of illegal sale of dangerous drugs, but he had no money to pay them.

This narration was corroborated by his mother, Marietta. From their house, she heard the screams of accused-appellant as he was being arrested. She became hysterical especially when the policemen entered their house. She learned from her son that the police was demanding money from him. In fact, the policemen also went to her house and demanded the sum of Twenty Thousand Pesos (₱20,000.00) so that the charge of Illegal Sale of Dangerous Drugs against her son will be dropped.[16]

[16] CA *rollo*, pp. 89-91. Decision dated 18 February 2011 of the Court of Appeals.

After trial, the court found accused-appellant guilty beyond reasonable doubt of both crimes.[17]

The Court of Appeals affirmed *in toto*[18] the decision of the trial court. Hence, this appeal.

Our Ruling

The appeal is meritorious.

To secure a conviction for illegal sale of *shabu*, the following elements must be present: "(a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing.[19] It is material to establish that the transaction or sale actually took place, and to bring to the court the *corpus delicti* as evidence.[20] As to the crime of illegal possession of *shabu*, it is necessary to prove the following essential elements of the crime:

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[17] Records, pp. 147-155. Decision dated 7 August 2006.

The dispositive portion of the Decision reads:

> Premises considered, the [c]ourt finds and so holds that accused Jose Alex Secreto *y* Villanueva **GUILTY** beyond reasonable doubt for violation of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drug Act of 2002, and imposes upon him the following:
>
> 1. In Criminal Case No. C-68520 for Violation of Section 5, Article II, likewise against Jose Alex Secreto *y* Villanueva the penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (Php500,000.00); and
> 2. In Criminal Case No. C-68521 for Violation of Section 11, Article II, against Jose Alex Secreto the indeterminate penalty of imprisonment of Six (6) years and One (1) day to Twelve (12) years and a fine of three Hundred Thousand Pesos (Php300,000.00).

x x x x x x x x x

[18] CA *rollo*, p. 104. Decision dated 18 February 2011 of the Court of Appeals.

[19] *People v. Bautista*, G.R. No. 177320, 22 February 2012, 666 SCRA 518, 529.

[20] *Id.* at 529-530 citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 449; *People v. del Monte*, G.R. No. 179940, 23 April 2008, 552 SCRA 627, 637-638; *People v. Santiago*, G.R. No. 175326, 28 November 2007, 539 SCRA 198, 212.

"(a) the accused [was] in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession [was] not authorized by law; and (c) the accused freely and consciously possessed the drug."[21] And, in the prosecution of these offenses, the primary consideration is to ensure that the identity and integrity of the seized drugs and other related articles has been preserved from the time they were confiscated from the accused until their presentation as evidence in court.[22]

We have time and again recognized, however, that a buy-bust operation resulting from the tip of an anonymous confidential informant, although an effective means of eliminating illegal drug-related activities, is "susceptible to police abuse."[23] Worse, it is usually used as a means for extortion.[24] It is for this reason, that the Court must ensure that the enactment of R.A. 9165 providing specific procedures to counter these abuses[25] is not put to naught.

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[21] *Id.* citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 451.

[22] *Reyes v. CA*, G.R. No. 180177, 18 April 2012, 670 SCRA 148, 159.

[23] *People v. Garcia*, *supra* note 2 at 267.

[24] *Id.*

[25] One of the procedural safeguards embodied in Article II, of R.A. 9165, reads:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel,**

Thus, we carefully examined the pieces of evidence on record, read the testimonies of the witnesses for the prosecution and the defense, and took a final look on the following material points:

1) Accused-appellant testified in court that the buy-bust team arrested him outside his house while he was having a light conversation with a friend. He was forcibly frisked, and when nothing was recovered from him, the officer ordered, *"[T]animan na yan."*[26] At the police station, PO2 Lagmay and his company demanded from him the amount of ₱50,000 later reduced to ₱20,000 — *first*, allegedly to bail him out in connection with the charge of illegal sale of *shabu,* which he did not know is actually a non-bailable offense,[27] and *second*, to drop the charge of illegal sale of *shabu*.[28] As he had no money, the police officers went back to his house and demanded the same amount from his mother. Frustrated with the outcome of their errand, one of the police officers allegedly even commented, "*[W]alang kwentang kausap ang [n]anay mo.*"[29] The narration of the circumstances surrounding the arrest and the allegation of extortion was corroborated by his mother. Both testimonies, as appearing in the transcript of stenographic notes, were consistent on all material points;

2) Contrary to the testimony of PO2 Lagmay that the team used two tricycles in the operation, the vehicle type issued to the team as reflected in the Pre-Operation Report dated 9 July 2003 supported the claim of accused-appellant that they boarded an owner-type jeep;

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a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; *(Emphasis supplied)*

[26] TSN, 3 October 2005, p. 4.

[27] *Id.* at 7.

[28] *Id.* at 9.

[29] *Id.* at 24.

3) PO2 Lagmay testified that a civilian informant came to their office at around 7:00 o'clock in the evening of 9 July 2003 to report about the illegal peddling of *shabu* by one *alias* Alex at Libis Espina, Caloocan City. A buy-bust team was organized and dispatched at around 7:30 in the evening. However, the Pre-Operation Report[30] appeared to have been issued for the surveillance and buy-bust operation against three different persons, namely, *alyas* Boy, Tess, and Jun. Also, pursuant to the said report, the operation was to start at 1:00 o'clock in the afternoon of 9 July 2003. Interestingly, this was clearly ahead of the time the DAID-SOG supposedly received the information[31] from the confidential informant at 7:00 o'clock in the evening of the same day.

4) In *Reyes v. CA* earlier referred to, the prosecution failed to explain why only six officers out of the thirteen members of the team actually executed and signed the Joint Affidavit. There, the Court concluded, that such a failure "might indicate that the incrimination of [accused] through the buy-bust operation was probably not reliable."[32] In the present case, there were six listed in the Pre-Operation Report as part of the team but only three names, to wit, PO2 Lagmay, PO1 Ameng and PO1 Allan I. Reyes (PO1 Reyes) appeared on the face of the *Pinagsamang Sinumpaang Salaysay.*[33] Of the three only PO2 Lagmay and PO1 Ameng actually signed the document.

5) More telling are the contents of the *Pinagsamang Sinumpaang Salaysay* executed by PO2 Lagmay and PO2 Ameng, which are completely inconsistent with the testimony given by PO2 Lagmay when he later testified in court.

In their *Pinagsamang Sinumpaang Salaysay*, it was made clear that: (1) PO1 Ameng and PO1 Reyes were the ones who

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[30] Records, p. 140. Pre-operation Report dated 9 July 2003, DAID Preop Control No. 03-7-9-043.

[31] See *Reyes v. CA*, *supra* note 22 at 163.

[32] *Id.* at 164.

[33] *Id.* at 131-134.

caught accused-appellant; while (2) PO2 Lagmay frisked the suspect and recovered from the latter's right pocket the buy-bust money together with another sachet containing white crystalline substances. Thus:

> x x x *Na matapos kong suriin ito at sa paniniwala ko (PO2 Lagmay) na ito ay Shabu ay kaagad kong senenyasahan (sic) ang aking mga kasamahan sabay pakilalang mga pulis kami at siya ay aming hinuhuli.* ***Na kami (PO1 Ameng at PO1 Reyes) ay agad naman naming nahawakan at nahuli ang suspek. Na ng kapkapan ko (PO2 Lagmay) ang suspek ay nakuha ko sa kanang bulsa*** *ng suot niyang short pant na maong ang buy-bust money na Isandaang Piso at isang pang pirasong maliit na plastic na naglalaman ng maliliit na kristal na sa paniniwala ko rin na ito ay Shabu.*[34] x x x (Emphasis, italics and underscoring supplied)

PO2 Lagmay, however, gave a different version when he testified in court. *First*, he claimed that it was he who arrested the accused-appellant. Thus:

> Q: After that what then did you do after you were able to buy *shabu*?
> A: **I introduced myself as police officer and arrested him, sir.**
>
> Q: What about the pre-arranged signal?
> A: My pre-arranged signal by scratching my head, sir.
>
> Q: And then you introduced yourself as police officer and arrested him?
> A: Yes, sir.
>
> Q: How did you arrest him?
> A: **I held his hand, sir**.
>
> Q: And then?
> A: And I told him "*Mga pulis kami," sir*.[35] (Emphasis supplied)

Second, contrary to his statement in the *Pinagsamang Sinumpaang Salaysay* that he frisked accused-appellant and

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[34] *Id.* at 131.

[35] TSN, 23 August 2004, pp. 6-7.

recovered the seized items from the latter's pocket, PO2 Lagmay testified on cross-examination that he ordered the accused-appellant to empty his pocket, *viz*:

Q: And then you introduced yourself as policeman?
A: Yes, sir.

Q: And you even used the word "*Mga Pulis kami*"?
A: Yes, sir.

Q: After that you did not say anything?
A: Yes, sir.

Q: You are not certain about that?
A: *I told him mga pulis kami*, **I ordered him to pull out his pocket**, x x x.[36]

More than the foregoing omissions and inconsistencies in the testimony of the witness for the prosecution, serious uncertainty arises as to the integrity and the evidentiary value of the *shabu* allegedly confiscated from the accused-appellant.

The arbitrariness in the identification and eventual marking of seized items, when the life and liberty of a person are at stake, is quite alarming. PO2 Lagmay, on cross examination, testified how he was able to identify the sachet he bought from the other sachet retrieved from the pocket of the pants of accused-appellant. The explanation of how he identified each of the seized items at the police station, after confiscating the two sachets and the marked money all with his right hand without comparing the one bought from the one in possession of the accused-appellant, and after the same transferred hands from PO2 Lagmay to SPO1 Edgar Pamor (SPO1 Pamor) to the former again was unacceptable. Thus:

Q: That **plastic sachet that you bought from Alex**, you did not put that in your pocket because you immediately scratched your head?
A: Yes, sir.

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[36] *Id.* at 15.

Q: And up to the time that you uttered[, "]Alex you retrieved (sic) whatever [is] on your right pocket[,"] you were still holding that plastic sachet?
A: Yes, sir.

Q: But **seeing that there is another plastic sachet allegedly in the pocket of Alex you retrieved that together with the ₱100.00**?
A: Yes, sir.

Q: And **again that same right hand was used** by you in taking that?
A: Yes, sir.

Q: And so in other words **you were now holding the two plastic sachets and the ₱100.00 bill in your right hand**?
A: Yes, sir.

Q: And again **that same right hand was used by you in taking that**?
A: Yes, sir.

Q: So in other words, you were now holding the two (2) plastic sachets and the ₱100.00 bill in your right hand?
A: Yes, sir.

Q: **Where did you bring that after?**
A: **I gave it to the Team leader SPO1 Pamor, sir.**

Q: **That was in Libis Espina?**
A: Yes, sir.

x x x x x x x x x

Q: **And the last thing that you told your team leader Pamor was to retrieve the two (2) plastic sachets and ₱100.00 bills?**
A: Yes, sir.

Q: **And that was in DAID office?**
A: Yes, sir.

x x x x x x x x x

Q: **These two (2) plastic sachets were not very familiar if there were no markings as RLR-1 and RLR-2, will you be able to identify the alleged buy bust money and the alleged I (sic) plastic sachet recovered?**
A: Yes, sir.

Q: And how?
A: The two had letters that fit the plastic sachet, the one I bought from him, sir.

Q: **Did you compare the two at that time you confiscated the two (2) from the accused?**
A: ***Nasalat na lang po, sir.***

Q: **But you did not compare?**
A: **No, sir.**[37] (Emphasis supplied)

Obviously the steps outlined in Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 to ensure the integrity and evidentiary value of the evidence of *corpus delicti* were not followed. That being the case, it is necessary for the prosecution to show that inspite of the non-observance of the requirements in Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165, the integrity and evidentiary value of the seized items were nonetheless preserved. This was not done in this case. The prosecution failed to show how SPO1 Pamor ensured the integrity of the seized items from the time it was entrusted to him at the place of confiscation until the team reached the police station[38] until he eventually handed them over again to PO2 Lagmay for the marking of the sachets. Neither did the prosecution show to whom the confiscated articles were turned over and the manner they were preserved after the laboratory examination and until their final presentation in court as evidence of the *corpus delicti*.[39] Clearly, these lapses raise doubt on the integrity and identity of the drugs presented as evidence in court.[40]

Further, on the basis of the testimony of PO2 Lagmay, the confiscated items were not immediately marked at the scene of the crime. More significantly, although these items were allegedly marked in the police station, there was no showing that it was

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[37] TSN, 23 August 2004, pp. 16-17.

[38] *People v. Relato*, G.R. No. 173794, 18 January 2012, 663 SCRA 260, 270.

[39] *Reyes v. CA*, *supra* note 22 at 163.

[40] *Id.*

done in the presence of the accused-appellant or his chosen representative.[41] Thus:

Q: What then did you do with the evidence you recovered and bought and the person of *alias* Alex?
A: We brought him in our office, sir.

Q: To whom did you turn over the person and the evidence?
A: To the investigator PO1 Llanderal, sir.

Q: What did Llanderal do with the *shabu* you recovered and bought?
A: I submitted the same for laboratory examination, sir.

Q: What did PO1 Llanderal do other than submitting it before the PNP Crime Laboratory?
A: Together with the plastic sachets, he told me to place my initial, sir.

Q: What initial did you place?
A: RLR, sir.

x x x x x x x x x

Q: There are two (2) sachets, the one you bought and the one you recovered, the one you bought what is the initial?
A: The one I bought is RLR-1, the one I recovered was RLR-2, sir.[42]

In *People v. Sanchez*,[43] the Court had the occasion to emphasize the necessity of marking the evidence in the presence of the apprehended violator and immediately upon confiscation. It ratiocinated:

x x x x x x x x x

What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and

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[41] See *People v. Relato*, *supra* note 38 at 268.

[42] TSN, 23 August 2004, p. 8.

[43] G.R. No. 175832, 15 October 2008, 569 SCRA 194.

photography when these activities are undertaken at the police station rather than at the place of arrest. **Consistency with the "chain of custody" rule requires that the "marking" of the seized items — <u>to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence</u> – should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation.** This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft.[44] (Emphasis and underscoring supplied; Citations omitted)

It is also clear from the foregoing that aside from the markings that PO2 Lagmay alleged to have been made in the presence of PO1 Llanderal, who did not testify on this point, the buy-bust team did not observe the procedures laid down in Section 21(a) of the Implementing Rules and Regulations of R.A. 9165.[45] They did not conduct a physical inventory and no photograph of the

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[44] *Id.* at 218-219.

[45] 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. — x x x:

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

confiscated item was taken in the presence of the accused-appellant, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official.[46] In fact, the prosecution failed to present an accomplished Certificate of Inventory.

In *People v. Ancheta*,[47] where the sole procedural lapse revolved on the failure to conduct the required physical inventory and the taking of photograph in the presence of the representatives and public officials enumerated in the law despite the fact that the accused had been under surveillance and his name already on the drugs watch list, we ruled:

> x x x We further note that, before the saving clause provided under it can be invoked, Section 21(a) of the IRR requires the prosecution to prove the twin conditions of (a) existence of justifiable grounds and (b) preservation of the integrity and the evidentiary value of the seized items. In this case, the arresting officers neither presented nor explained justifiable grounds for their failure to (1) make a physical inventory of the seized items; (2) take photographs of the items; and (3) establish that a representative each from the media and the Department of Justice (DOJ), and any elected public official had been contacted and were present during the marking of the items. These errors were exacerbated by the fact that the officers had ample time to comply with these legal requirements, as they had already monitored and put accused-appellants on their watch list. The totality of these circumstances has led us to conclude that the apprehending officers deliberately disregarded the legal procedure under R.A. 9165. **"These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up"** Accused-appellants would thereby be discharged from the crimes of which they were convicted.[48] (Emphasis supplied)

Here, the circumstances obtaining from the time the buy-bust team was organized until the chain of custody commenced were riddled with procedural lapses and inconsistencies between

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[46] See *Reyes v. CA*, *supra* note 22 at 161.

[47] G.R. No. 197371, 13 June 2012.

[48] *Id.* citing *People v. Umipang, supra* note 4.

the testimony and the documents presented as evidence in court so much so that even assuming, that the physical inventory contemplated in R.A. 9165 subsumes the marking of the items itself, the belated marking of the seized items at the police station sans the required presence of the accused and the witnesses enumerated under Sec. 21(a) of the Implementing Rules and Regulations of R.A. 9165, and, absent a justifiable ground to stand on, cannot be considered a minor deviation from the procedures prescribed by the law. There being a "gross, systematic, or deliberate disregard of the procedural safeguards" the presumption of regularity in the performance of official duties is overturned.[49]

Above all, against these serious procedural lapses lies the glaring fact that, other than the stipulation of the parties during pre-trial on the receipt of the specimen and the results of the test conducted thereon, and the testimony of PO1 Llanderal, which was limited to the subject on the preparation of the request for the conduct of a drug test on accused-appellant and the Pre-Coordination Report to the PDEA, PO2 Lagmay's "testimony and the evidence he [alone] identified [in court] constitute the totality of the evidence for the prosecution on the handling of the allegedly seized items."[50] We cannot, therefore, hold that the guilt of the accused-appellant has been proven beyond reasonable doubt. The constitutional right of the accused-appellant to be presumed innocent[51] must prevail.

WHEREFORE, we **REVERSE and SET ASIDE** the Decision dated 18 February 2011 of the Court of Appeals in CA-G.R. CR HC No. 02488. Accused-appellant Jose Alex Secreto *y* Villanueva is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for another lawful cause.

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[49] *Id.*

[50] *People v. Sanchez*, *supra* note 43 at 211.

[51] *Id.* at 222.

Let a copy of this decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court the action taken thereon within five (5) days from receipt of this Decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 201167. February 27, 2013]

GOTESCO PROPERTIES, INC., JOSE C. GO, EVELYN GO, LOURDES D. ORTIGA, GEORGE GO, and VICENTE GO, *petitioners, vs.* **SPOUSES EUGENIO and ANGELINA FAJARDO,** *respondents.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT TO SELL; THE SELLER'S OBLIGATION TO DELIVER THE CORRESPONDING CERTIFICATES OF TITLE IS SIMULTANEOUS AND RECIPROCAL TO THE BUYER'S FULL PAYMENT OF THE PURCHASE PRICE.—** It is settled that in a contract to sell, the seller's obligation to deliver the corresponding certificates of title is simultaneous and reciprocal to the buyer's full payment of the purchase price.

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[*] Additional member per raffle dated 25 February 2013.

[**] Designated acting member per Special Order No. 1421 dated 20 February 2013.

In this relation, Section 25 of PD 957, which regulates the subject transaction, imposes on the subdivision owner or developer the obligation to cause the transfer of the corresponding certificate of title to the buyer upon full payment x x x.

2. **ID.; OBLIGATIONS AND CONTRACTS; RECIPROCAL OBLIGATIONS; RESCISSION; ENTAILS MUTUAL RESTITUTION; CASE AT BAR.—** [R]escission does not merely terminate the contract and release the parties from further obligations to each other, but abrogates the contract from its inception and restores the parties to their original positions as if no contract has been made. Consequently, mutual restitution, which entails the return of the benefits that each party may have received as a result of the contract, is thus required. To be sure, it has been settled that the effects of rescission as provided for in Article 1385 of the Code are equally applicable to cases under Article 1191 x x x. In this light, it cannot be denied that only GPI benefited from the contract, having received full payment of the contract price plus interests as early as January 17, 2000, while Sps. Fajardo remained prejudiced by the persisting non-delivery of the subject lot despite full payment. As a necessary consequence, considering the propriety of the rescission x x x Sps. Fajardo must be able to recover the price of the property pegged at its prevailing market value consistent with the Court's pronouncement in *Solid Homes* x x x. On this score, it is apt to mention that it is the intent of PD 957 to protect the buyer against unscrupulous developers, operators and/or sellers who reneged on their obligations. Thus, in order to achieve this purpose, equity and justice dictate that the injured party should be afforded full recompense and as such, be allowed to recover the prevailing market value of the undelivered lot which had been fully paid for.

3. **MERCANTILE LAW; CORPORATION CODE; OFFICERS OF THE CORPORATION; CANNOT BE MADE PERSONALLY LIABLE FOR LIABILITIES OF THE CORPORATION IN THE ABSENCE OF MALICE AND BAD FAITH.—** [T]he Court finds no basis to hold individual petitioners solidarily liable with petitioner GPI for the payment of damages in favor of Sps. Fajardo since it was not shown that they acted maliciously or dealt with the latter in bad faith. Settled is the rule that in the absence of malice and bad faith,

as in this case, officers of the corporation cannot be made personally liable for liabilities of the corporation which, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members.

APPEARANCES OF COUNSEL

De Sagun Law Office for petitioners.
Gary A. Sancio for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the July 22, 2011 Decision[1] and February 29, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 112981, which affirmed with modification the August 27, 2009 Decision[3] of the Office of the President (OP).

The Facts

On January 24, 1995, respondent-spouses Eugenio and Angelina Fajardo (Sps. Fajardo) entered into a Contract to Sell[4] (contract) with petitioner-corporation Gotesco Properties, Inc. (GPI) for the purchase of a 100-square meter lot identified as Lot No. 13, Block No. 6, Phase No. IV of Evergreen Executive Village, a subdivision project owned and developed by GPI located at Deparo Road, Novaliches, Caloocan City. The subject lot is a portion of a bigger lot covered by Transfer Certificate of Title (TCT) No. 244220[5] (mother title).

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[1] *Rollo*, pp. 42-50. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Mario V. Lopez and Socorro B. Inting, concurring.

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

[3] *Id.* at 195-198. Penned by Deputy Executive Secretary for Legal Affairs Natividad G. Dizon, by authority of the Executive Secretary.

[4] *Id.* at 101-104.

[5] *Id.* at 56-57.

Under the contract, Sps. Fajardo undertook to pay the purchase price of ₱126,000.00 within a 10-year period, including interest at the rate of nine percent (9%) per annum. GPI, on the other hand, agreed to execute a final deed of sale (deed) in favor of Sps. Fajardo upon full payment of the stipulated consideration. However, despite its full payment of the purchase price on January 17, 2000[6] and subsequent demands,[7] GPI failed to execute the deed and to deliver the title and physical possession of the subject lot. Thus, on May 3, 2006, Sps. Fajardo filed before the Housing and Land Use Regulatory Board-Expanded National Capital Region Field Office (HLURB-ENCRFO) a complaint[8] for specific performance or rescission of contract with damages against GPI and the members of its Board of Directors namely, Jose C. Go, Evelyn Go, Lourdes G. Ortiga, George Go, and Vicente Go (individual petitioners), docketed as HLURB Case No. REM-050306-13319.

Sps. Fajardo averred that GPI violated Section 20[9] of Presidential Decree No. 957[10] (PD 957) due to its failure to construct and provide water facilities, improvements, infrastructures and other forms of development including water supply and lighting facilities for the subdivision project. They also alleged that GPI failed to provide boundary marks for each lot and that the mother title including the subject lot had no

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[6] *Id.* at 105. Certificate of Full Payment.

[7] *Id.* at 108-112. Letters dated September 16, 2002 and February 10, 2006.

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

[9] Sec. 20. *Time of Completion.* Every owner or developer shall construct and provide the facilities, improvements, infrastructures and other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, within one year from the date of the issuance of the license for the subdivision or condominium project or such other period of time as may be fixed by the Authority.

[10] Otherwise known as "The Subdivision and Condominium Buyers' Protective Decree."

technical description and was even levied upon by the Bangko Sentral ng Pilipinas (BSP) without their knowledge. They thus prayed that GPI be ordered to execute the deed, to deliver the corresponding certificate of title and the physical possession of the subject lot within a reasonable period, and to develop Evergreen Executive Village; or in the alternative, to cancel and/or rescind the contract and refund the total payments made plus legal interest starting January 2000.

For their part, petitioners maintained that at the time of the execution of the contract, Sps. Fajardo were actually aware that GPI's certificate of title had no technical description inscribed on it. Nonetheless, the title to the subject lot was free from any liens or encumbrances.[11] Petitioners claimed that the failure to deliver the title to Sps. Fajardo was beyond their control[12] because while GPI's petition for inscription of technical description (LRC Case No. 4211) was favorably granted[13] by the Regional Trial Court of Caloocan City, Branch 131 (RTC-Caloocan), the same was reversed[14] by the CA; this caused the delay in the subdivision of the property into individual lots with individual titles. Given the foregoing incidents, petitioners thus argued that Article 1191 of the Civil Code (Code) — the provision on which Sps. Fajardo anchor their right of rescission — remained inapplicable since they were actually willing to comply with their obligation but were only prevented from doing so due to circumstances beyond their control. Separately, petitioners pointed out that BSP's adverse claim/levy which was annotated long after the execution of the contract had already been settled.

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[11] *Rollo,* p. 114. Answer.

[12] *Id.* at 131. Position Paper.

[13] *Id.* at 61-63. Amended Decision dated October 8, 2001.

[14] *Id.* at 64-72. Decision dated July 15, 2003 in CA-G.R. CV No. 72187. The petition for inscription was dismissed for GPI's failure: (*a*) to implead the adverse claimant, Andres Rustia (representative of BSP); (*b*) to notify the adjoining owners; and (*c*) to show why the technical description was in the name of one Andres Pacheco, the averred predecessor-in-interest, whose ownership was not sufficiently established.

The Ruling of the HLURB-ENCRFO

On February 9, 2007, the HLURB-ENCRFO issued a Decision[15] in favor of Sps. Fajardo, holding that GPI's obligation to execute the corresponding deed and to deliver the transfer certificate of title and possession of the subject lot arose and thus became due and demandable at the time Sps. Fajardo had fully paid the purchase price for the subject lot. Consequently, GPI's failure to meet the said obligation constituted a substantial breach of the contract which perforce warranted its rescission. In this regard, Sps. Fajardo were given the option to recover the money they paid to GPI in the amount of ₱168,728.83, plus legal interest reckoned from date of extra-judicial demand in September 2002 until fully paid. Petitioners were likewise held jointly and solidarily liable for the payment of moral and exemplary damages, attorney's fees and the costs of suit.

The Ruling of the HLURB Board of Commissioners

On appeal, the HLURB Board of Commissioners affirmed the above ruling in its August 3, 2007 Decision,[16] finding that the failure to execute the deed and to deliver the title to Sps. Fajardo amounted to a violation of Section 25 of PD 957 which therefore, warranted the refund of payments in favor of Sps. Fajardo.

The Ruling of the OP

On further appeal, the OP affirmed the HLURB rulings in its August 27, 2009 Decision.[17] In so doing, it emphasized the mandatory tenor of Section 25 of PD 957 which requires the delivery of title to the buyer upon full payment and found that GPI unjustifiably failed to comply with the same.

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[15] *Id.* at 147-151. Penned by Housing and Land Use Arbiter Atty. Ma. Lorina J. Rigor.

[16] *Id.* at 153-154. Signed by Commissioner Romulo Q. Fabul, with Presiding Commissioner Jesus Yap Pang and *Ex-Officio* Commissioner Joel I. Jacob.

[17] *Id.* at 195-198.

The Ruling of the CA

On petition for review, the CA affirmed the above rulings with modification, fixing the amount to be refunded to Sps. Fajardo at the prevailing market value of the property[18] pursuant to the ruling in *Solid Homes v. Tan* (*Solid Homes*).[19]

The Petition

Petitioners insist that Sps. Fajardo have no right to rescind the contract considering that GPI's inability to comply therewith was due to reasons beyond its control and thus, should not be held liable to refund the payments they had received. Further, since the individual petitioners never participated in the acts complained of nor found to have acted in bad faith, they should not be held liable to pay damages and attorney's fees.

The Court's Ruling

The petition is partly meritorious.

A. Sps. Fajardo's right to rescind

It is settled that in a contract to sell, the seller's obligation to deliver the corresponding certificates of title is simultaneous and reciprocal to the buyer's full payment of the purchase price.[20] In this relation, Section 25 of PD 957, which regulates the subject transaction, imposes on the subdivision owner or developer the obligation to cause the transfer of the corresponding certificate of title to the buyer upon full payment, to wit:

> Sec. 25. *Issuance of Title*. **The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit**. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event

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[18] *Id.* at 42-50.

[19] G.R. Nos. 145156-57, July 29, 2005, 465 SCRA 137.

[20] *Cantemprate v. CRS Realty Development Corporation*, G.R. No. 171399, May 8, 2009, 587 SCRA 492, 513.

a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith. (Emphasis supplied.)

In the present case, Sps. Fajardo claim that GPI breached the contract due to its failure to execute the deed of sale and to deliver the title and possession over the subject lot, notwithstanding the full payment of the purchase price made by Sps. Fajardo on January 17, 2000[21] as well as the latter's demand for GPI to comply with the aforementioned obligations per the letter[22] dated September 16, 2002. For its part, petitioners proffer that GPI could not have committed any breach of contract considering that its purported non-compliance was largely impelled by circumstances beyond its control *i.e.*, the legal proceedings concerning the subdivision of the property into individual lots. Hence, absent any substantial breach, Sps. Fajardo had no right to rescind the contract.

The Court does not find merit in petitioners' contention.

A perusal of the records shows that GPI acquired the subject property on March 10, 1992 through a Deed of Partition and Exchange[23] executed between it and Andres Pacheco (Andres), the former registered owner of the property. GPI was issued TCT No. 244220 on March 16, 1992 but the same did not bear any technical description.[24] However, no plausible explanation was advanced by the petitioners as to why the petition for inscription (docketed as LRC Case No. 4211) dated January 6, 2000,[25] was filed only after almost eight (8) years from the acquisition of the subject property.

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[21] *Rollo,* p. 105.

[22] *Id.* at 108-110.

[23] *Id.* at 58-60.

[24] *Id.* at 56-57.

[25] *Id.* at 61.

Neither did petitioners sufficiently explain why GPI took no positive action to cause the immediate filing of a new petition for inscription *within a reasonable time* from notice of the July 15, 2003 CA Decision which dismissed GPI's earlier petition based on technical defects, this notwithstanding Sps. Fajardo's full payment of the purchase price and prior demand for delivery of title. GPI filed the petition before the RTC-Caloocan, Branch 122 (docketed as LRC Case No. C-5026) only on *November 23, 2006*,[26] following receipt of the letter[27] dated February 10, 2006 and the filing of the complaint on May 3, 2006, alternatively seeking refund of payments. While the court *a quo* decided the latter petition for inscription in its favor,[28] there is no showing that the same had attained finality or that the approved technical description had in fact been annotated on TCT No. 244220, or even that the subdivision plan had already been approved.

Moreover, despite petitioners' allegation[29] that the claim of BSP had been settled, there appears to be no cancellation of the annotations[30] in GPI's favor. Clearly, the long delay in the performance of GPI's obligation from date of demand on September 16, 2002 was unreasonable and unjustified. It cannot therefore be denied that GPI substantially breached its contract to sell with Sps. Fajardo which thereby accords the latter the right to rescind the same pursuant to Article 1191 of the Code, *viz*:

ART. 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 fulfillment and the rescission of the obligation, with the payment of damages in either

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[26] *Id.* at 73.

[27] *Id.* at 111-112.

[28] *Id.* at 160-162. Decision dated June 7, 2007.

[29] *Id.* at 130.

[30] *Id.* at 57.

case. He may also seek rescission, even after he has chosen fulfillment, 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.

B. Effects of rescission

At this juncture, it is noteworthy to point out that rescission does not merely terminate the contract and release the parties from further obligations to each other, but abrogates the contract from its inception and restores the parties to their original positions as if no contract has been made.[31] Consequently, mutual restitution, which entails the return of the benefits that each party may have received as a result of the contract, is thus required.[32] To be sure, it has been settled that the effects of rescission as provided for in Article 1385 of the Code are equally applicable to cases under Article 1191, to wit:

x x x x x x x x x

Mutual restitution is required in cases involving rescission under Article 1191. This means bringing the parties back to their original status prior to the inception of the contract. Article 1385 of the Civil Code provides, thus:

> ART. 1385. **Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obligated to restore.**
>
> Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

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[31] *Unlad Resources Development Corporation v. Dragon*, G.R. No. 149338, July 28, 2008, 560 SCRA 63, 79.

[32] *Goldloop Properties Inc. v. Government Service Insurance System*, G.R. No. 171076, August 1, 2012.

In this case, indemnity for damages may be demanded from the person causing the loss.

This Court has consistently ruled that this provision applies to rescission under Article 1191:

> [S]ince Article 1385 of the Civil Code expressly and clearly states that "rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest," the Court finds no justification to sustain petitioners' position that said Article 1385 does not apply to rescission under Article 1191. x x x[33] (Emphasis supplied; citations omitted.)

In this light, it cannot be denied that only GPI benefited from the contract, having received full payment of the contract price plus interests as early as January 17, 2000, while Sps. Fajardo remained prejudiced by the persisting non-delivery of the subject lot despite full payment. As a necessary consequence, considering the propriety of the rescission as earlier discussed, Sps. Fajardo must be able to recover the price of the property pegged at its prevailing market value consistent with the Court's pronouncement in *Solid Homes*,[34] *viz*:

> Indeed, there would be unjust enrichment if respondents *Solid Homes, Inc. & Purita Soliven* are made to pay only the purchase price plus interest. It is definite that the value of the subject property already escalated after almost two decades from the time the petitioner paid for it. **Equity and justice dictate that the injured party should be paid the market value of the lot, otherwise, respondents Solid Homes, Inc. & Purita Soliven would enrich themselves at the expense of herein lot owners when they sell the same lot at the present market value.** Surely, such a situation should not be countenanced for to do so would be contrary to reason and therefore, unconscionable. Over time, courts have recognized with almost pedantic adherence that what is inconvenient or contrary to reason is not allowed in law. (Emphasis supplied.)

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[33] *Supra* note 31, citing *Laperal v. Solid Homes, Inc.*, G.R. No. 130913, June 21, 2005, 460 SCRA 375, 385-387.

[34] *Supra* note 19.

On this score, it is apt to mention that it is the intent of PD 957 to protect the buyer against unscrupulous developers, operators and/or sellers who reneged on their obligations.[35] Thus, in order to achieve this purpose, equity and justice dictate that the injured party should be afforded full recompense and as such, be allowed to recover the prevailing market value of the undelivered lot which had been fully paid for.

C. Moral and exemplary damages, attorney's fees and costs of suit

Furthermore, the Court finds that there is proper legal basis to accord moral and exemplary damages and attorney's fees, including costs of suit. Verily, GPI's unjustified failure to comply with its obligations as above-discussed caused Sps. Fajardo serious anxiety, mental anguish and sleepless nights, thereby justifying the award of moral damages. In the same vein, the payment of exemplary damages remains in order so as to prevent similarly minded subdivision developers to commit the same transgression. And finally, considering that Sps. Fajardo were constrained to engage the services of counsel to file this suit, the award of attorney's fees must be likewise sustained.

D. Liability of individual petitioners

However, the Court finds no basis to hold individual petitioners solidarily liable with petitioner GPI for the payment of damages in favor of Sps. Fajardo since it was not shown that they acted maliciously or dealt with the latter in bad faith. Settled is the rule that in the absence of malice and bad faith, as in this case, officers of the corporation cannot be made personally liable

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[35] PD 957 states: WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems, and other similar basic requirements, thus endangering the health and safety of home and lot buyers.

for liabilities of the corporation which, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members.[36]

WHEREFORE, the assailed July 22, 2011 Decision and February 29, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 112981 are hereby **AFFIRMED WITH MODIFICATION,** absolving individual petitioners Jose C. Go, Evelyn Go, Lourdes G. Ortiga, George Go, and Vicente Go from personal liability towards respondent-spouses Eugenio and Angelina Fajardo.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 184023. March 4, 2013]

LORNA CASTIGADOR, *petitioner*, *vs.* **DANILO M. NICOLAS,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR ANNULMENT OF JUDGMENT; THE TRIAL COURT MUST STATE CLEARLY THE REASON FOR THE DISMISSAL OF THE PETITION.—** [U]nder Section 5,

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[36] See *Alert Security and Investigation Agency, Inc. v. Pasawilan*, G.R. No. 182397, September 14, 2011, 657 SCRA 655, 670-671.

[*] Designated Acting Member per Special Order No. 1421 dated February 20, 2013.

Rule 47 of the Rules of Court, it is incumbent that when a court finds no substantial merit in a petition for annulment of judgment, it may dismiss the petition outright but the "**specific reasons for such dismissal**" shall be clearly set out. In this case, the Court is at sea on the tenor of the assailed resolutions. Was the petition dismissed because it does not contain any allegation of extrinsic fraud or lack of jurisdiction (procedural)? Or was it dismissed because the petition failed to make out a case for annulment of judgment based on extrinsic fraud or lack of jurisdiction (substantial)? Unfortunately, the CA brushed aside any discussion on these points and failed to state with clarity the reasons for the dismissal.

2. **ID.; ID.; ID.; THE PETITION NEED NOT CATEGORICALLY STATE THE EXACT WORDS *EXTRINSIC FRAUD*.—** The petition filed with the CA contained the following allegations, among others: (1) "the auction sale of the land is **null and void** for lack of actual and personal notice to herein petitioner"; (2) the RTC did not comply with the procedure prescribed in Section 71, Presidential Decree No. 1529 requiring notice by the Register of Deeds to the registered owner as to the issuance of a certificate of sale; and (3) petitioner was not afforded due process when she was not notified of the proceedings instituted by respondent for the cancellation of her title. The petition need not categorically state the exact words *extrinsic fraud*; rather, the allegations in the petition should be so crafted to easily point out the ground on which it was based. The allegations in the petition filed with the CA sufficiently identify the ground upon which the petition was based — extrinsic fraud. The allegations clearly charged the RTC and respondent with depriving petitioner of the opportunity to oppose the auction sale and the cancellation of her title and ventilate her side. This allegation, if true, constitutes extrinsic fraud.

3. **ID.; ID.; ID.; WHERE THE SUMMARY DISMISSAL OF THE PETITION FOR ANNULMENT OF JUDGMENT WAS ERRONEOUS, REMAND OF THE CASE FOR FURTHER PROCEEDINGS IS PROPER.—** [T]he grounds relied upon by the petitioner in support of its prayer for the annulment of judgment is lack of notice, from the assessment of the property for real estate tax purposes up to the time the title over the property passed on to respondent. These are serious charges and could very well affect the validity of the issuance

of the new title to respondent. Nevertheless, the Court is not in the proper position to determine the veracity and validity of petitioner's allegations as these entail a factual assessment of the records. Moreover, records show that the proceedings before the CA did not even reach the comment stage as the petition was summarily dismissed. Therefore, this case should be remanded to the CA for further proceedings on the petition for annulment of judgment.

APPEARANCES OF COUNSEL

Casanova Law Office for petitioner.

R E S O L U T I O N

REYES, *J*.:

Petitioner Lorna Castigador (petitioner) assails the Court of Appeals (CA) Resolutions in CA-G.R. SP No. 99725 dated July 31, 2007[1] and July 29, 2008,[2] dismissing her petition for annulment of judgment.[3]

Petitioner was the previous registered owner of a 522-square meter property in Tagaytay under Transfer Certificate of Title (TCT) No. T-41069. In 2004, the City Treasurer of Tagaytay sold the property at public auction for non-payment of real estate taxes. According to petitioner, she did not receive any notice of assessment, notice of delinquency, warrant of levy and notice of public auction.[4] Respondent Danilo M. Nicolas (respondent) was thereafter declared the highest bidder. The certificate of sale issued to respondent was then annotated at the back of petitioner's title. Petitioner further alleged that she was not given

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[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Lucenito N. Tagle and Sixto C. Marella, Jr., concurring; *rollo*, pp. 49-51.

[2] *Id*. at 54-57.

[3] *Id*. at 50.

[4] *Id.* at 5.

a notice of the auction sale or registration of the certificate of sale.[5]

In 2006, respondent sought the issuance of a new title due to petitioner's failure to redeem the property. Petitioner, again, alleged that she did not receive a copy of the petition or any subsequent notices as her address indicated therein was wrong. Consequently, the Regional Trial Court (RTC) of Tagaytay City rendered on May 31, 2006 its decision granting respondent's petition[6] and ordering the issuance of TCT No. T-65220 in respondent's name.[7]

When finally apprised of these events, petitioner filed a notice of adverse claim on respondent's TCT but it was denied by the Register of Deeds of Tagaytay City on the ground that there was no privity between petitioner and respondent.

Thus, petitioner filed the petition for annulment of judgment with the CA on July 17, 2007. On July 31, 2007, the CA rendered the assailed Resolution dismissing the petition on the grounds that: (1) the petition is defective for failure to comply with Rule 7, Section 4 of the 1997 Rules of Civil Procedure, as amended; and (2) there is no allegation in the petition that it is based on extrinsic fraud and lack of jurisdiction, in violation of Rule 47, Section 2 of the Rules.[8] Petitioner filed a Motion for Reconsideration with Motion for Leave to Admit Amended Petition, which was denied by the CA in the assailed Resolution dated July 29, 2008. The CA simply stated that "the arguments posed by the petitioner in support of the grounds cited for the allowance of the petition are bereft of merit, as they do not constitute extrinsic fraud to annul the questioned *decision*."[9]

Hence, this petition.

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

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

[7] *Id.* at 8.

[8] *Id.* at 49-50.

[9] *Id.* at 57.

To begin with, under Section 5, Rule 47 of the Rules of Court, it is incumbent that when a court finds no substantial merit in a petition for annulment of judgment, it may dismiss the petition outright but the "**specific reasons for such dismissal**" shall be clearly set out. In this case, the Court is at sea on the tenor of the assailed resolutions. Was the petition dismissed because it does not contain any allegation of extrinsic fraud or lack of jurisdiction (procedural)? Or was it dismissed because the petition failed to make out a case for annulment of judgment based on extrinsic fraud or lack of jurisdiction (substantial)? Unfortunately, the CA brushed aside any discussion on these points and failed to state with clarity the reasons for the dismissal. Thus, the difficult, but not impossible, task on the part of the Court to make a definitive determination as to whether the CA committed a reversible error in dismissing the petition.

On the assumption that the CA's dismissal was based on a procedural defect, the Court finds a reversible error committed by the CA on this score.

The petition filed with the CA contained the following allegations, among others: (1) "the auction sale of the land is **null and void** for lack of actual and personal notice to herein petitioner"; (2) the RTC did not comply with the procedure prescribed in Section 71, Presidential Decree No. 1529 requiring notice by the Register of Deeds to the registered owner as to the issuance of a certificate of sale; and (3) petitioner was not afforded due process when she was not notified of the proceedings instituted by respondent for the cancellation of her title.[10] The petition need not categorically state the exact words *extrinsic* fraud; rather, the allegations in the petition should be so crafted to easily point out the ground on which it was based. The allegations in the petition filed with the CA sufficiently identify the ground upon which the petition was based — extrinsic fraud. Fraud is extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates

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[10] *Id.* at 79-84. Petitioner also filed an Amended Petition but the records are bereft of any indication whether this was acted upon by the CA.

upon matters pertaining not to the judgment itself but to the manner in which it is procured. The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court.[11] The allegations clearly charged the RTC and respondent with depriving petitioner of the opportunity to oppose the auction sale and the cancellation of her title and ventilate her side. This allegation, if true, constitutes extrinsic fraud.

On the assumption, on the other hand, that the CA's disposition of the petition was based on its substantial merits, the Court still finds a reversible error committed by the CA.

As previously stressed, the grounds relied upon by the petitioner in support of its prayer for the annulment of judgment is lack of notice, from the assessment of the property for real estate tax purposes up to the time the title over the property passed on to respondent. These are serious charges and could very well affect the validity of the issuance of the new title to respondent. Nevertheless, the Court is not in the proper position to determine the veracity and validity of petitioner's allegations as these entail a factual assessment of the records. Moreover, records show that the proceedings before the CA did not even reach the comment stage as the petition was summarily dismissed. Therefore, this case should be remanded to the CA for further proceedings on the petition for annulment of judgment.

WHEREFORE, the petition for review is **GRANTED.** Let this case be remanded to the Court of Appeals for further proceedings in CA-G.R. SP No. 99725 in accordance with Rule 47 of the Rules of Court.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[11] *Bulawan v. Aquende*, G.R. No. 182819, June 22, 2011, 652 SCRA 585, 594.

SECOND DIVISION

[G.R. No. 200727. March 4, 2013]

IRENE VILLAMAR-SANDOVAL, *petitioner*, *vs.* **JOSE CAILIPAN, MARIA OFELIA M. GONZALES, LAURA J. CAYABYAB, ROGELIO COSTALES, and FERNANDO V. AUSTRIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; AN APPEAL AND A PETITION FOR *CERTIORARI* ARE MUTUALLY EXCLUSIVE AND NOT ALTERNATIVE OR SUCCESSIVE; AN APPEAL RENDERS SUPERFLUOUS A PENDING PETITION FOR *CERTIORARI* AND MANDATES ITS DISMISSAL.— It is well-settled that the remedies of appeal and *certiorari* are mutually exclusive and **not alternative or <u>successive</u>.** The simultaneous filing of a petition for *certiorari* under Rule 65 and an ordinary appeal under Rule 41 of the Revised Rules of Civil Procedure cannot be allowed **<u>since one remedy would necessarily cancel out the other</u>.** The existence and availability of the right of appeal proscribes resort to *certiorari* because one of the requirements for availment of the latter is precisely that there should be no appeal. x x x Although respondents did not err in filing the *certiorari* petition with the CA on January 11, 2011 — as they only received the RTC's Decision three (3) days after the said date and therefore could not have availed of the remedy of an appeal at that time — they should have, however, upon receipt of the RTC's Decision or after the filing o f their notices of appeal: (*a*) filed a motion with the CA's Twenty-First Division for the withdrawal/dismissal of their *certiorari* petition and instead raised the jurisdictional errors stated therein in their appeal; or (*b*) filed a motion with the same division for the consolidation of the *certiorari* case with the appealed case. Having failed in this respect, respondents should be deemed to have effectively abandoned their *certiorari* petition, this notwithstanding their assertions in the Amended Notices of Appeal that they were not abandoning the said petition and that a decision had been subsequently rendered by the CA on the same. **To reiterate, an appeal and a petition for**

***certiorari* are mutually exclusive and hence, cannot be availed of successively. Therefore, an appeal renders superfluous a pending petition for *certiorari* and mandates its dismissal.** To rule otherwise would be sanctioning a procedural aberration thereby, allowing respondents to benefit from their own neglect and omission.

APPEARANCES OF COUNSEL

D.G. Macalino & Associates for petitioner.
Romero Valdecantos & Valencia Law Office for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] is the September 30, 2011 Decision[2] and February 1, 2012 Resolution[3] of the Court of Appeals (CA) of Cagayan de Oro City in CA-G.R. SP No. 03976-MIN which set aside the October 20, 2010 and November 10, 2010 Orders of the Regional Trial Court (RTC) of Koronadal City, Branch 24 declaring respondents in default.

The Facts

Petitioner Irene Villamar-Sandoval (petitioner) instituted a complaint for damages before the RTC, claiming that she was prejudiced by the false, baseless and malicious libel case filed against her by respondent Jose Cailipan (Cailipan) which was supported by affidavits executed by the other respondents herein.[4] The said libel case circled around certain declarations purportedly made by petitioner during a homeowner's association meeting

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[1] *Rollo,* pp. 27-67.

[2] *Id.* at 9-21. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Romulo V. Borja and Carmelita Salandanan-Manahan, concurring.

[3] *Id.* at 23-25.

[4] *Id.* at 10. Docketed as Civil Case No. 1936-24 (main case).

about Cailipan's criminal records for murder, slight physical injuries and *estafa*. These allegations were supposedly made by petitioner in order to tarnish Cailipan's reputation and facilitate his ouster as President of the said homeowner's association.[5]

During the course of the proceedings, respondents belatedly filed their answer (albeit by one day), prompting petitioner to move to declare respondents in default. Consequently, the RTC issued an Order dated September 27, 2010 denying the said motion and admitting the answer of respondents.[6]

Subsequently, the case was set for pre-trial, during which respondents' counsel, Atty. Sardido, failed to appear as well as file a pre-trial brief despite due notice, while petitioner and her counsel appeared and made such submission. In view of these lapses, petitioner prayed that respondents be declared in default which was granted by the RTC in its October 20, 2010 Order.[7]

Aggrieved, Atty. Sardido filed an Entry of Appearance with Motion for Reconsideration on October 29, 2010, seeking the reversal of the October 20, 2010 Order. He proffered the excuse that on the day of the pre-trial conference, he had to attend an urgent hearing in Cotabato City involving an election protest but that he immediately went back to Koronadal City to attend the mediation proceeding for the main case scheduled at 2:00 in the afternoon of the same day. Petitioner opposed the motion.[8]

Ruling of the RTC

On November 10, 2010, the RTC issued an Order denying respondents' motion for reconsideration, sustaining the declaration of default due to their counsel's failure to: (1) attend the scheduled pre-trial conference on October 20, 2010 and; (2) file a pre-trial brief despite due notice.[9] Notably, it observed that

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[5] *Id.* at 88-90.

[6] *Id.* at 10-11.

[7] *Id.* at 11.

[8] *Id.* at 11-12.

[9] *Id.* at 12.

respondents were already accorded consideration when their answer was admitted despite its belated filing. It also found that "[their] newly retained counsel miserably failed to attach a [pre-trial brief or] submit/attach an [affidavit of merit]" in the said motion for reconsideration.[10] Pursuant thereto, petitioner proceeded with the presentation of her evidence *ex parte*. Upon submission of her formal offer of evidence, the case was submitted for resolution.[11]

On January 11, 2011, respondents filed before the CA a petition for *certiorari* under Rule 65 of the Rules of Court, asserting that the RTC gravely abused its discretion in issuing the October 20, 2010 and November 10, 2010 Orders and in not dismissing the case for improper venue.[12]

On even date, the RTC rendered a Decision in favor of petitioner, a copy of which was received by respondents on January 24, 2011.[13]

On January 22, 2011, respondents filed a Notice of Appeal with the CA, while its initially filed *certiorari* petition was still pending resolution before the same appellate court.[14] In this relation, they subsequently filed on February 2, 2011 an Amended Notice of Appeal *Ad Cautelam* and a Joint Notice of Appeal *Ad Cautelam* (Amended Notices of Appeal), clarifying therein that they were not abandoning their petition for *certiorari*.[15]

Ruling of the CA

In its Decision dated September 30, 2011, [16] the CA, through its Twenty-First Division, denied respondents' contention that

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[10] *Id.*

[11] *Id.* at 13.

[12] *Id.* at 101-123.

[13] *Id.* at 87-100. Penned by Judge Oscar E. Dinopol.

[14] *Id.* at 32.

[15] *Id.* at 32-33.

[16] *Id.* at 9-21.

the venue was improperly laid[17] but nevertheless, granted their petition grounded on the impropriety of the order of default. It applied the principle of substantial justice and deemed that "it would be most unfair" to declare respondents in default for their lawyer's failure to attend the pre-trial conference.[18] With respect to the failure of respondents' counsel to file a pre-trial brief on time, the CA held that the RTC's Order "barring [respondents] from presenting evidence had been too precipitate and was not commensurate with the level of non-compliance by [respondents'] counsel with the [said order]."[19] Thus, for these reasons, the CA set aside the RTC's October 20, 2010 and November 10, 2010 Orders and directed the remand of the case to the RTC to allow the respondents to present their evidence.[20]

Dissatisfied, petitioner filed a Partial Motion for Reconsideration,[21] arguing that: (1) since the main case had already been decided by the RTC through its January 11, 2011 Decision and respondents have availed of the remedy of appeal, the latter's petition for *certiorari* filed with the CA on January 11, 2011 was already moot and academic; and (2) the RTC did not commit grave abuse of discretion when it declared respondents in default.

The foregoing motion was denied by the CA in its February 1, 2012 Resolution, holding that petitioner "failed to raise substantial issues that would warrant reconsideration."[22] In sustaining the invalidity of the RTC's October 20, 2010 and November 10, 2010 Orders, it ratiocinated that "[i]t is a far better and more

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[17] *Id.* at 13-15.

[18] *Id.* at 18.

[19] *Id.*

[20] *Id.* at 21.

[21] *Id.* at 434-463.

[22] *Id.* at 23-25.

prudent cause of action for the court to excuse a technical lapse" and afford the respondents the right to be heard.[23]

Separately, the CA noted that, per the January 27, 2012 Verification issued by its Judicial Records Division, the case records have yet to be forwarded to it, despite petitioner's allegations that the RTC had already promulgated a decision and that the respondents filed a Notice of Appeal.[24] In this regard, it modified its initial September 30, 2011 Decision and thus deleted the portion which directed that the records of the case be remanded to the court *a quo*.[25]

Issues Before the Court

Essentially, the following issues are presented for the Court's resolution: (1) whether respondents' petition for *certiorari* was an improper remedy and/or had been rendered moot and academic by virtue of the RTC's January 11, 2011 Decision; and (2) whether the CA erred in setting aside the October 20, 2010 and November 10, 2010 RTC Orders.

The Court's Ruling

The petition is meritorious.

It is well-settled that the remedies of appeal and *certiorari* are mutually exclusive and not **alternative or <u>successive</u>.**[26] The simultaneous filing of a petition for *certiorari* under Rule 65 and an ordinary appeal under Rule 41 of the Revised Rules of Civil Procedure cannot be allowed **<u>since one remedy would necessarily cancel out the other</u>**. The existence and availability of the right of appeal proscribes resort to *certiorari* because

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[23] *Id.* at 24.

[24] *Id.*

[25] *Id.*

[26] *Magestrado v. People*, G.R. No. 148072, July 10, 2007, 527 SCRA 125, 136, citing *Fajardo v. Bautista*, G.R. Nos. 102193-97, May 10, 1994, 232 SCRA 291, 298; emphasis and underscoring supplied.

one of the requirements for availment of the latter is precisely that there should be no appeal.[27]

Corollary thereto, an appeal renders a pending petition for *certiorari* superfluous and mandates its dismissal. As held in *Enriquez v. Rivera*:[28]

> The general rule is that *certiorari* will not lie as a substitute for an appeal, for relief through a special action like *certiorari* may only be established when no remedy by appeal lies. The exception to this rule is conceded only "where public welfare and the advancement of public policy so dictate, and the broader interests of justice so require, or where the orders complained of were found to be completely null and void, or that appeal was not considered the appropriate remedy, such as in appeals from orders of preliminary attachment or appointments of receiver." (*Fernando v. Vasquez*, L-26417, 30 January 1970; 31 SCRA 288). For example, *certiorari* maybe available where appeal is inadequate and ineffectual (*Romero Sr. v. Court of Appeals*, L-29659, 30 July 1971; 40 SCRA 172).
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> None of the exceptional circumstances have been shown to be present in this case; hence the general rule applies in its entirety. **Appeal renders superfluous a pending petition for *certiorari*, and mandates its dismissal. In the light of the clear language of Rule 65 (1), this is the only reasonable reconciliation that can be effected between the two concurrent actions: the appeal has to be prosecuted, but at the cost of the petition for *certiorari*, for the petition has lost its *raison d'etre*. To persevere in the pursuit of the writ would be to engage in an enterprise which is unnecessary, tautological and frowned upon by the law.** (Emphasis and underscoring supplied.)

Applying the foregoing principles to the case at bar, it is clear that respondents' January 11, 2011 petition for *certiorari* was rendered superfluous by their January 22, 2011 appeal.

Although respondents did not err in filing the *certiorari* petition with the CA on January 11, 2011 — as they only received the

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[27] *Balindong v. Dacalos*, G.R. No. 158874, November 10, 2004, 441 SCRA 607, 612, citing *Metropolitan Manila Development Authority v. JANCOM Environmental Corp.*, G.R. No. 147465, January 30, 2002, 375 SCRA 320; emphasis and underscoring supplied.

[28] 179 Phil. 482, 486-487 (1979).

RTC's Decision three days after the said date and therefore could not have availed of the remedy of an appeal at that time[29] — they should have, however, upon receipt of the RTC's Decision or after the filing of their notices of appeal: *(a)* filed a motion with the CA's Twenty-First Division[30] for the withdrawal/dismissal of their *certiorari* petition and instead raised the jurisdictional errors stated therein in their appeal[31] or *(b)* filed a motion with the same division for the consolidation of the *certiorari* case with the appealed case. Having failed in this respect, respondents should be deemed to have effectively abandoned their certiorari petition, this notwithstanding their assertions in the Amended Notices of Appeal[32] that they were not abandoning the said petition and that a decision had been subsequently rendered by the CA on the same. **To reiterate, an appeal and a petition for *certiorari* are mutually exclusive and hence, cannot be availed of successively. Therefore, an appeal renders superfluous a pending petition for *certiorari* and mandates its dismissal.** To rule otherwise would be sanctioning a procedural aberration thereby, allowing respondents to benefit from their own neglect and omission.

In the foregoing light, the CA's September 30, 2011 Decision and February 1, 2012 Resolution in the *certiorari* case should be set aside. This course of action will allow the CA Division

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[29] To be clear, respondents filed their petition for *certiorari* with the CA on January 11, 2011. Only three (3) days after, or on January 14, 2011, did they receive the RTC's January 11, 2011 Decision. Therefore, prior to the receipt of the said RTC decision, they could not have availed of the remedy of an appeal under Rule 41 of the Rules of Court and as such, they filed a petition for *certiorari*.

[30] The CA division in which respondents' *certiorari* petition was pending.

[31] As held in *Silverio v. CA*, G.R. No. 178933, September 16, 2009, 600 SCRA 1, 14, after a judgment has been rendered in the case, the ground for the appeal of the interlocutory order may be included in the appeal of the judgment itself.

[32] On February 2, 2011, respondents filed the Amended Notices of Appeal, stating therein that they were not abandoning their petition for *certiorari*, *Id.* at 32-33.

where the appeal of the main case is pending to appropriately pass upon the merits of the RTC's January 11, 2011 Decision including all assailed irregularities in the proceedings such as the validity of the default orders.

Besides, respondents' petition for *certiorari* had long become moot by the RTC's January 11, 2011 Decision. In particular, the grant of the petition for *certiorari* on mere incidental matters of the proceedings would not accord any practical relief to respondents because a decision had already been rendered on the main case and therefore, may be elevated on appeal. Lest it be misunderstood, a case becomes moot when no useful purpose can be served in passing upon its merits. As a rule, courts will not determine a moot question in a case in which no practical relief can be granted.[33]

Given the foregoing pronouncement, there exists no cogent reason to further dwell on the issue regarding the RTC's grave abuse of discretion in issuing the October 20, 2010 and November 10, 2010 default orders. As earlier mentioned, that matter may be properly ventilated on appeal.

WHEREFORE, the petition is **GRANTED.** The September 30, 2011 Decision and February 1, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 03976-MIN are hereby **SET ASIDE.**

SO ORDERED.

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

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[33] *Baldo, Jr. v. COMELEC*, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 310-311, citing *Villarico v. CA*, 424 Phil. 26, 33-34 (2002).

EN BANC

[A.C. No. 9615. March 5, 2013]

GLORIA P. JINON, *complainant*, *vs*. **ATTY. LEONARDO E. JIZ,** *respondent*.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; NEGLECTING A CLIENT'S CASE AND MISAPPROPRIATION OF CLIENT'S FUNDS, COMMITTED.—** [T]he Court concurs with the findings of Commissioner Villanueva and the IBP Board of Governors that Atty. Jiz was remiss in his duties as a lawyer in neglecting his client's case, misappropriating her funds and disobeying the CBD's lawful orders requiring the submission of his pleadings and his attendance at hearings. He should thus be suspended from the practice of law in conformity with prevailing jurisprudence. x x x "[W]hen a lawyer takes a client's cause, he covenants that he will exercise due diligence in protecting the latter's rights. Failure to exercise that degree of vigilance and attention expected of a good father of a family makes the lawyer unworthy of the trust reposed on him by his client and makes him answerable not just to client but also to the legal profession, the court and society." Moreover, money entrusted to a lawyer for a specific purpose, such as for the processing of transfer of land title, but not used for the purpose, should be immediately returned. "A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed to him by his client. Such act is a gross violation of general morality as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment." In this case, Atty. Jiz committed acts in violation of his sworn duty as a member of the bar. Aside from the demand letter dated April 29, 2003 which he sent to Viola, he failed to perform any other positive act in order to recover TCT No. T-119598 from Viola for more than a year. He also failed to return, despite due demand, the funds allocated for the transfer of the title that

he received from her. The claim that the total amount of ₱62,000.00 that Gloria paid him was for the services he rendered in facilitating the sale of the Sta. Barbara Property is belied by the receipt dated April 29, 2003, which states that the amount of ₱17,000.00 paid by Gloria was for "consultation and other legal services" he would render "up to and including April 30, 2003." His handwritten notation at the bottom portion made it clear that he received the said amount "as full payment." He likewise failed to substantiate his averment that he actually facilitated the sale of the Sta. Barbara Property.

2. **ID.; ID.; ID.; PENALTY.—** [T]he Court finds it appropriate to adopt the recommendation of the IBP Board of Governors to suspend Atty. Jiz from the practice of law for two (2) years. With respect to the amount that he should refund to Gloria, only the sum of ₱45,000.00 plus legal interest should be returned to her, considering the finding that the initial payment of ₱17,000.00 was reasonable and sufficient remuneration for the actual legal services he rendered.

3. **ID.; ID.; FAILURE TO COMPLY WITH THE LAWFUL ORDERS OF THE COMMITTEE ON BAR DISCIPLINE AMOUNTS TO DISRESPECT TO THE JUDICIARY AND FELLOW LAWYERS.—** [R]espondent's infractions were aggravated by his failure to comply with CBD's directives for him to file his pleadings on time and to religiously attend hearings, demonstrating not only his irresponsibility but also his disrespect for the judiciary and his fellow lawyers. Such conduct was unbecoming of a lawyer who is called upon to obey court orders and processes and is expected to stand foremost in complying with court directives as an officer of the court. As a member of the bar, he ought to have known that the orders of the CBD as the investigating arm of the Court in administrative cases against lawyers were not mere requests but directives which should have been complied with promptly and completely.

APPEARANCES OF COUNSEL

Gerry T. Galacio for complainant.
Mildred D. Jimenea for respondent.

D E C I S I O N

PERLAS-BERNABE, *J*.:

Before the Court is an administrative complaint[1] for disciplinary action filed by complainant Gloria P. Jinon (Gloria) before the Committee on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) against respondent Atty. Leonardo E. Jiz (Atty. Jiz) for neglecting her case, misappropriating funds, and assigning her case to another lawyer without her consent, in violation of the provisions of the Code of Professional Responsibility.

The Facts

The complaint alleged that Gloria, after the death of her brother Charlie in July 2001, entrusted two (2) land titles covering properties owned by their deceased parents to her sister-in-law, Viola J. Jinon (Viola): one located in Mangasina, Sta. Barbara, Iloilo (Sta. Barbara Property) and the other at No. 12 Valencia St., Poblacion, Leganes, Iloilo (Leganes Property) covered by Transfer Certificate of Title (TCT) No. T-119598.[2]

Eventually, Gloria sold the Sta. Barbara Property, which resulted in disagreements between her and Viola regarding their respective shares in the proceeds. Consequently, Viola refused to return to Gloria TCT No. T-119598, prompting Gloria to engage the services of Atty. Jiz on April 29, 2003 to recover the said title, for which she immediately paid an acceptance fee of ₱17,000.00.[3] In their subsequent meeting, Atty. Jiz assured the transfer of the title in Gloria's name.

On August 13, 2003, Gloria, upon Atty. Jiz's instructions, remitted the amount of ₱45,000.00[4] to answer for the expenses

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[1] *Rollo,* pp. 2-6.

[2] *Id.* at 2.

[3] *Id.* at 8.

[4] *Id.* at 9.

of the transfer. However, when she later inquired about the status of her case, she was surprised to learn from Atty. Jiz that a certain Atty. Caras was handling the same. Moreover, when she visited the Leganes Property, which has been leased out to one Rose Morado (Rose), she discovered that Atty. Jiz has been collecting the rentals for the period June 2003 up to October 2004, which amounted to ₱12,000.00. When she demanded for the rentals, Atty. Jiz gave her only ₱7,000.00, explaining that the balance of ₱5,000.00 would be added to the expenses needed for the transfer of the title of the Leganes Property to her name.

The foregoing incidents prompted Gloria to terminate the legal services of Atty. Jiz and demand the return of the amounts of ₱45,000.00 and ₱5,000.00 through a letter[5] dated September 22, 2004, which has remained unheeded.

To date, Atty. Jiz has not complied with his undertaking to recover TCT No. T-119598 from Viola and effect its transfer in Gloria's name, and has failed to return her money despite due demands. Hence, the instant administrative complaint praying that Atty. Jiz: (1) be ordered to reimburse the total amount of ₱67,000.00 (₱17,000.00 acceptance fee, ₱45,000.00 for the transfer of title, and ₱5,000.00 as unremitted rentals for the Leganes Property); and (2) be meted disciplinary action that the Court may deem fit under the circumstances.

In his Answer[6] and Position Paper,[7] Atty. Jiz admitted accepting Gloria's case but claimed that it was only for the purpose of protecting her rights against her sister-in-law, Viola. According to him, the extent of his legal services covered the negotiation and consummation of the sale of the Sta. Barbara Property for a fee of ₱75,000.00; recovery of TCT No. T-119598 from Viola; and the possible filing of an ejectment case against the tenant of the Leganes Property. For his attorney's fees, Gloria had partially paid the sum of ₱62,000.00 inclusive of the acceptance fee of ₱17,000.00, leaving an unpaid balance of ₱13,000.00.

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[5] *Id.* at 10.

[6] *Id.* at 65-68.

[7] *Id.* at 136-146.

Atty. Jiz also alleged that Gloria approached him to secure another owner's copy of a title she purportedly lost, but which would turn out to be in Viola's possession. Despite her offer to pay legal fees amounting to ₱100,000.00, he claimed to have refused to file a "fraudulent cadastral case." He likewise denied having committed to file one or to refer the case to another lawyer.[8]

Thus, Atty. Jiz asseverated that he was not remiss in his legal duties to Gloria. Denying liability to reimburse Gloria for any amount, much less for ₱45,000.00, he claimed that he had rendered the corresponding legal services to her with fidelity and candor. In particular, he pointed to the demand letters he sent to Viola for the return of the subject title and to Rose, the tenant of the Leganes Property, requiring the submission of the itemized expenses for the repair of the leased property. He also claimed to have caused the execution of a lease contract covering the Leganes Property. Hence, he prayed that the complaint against him be dismissed.

The Action and Recommendation of the IBP

After the parties' submission of their respective position papers,[9] the CBD, through Commissioner Cecilio A.C. Villanueva (Commissioner Villanueva), submitted its October 8, 2010 Report and Recommendation.[10] He found Atty. Jiz to have been remiss in his duty to update his client, Gloria, regarding her case, and to respond to Gloria's letter terminating his services and demanding the refund of the sum of ₱45,000.00, in violation of Rule 18.04, Canon 18 of the Code of Professional Responsibility which states:

> A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

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[8] *Id.* at 66.

[9] *Id.* at 117-124 for complainant; and *Id.* at 136-146 for respondent.

[10] *Id.* at 156-168.

Commissioner Villanueva also observed that the scope of the legal services that Atty. Jiz undertook to perform for Gloria could have been clarified had he been more candid with the exact fees that he intended to collect. Recognizing, however, the legal services rendered by Atty. Jiz in the form of legal advice, sending of demand letters to Viola and Rose and collecting rentals from the latter, he found the amount of ₱17,000.00 as sufficient and reasonable remuneration for his services. Moreover, Atty. Jiz's disregard of the CBD's orders — to submit his answer on time and attend hearings — showed disrespect to the judiciary and his fellow lawyers.

With these findings, Commissioner Villanueva held Atty. Jiz to have committed improper conduct and recommended that he be (1) ordered to refund to Gloria the amount of ₱45,000.00 with legal interest, and (2) reprimanded, with a stern warning that a more drastic punishment will be imposed upon him for a repetition of the same acts.

On December 10, 2011, the IBP Board of Governors passed Resolution No. XX-2011-303,[11] adopting with modification the Commission's Report and Recommendation, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, ***with modification,*** *the Report and Recommendation of the Investigating Commissioner in 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 finding Respondent remiss in his duty and for disregarding the Orders of the Commission, Atty. Leonardo E. Jiz is hereby* ***SUSPENDED*** *from the practice of law for two (2) years and to Ordered to Restitute complainant the amount of ₱45,000.00 and 12% interest from the time he received the amount until fully paid within sixty (60) days from notice.*

The Issue

The sole issue before the Court is whether Atty. Jiz should be held administratively liable for having been remiss in his

[11] *Id.* at 155.

duties as a lawyer with respect to the legal services he had undertaken to perform for his client, Gloria.

The Court's Ruling

After a careful perusal of the records, the Court concurs with the findings of Commissioner Villanueva and the IBP Board of Governors that Atty. Jiz was remiss in his duties as a lawyer in neglecting his client's case, misappropriating her funds and disobeying the CBD's lawful orders requiring the submission of his pleadings and his attendance at hearings. He should thus be suspended from the practice of law in conformity with prevailing jurisprudence.

The practice of law is considered a privilege bestowed by the State on those who show that they possess and continue to possess the legal qualifications for the profession. As such, lawyers are expected to maintain at all times a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms embodied in the Code.[12] "Lawyers may, thus, be disciplined for any conduct that is wanting of the above standards whether in their professional or in their private capacity."[13]

The Code of Professional Responsibility provides:

> CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT COME INTO HIS POSSESSION.
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> RULE 16.01 — A lawyer shall account for all money or property collected or received for or from the client.
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> x x x x x x x x x
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> RULE 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand.

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[12] *Molina v. Magat*, A.C. No. 1900, June 13, 2012, 672 SCRA 1, 6.

[13] *Tumbokon v. Pefianco*, A.C. No. 6116, August 1, 2012, 678 SCRA 60, 64.

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CANON 18. — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

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RULE 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

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Undeniably, "when a lawyer takes a client's cause, he covenants that he will exercise due diligence in protecting the latter's rights. Failure to exercise that degree of vigilance and attention expected of a good father of a family makes the lawyer unworthy of the trust reposed on him by his client and makes him answerable not just to client but also to the legal profession, the court and society."[14]

Moreover, money entrusted to a lawyer for a specific purpose, such as for the processing of transfer of land title, but not used for the purpose, should be immediately returned.[15] "A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed to him by his client. Such act is a gross violation of general morality as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment."[16]

In this case, Atty. Jiz committed acts in violation of his sworn duty as a member of the bar. Aside from the demand letter[17] dated April 29, 2003 which he sent to Viola, he failed to perform any other positive act in order to recover TCT No. T-119598 from Viola for more than a year. He also failed to return, despite

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[14] *Del Mundo v. Capistrano*, A.C. No. 6903, April 16, 2012, 669 SCRA 462, 468, citing *Dalisay v. Mauricio, Jr.*, 496 Phil. 393, 399-400 (2005).

[15] *Dhaliwal v. Dumaguing*, A.C. No. 9390, August 1, 2012, 678 SCRA 68, 71, citing *Adrimisin v. Javier*, A.C. No. 2591, 532 Phil. 639, 645 (2006).

[16] *Id.*

[17] *Rollo*, p. 150.

due demand, the funds allocated for the transfer of the title that he received from her.

The claim that the total amount of ₱62,000.00 that Gloria paid him was for the services he rendered in facilitating the sale of the Sta. Barbara Property is belied by the receipt[18] dated April 29, 2003, which states that the amount of ₱17,000.00 paid by Gloria was for "consultation and other legal services" he would render "up to and including April 30, 2003." His handwritten notation at the bottom portion made it clear that he received the said amount "as full payment." He likewise failed to substantiate his averment that he actually facilitated the sale of the Sta. Barbara Property.

Furthermore, respondent's infractions were aggravated by his failure to comply with CBD's directives for him to file his pleadings on time and to religiously attend hearings, demonstrating not only his irresponsibility but also his disrespect for the judiciary and his fellow lawyers. Such conduct was unbecoming of a lawyer who is called upon to obey court orders and processes and is expected to stand foremost in complying with court directives as an officer of the court.[19] As a member of the bar, he ought to have known that the orders of the CBD as the investigating arm of the Court in administrative cases against lawyers were not mere requests but directives which should have been complied with promptly and completely.[20]

In *Rollon v. Naraval*,[21] the Court suspended respondent Atty. Naraval from the practice of law for two (2) years for failing to render any legal service even after receiving money from the complainant and for failing to return the money and documents he received.

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[18] *Id.* at 8.

[19] *Sibulo v. Ilagan*, 486 Phil. 197, 203-204 (2004).

[20] *Belleza v. Macasa*, A.C. No. 7815, July 23, 2009, 593 SCRA 549, 557.

[21] 493 Phil. 24 (2005).

Similarly, in *Small v. Banares*,[22] the respondent was suspended from the practice of law for two (2) years for failing to file a case for which the amount of ₱80,000.00 was given him by his client; to update the latter of the status of the case; and to return the said amount upon demand.

Likewise, in *Villanueva v. Gonzales*,[23] the Court meted the same punishment to the respondent lawyer for (1) having failed to serve his client with fidelity, competence and diligence; (2) refusing to account for and to return his client's money as well as the titles over certain properties owned by the latter; and (3) failing to update his client on the status of her case and to respond to her requests for information, all in violation of the Code of Professional Responsibility.

Considering the foregoing relevant jurisprudence, the Court finds it appropriate to adopt the recommendation of the IBP Board of Governors to suspend Atty. Jiz from the practice of law for two (2) years. With respect to the amount that he should refund to Gloria, only the sum of ₱45,000.00 plus legal interest should be returned to her, considering the finding that the initial payment of ₱17,000.00 was reasonable and sufficient remuneration for the actual legal services he rendered.

The Court notes that in administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required.[24] Having carefully scrutinized the records of this case, the Court therefore finds that the standard of substantial evidence has been more than satisfied.

WHEREFORE, respondent Atty. Leonardo E. Jiz, having clearly violated Rules 16.01 and 16.03, Canon 16 and Rule 18.03, Canon 18 of the Code of Professional Responsibility and disobeyed lawful orders of the Commission on Bar Discipline,

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[22] 545 Phil. 226 (2007).

[23] A.C. No. 7657, February 12, 2008, 544 SCRA 410.

[24] *Babante-Caples v. Caples*, A.M. No. HOJ-10-03, November 5, 2010, 634 SCRA 498, 502.

is **SUSPENDED** from the practice of law for two (2) years, with a stern warning that a repetition of the same or similar acts shall be dealt with more severely. He is **ORDERED** to return to complainant Gloria P. Jinon the full amount of ₱45,000.00 with legal interest of 6% *per annum* from date of demand on September 22, 2004 up to the finality of this Decision and 12% *per annum* from its finality until paid.

Let a copy of this Decision be furnished the Office of the Bar Confidant to be entered into respondent's records as attorney. Copies shall likewise be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

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

Velasco, Jr., J., no part due to relationship to a party.

EN BANC

[G.R. No. 168613. March 5, 2013]

ATTY. MA. ROSARIO MANALANG-DEMIGILLO, *petitioner*, *vs*. **TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES (TIDCORP), and its BOARD OF DIRECTORS,** *respondents*.

[G.R. No. 185571. March 5, 2013]

TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES, *petitioner*, *vs.* **MA. ROSARIO S. MANALANG-DEMIGILLO,** *respondent*.

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; DOCTRINE OF QUALIFIED POLITICAL AGENCY; CONCEPT.—** The doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the *alter egos* of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts. This doctrine is in recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.

2. **ID.; ID.; ID.; ID.; DOCTRINE OF QUALIFIED POLITICAL AGENCY COULD NOT BE EXTENDED TO THE ACTS OF THE BOARD OF DIRECTORS OF TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES (TIDCORP).—** [T]he doctrine of qualified political agency could not be extended to the acts of the Board of Directors of TIDCORP despite some of its members being themselves the appointees of the President to the Cabinet. Under Section 10 of Presidential Decree No. 1080, as further amended by Section 6 of Republic Act No. 8494, the five *ex officio* members were the Secretary of Finance, the Secretary of Trade and Industry, the Governor of the Bangko Sentral ng Pilipinas, the Director-General of the National Economic and Development Authority, and the Chairman of the Philippine Overseas Construction Board, while the four other members

of the Board were the three from the private sector (at least one of whom should come from the export community), who were elected by the *ex officio* members of the Board for a term of not more than two consecutive years, and the President of TIDCORP who was concurrently the Vice-Chairman of the Board. Such Cabinet members sat on the Board of Directors of TIDCORP *ex offici*o, or by reason of their office or function, not because of their direct appointment to the Board by the President. Evidently, it was the law, not the President, that sat them in the Board. Under the circumstances, when the members of the Board of Directors effected the assailed 2002 reorganization, they were acting as the responsible members of the Board of Directors of TIDCORP constituted pursuant to Presidential Decree No. 1080, as amended by Republic Act No. 8494, not as the *alter egos* of the President. We cannot stretch the application of a doctrine that already delegates an enormous amount of power. Also, it is settled that the delegation of power is not to be lightly inferred.

3. **ID.; ADMINISTRATIVE LAW; THE REORGANIZATION OF THE TIDCORP IS VALID.—** [W]e uphold the 2002 reorganization and declare it valid for being done in accordance with the exclusive and final authority expressly granted under Republic Act No. 8494, further amending Presidential Decree No. 1080, the law creating TIDCORP itself[.] x x x [T]he reorganization was not arbitrary and whimsical. It had been formulated following lengthy consultations and close coordination with the affected offices within TIDCORP in order for them to come up with various functional statements relating to the new organizational setup. In fact, the Board of Directors decided on the need to reorganize in 2002 to achieve several worthy objectives[.] x x x The result of the lengthy consultations and close coordination was the comprehensive reorganization plan that included a new organizational structure, position classification and staffing pattern, qualification standards, rules and regulations to implement the reorganization, separation incentive packages and timetable of implementation. Undoubtedly, TIDCORP effected the reorganization within legal bounds and in response to the perceived need to make the agency more attuned to the changing times.

4. **ID.; ID.; ID.; REASSIGNMENT OF A CORPORATE OFFICER TO A SMALLER UNIT AS A RESULT OF A**

VALID REORGANIZATION CANNOT BE CONSIDERED A DEMOTION.— Having found the 2002 reorganization to be valid and made pursuant to Republic Act No. 8494, we declare that there are no legal and practical bases for reinstating Demigillo to her former position as Senior Vice President in the LCSD. To be sure, the reorganization plan abolished the LCSD, and put in place a set-up completely different from the previous one, including a new staffing pattern in which Demigillo would be heading the RCMSS, still as a Senior Vice President of TIDCORP. With that abolition, reinstating her as Senior Vice President in the LCSD became legally and physically impossible. Demigillo's contention that she was specifically appointed to the position of Senior Vice President in the LCSD was bereft of factual basis. The records indicate that her permanent appointment pertained only to the position of Senior Vice President. Her appointment did not indicate at all that she was to hold that specific post in the LCSD. Hence, her re-assignment to the RCMSS was by no means a diminution in rank and status considering that she maintained the same rank of Senior Vice President with an accompanying increase in pay grade.

5. **ID.; ID.; ID.; ID.; THE REASSIGNMENT DID NOT VIOLATE THE RIGHT TO A SECURITY OF TENURE.—** The assignment to the RCMSS did not also violate Demigillo's security of tenure as protected by Republic Act No. 6656. We have already upheld reassignments in the Civil Service resulting from valid reorganizations. Nor could she claim that her reassignment was invalid because it caused the reduction in her rank, status or salary. On the contrary, she was reappointed as Senior Vice President, a position that was even upgraded like all the other similar positions to Pay Grade 16, Step 4, Level II. In every sense, the position to which she was reappointed under the 2002 reorganization was comparable with, if not similar to her previous position. That the RCMSS was a unit smaller than the LCSD did not necessarily result in or cause a demotion for Demigillo. Her new position was but the consequence of the valid reorganization, the authority to implement which was vested in the Board of Directors by Republic Act No. 8494. Indeed, we do not consider to be a violation of the civil servant's right to security of tenure the exercise by the agency where she works of the essential prerogative to change the work assignment or to transfer the

civil servant to an assignment where she would be most useful and effective. More succinctly put, that prerogative inheres with the employer, whether public or private.

6. **ID.; ID.; CIVIL SERVICE; REVISED OMNIBUS RULES ON APPOINTMENTS AND OTHER PERSONNEL ACTIONS (CSC MEMORANDUM CIRCULAR NO. 40, SERIES OF 1998); REQUISITES BEFORE AN OFFICIAL OR EMPLOYEE MAY BE DROPPED FROM THE ROLLS, PRESENT.—** Demigillo was validly dropped from the rolls by TIDCORP as the consequence of the application of the rules governing her employment. Section 2(2.2), Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions (Memorandum Circular No. 40, Series of 1998) x x x Under Section (b) x x x an official or employee may be dropped from the rolls provided the following requisites are present, namely: (1) the official or employee was rated poor in performance for one evaluation period; (2) the official or employee was notified in writing of the status of her performance not later than the 4th month of the rating period with sufficient warning that failure to improve her performance within the remaining period of the semester shall warrant her separation from the service; and (3) such notice contained adequate information that would enable her to prepare an explanation. All of the requisites were duly established herein.

APPEARANCES OF COUNSEL

Roberto A. Demigillo for Atty. Ma. Rosario Manalang-Demigillo.

The Government Corporate Counsel, Dante M. Patapat and George Paul B. Hermogeno and *Paul Khristan J. Baylon and Isabelo G. Gumaru* for Trade and Investment Development Corp. of the Philippines.

D E C I S I O N

BERSAMIN, *J.*:

A reorganization undertaken pursuant to a specific statutory authority by the Board of Directors of a government-owned and government-controlled corporation is valid.

Antecedents

On February 12, 1998, the Philippine Export and Foreign Loan Guarantee was renamed Trade and Investment Development Corporation of the Philippines (TIDCORP) pursuant to Republic Act No. 8494 entitled *An Act Further Amending Presidential Decree No. 1080, As Amended, by Reorganizing And Renaming the Philippine Export and Foreign Loan Guarantee Corporation, Expanding Its Primary Purpose, and for Other Purposes*.

Republic Act No. 8494 reorganized the structure of TIDCORP. The issuance of appointments in accordance with the reorganization ensued. Petitioner Rosario Manalang-Demigillo (Demigillo) was appointed as Senior Vice President (PG 15) with permanent status, and was assigned to the Legal and Corporate Services Department (LCSD) of TIDCORP.

In 2002, TIDCORP President Joel C. Valdes sought an opinion from the Office of the Government Corporate Counsel (OGCC) relative to TIDCORP's authority to undertake a reorganization under the law, whose Section 7 and Section 8 provide as follows:

> Section 7. The Board of Directors shall provide for an organizational structure and staffing pattern for officers and employees of the Trade and Investment Development Corporation of the Philippines (TIDCORP) and upon recommendation of its President, appoint and fix their remuneration, emoluments and fringe benefits: Provided, That the Board shall have exclusive and final authority to appoint, promote, transfer, assign and re-assign personnel of the TIDCORP, any provision of existing law to the contrary notwithstanding. x x x
>
> Section 8. All incumbent personnel of the Philippine Export and Foreign Loan Guarantee Corporation shall continue to exercise their duties and functions as personnel of the TIDCORP until reorganization is fully implemented but not to exceed one (1) year from the approval of this Act. The Board of Directors is authorized to provide for separation benefits for those who cannot be accommodated in the new structure. All those who shall retire or are separated from the service on account of the reorganization under the preceding Section shall be entitled to such incentives, as are

authorized by the Corporation, which shall be in addition to all gratuities and benefits to which they may be entitled under existing laws.

In Opinion No. 221 dated September 13, 2002,[1] then Government Corporate Counsel Amado D. Valdez opined as follows:

> There is no question on the power of the PhilEXIM (also known as TIDCORP) Board of Directors to undertake a reorganization of the corporation's present organizational set-up. In fact, the authority to provide for the corporation's organizational structure is among the express powers granted to PhilEXIM through its Board.
>
> As to the one-year period to implement a reorganization mentioned in Section 8 of RA 8494, it is our considered opinion that the same provision refers to the initial reorganization to effect transition from the Philippine Export and Foreign Loan Guarantee Corporation (Philguarantee) to what is now known as the Trade and Investment Corporation of the Philippines (TIDCORP). The one-year period does not, however, operate as a limitation that any subsequent changes in the organizational set-up pursuant to the authority of the Board to determine the corporation's organizational structure under Section 7 of RA 8494, which is designed to make the corporation more attuned to the needs of the people or, in this case, the sector of the Philippine economy that it serves, can only be made during the same one-year period.

On the basis of OGCC Opinion No. 221, the Board of Directors passed Resolution No. 1365, Series of 2002, on October 22, 2002 to approve a so-called *Organizational Refinement/ Restructuring Plan* to implement a new organizational structure and staffing pattern, a position classification system, and a new set of qualification standards.

During the implementation of the *Organizational Refinement/ Restructuring Plan*, the LCSD was abolished. According to the List of Appointed Employees under the New Organizational Structure of TIDCORP as of November 1, 2002, Demigillo,

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[1] *Rollo* (G.R. No. 168613), p. 280.

albeit retaining her position as a Senior Vice President, was assigned to head the Remedial and Credit Management Support Sector (RCMSS). On the same date, President Valdes issued her appointment as head of RCMSS, such appointment being in nature a reappointment under the reorganization plan.

On December 13, 2002, President Valdes issued a memorandum informing all officers and employees of TIDCORP that the Board of Directors had approved on December 11, 2002 the appointments issued pursuant to the newly approved positions under the *Organizational Refinement/Restructuring Plan*.

In her letter dated December 23, 2002 that she sent to TIDCORP Chairman Jose Isidro Camacho, however, Demigillo challenged before the Board of Directors the validity of Resolution No. 1365 and of her assignment to the RCMSS. She averred that she had been thereby illegally removed from her position of Senior Vice President in the LCSD to which she had been previously assigned during the reorganization of July 1998. She insisted that contrary to OGCC Opinion No. 221 dated September 13, 2002 the Board of Directors had not been authorized to undertake the reorganization and corporate restructuring.

On January 31, 2003, pending determination of her challenge by the Board of Directors, Demigillo appealed to the Civil Service Commission (CSC), raising the same issues.

TIDCORP assailed the propriety of Demigillo's appeal to the CSC, alleging that her elevation of the case to the CSC without the Board of Directors having yet decided her challenge had been improper and a clear case of forum-shopping.

Later on, however, TIDCORP furnished to the CSC a copy of Board Decision No. 03-002 dismissing Demigillo's appeal for its lack of merit, thereby rendering the question about the propriety of Demigillo's appeal moot and academic. Board Decision No. 03-002 pertinently reads as follows:

> Atty. Demigillo failed to show to the Board that she was prejudiced in the implementation of the TIDCORP organizational refinements/

restructuring. She was reappointed to the same position she was holding before the reorganization. She was not demoted in terms of salary, rank and status. There was a (sic) substantial compliance with the requirements of RA 6656, particularly on transparency. More importantly, the said organizational refinements done and adoption of a new compensation structure were made in accordance with what is mandated under the Charter of the Corporation.

WHEREFORE, foregoing premises considered, the Board decided as it hereby decides to **DISMISS** the appeal of Atty. Ma. Rosario Demigillo for lack of merit.[2]

In the meanwhile, by letter dated April 14, 2003, President Valdes informed Demigillo of her *poor performance* rating for the period from January 1, 2002 to December 31, 2002, to wit:

After a thorough evaluation/assessment of your job performance for the rating period January 1 to December 21, 2002, it appears that your over-all performance is 'Poor.'

Records show that you consistently behaved as an obstructionist in the implementation of the Corporate Business Plan. You failed to demonstrate cooperation, respect and concern towards authority and other members of the company. You also failed to abide by Civil Service and company policies, rules and regulation. You miserably failed to adapt and respond to changes. You were very resentful to new approaches as shown by your vehement objection to new improved policies and programs. Instead of helping raise the morale of subordinate at high levels (sic) and promote career and professional growth of subordinates, you tried to block such efforts towards this end.

In view of the foregoing and your failure to prove that you have effectively and efficiently performed the duties, functions and responsibility (sic) of your position, I am constrained to give you a rating of "Poor" for your 2002 performance.[3]

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[2] *Id.* at 113-114 (as quoted in Civil Service Commission Resolution No. 041092).

[3] *Id.* at 114.

On April 28, 2003, Demigillo formally communicated to Atty. Florencio P. Gabriel Jr., Executive Vice President of the Operations Group, appealing the "poor rating" given her by President Valdes.

In a memorandum dated May 6, 2003, Atty. Gabriel informed Demigillo that he could not act on her appeal because of her "*failure to state facts and arguments constituting the grounds for the appeal and submit any evidence to support the same*."[4]

On May 6, 2003, President Valdes issued a memorandum to Demigillo stating that he found no justification to change the *poor* rating given to her for the year 2002.

On August 12, 2003, Demigillo received a memorandum from President Valdes stating that her performance rating for the period from January 1, 2003 to June 2003 "needs improvement," attaching the pertinent Performance Evaluation Report Form that she was instructed to return "within 24 hours from receipt."[5]

Not in conformity with the performance rating, Demigillo scribbled on the right corner of the memorandum the following comments: "*I do not agree and accept. I am questioning the same. This is pure harassment*."

She then appealed the *poor performance* rating on August 14, 2003, calling the rating a part of Valdes' "*unremitting harassment and oppression on her*."[6]

On August 19, 2003, Demigillo reported for work upon the expiration of the 90-day preventive suspension imposed by the Board of Directors in a separate administrative case for grave misconduct, conduct prejudicial to the best interest of the service, insubordination and gross discourtesy. In her memorandum of that date, she informed Atty. Gabriel Jr. of her readiness to resume her duties and responsibilities, but requested to be allowed to reproduce documents in connection with the appeal of her

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[4] *Id.* at 115.

[5] *Id.*

[6] *Id.* at 116.

performance rating. She further requested that the relevant grievance process should commence.

It appears that the Board of Directors rendered Decision No. 03-003 dated August 15, 2003 unanimously dropping Demigillo from the rolls.[7] Demigillo received the copy of Decision No. 03-003 on August 25, 2003.

Decision of the CSC

On October 14, 2004, the CSC ruled through Resolution No. 041092[8] that the 2002 *Organizational Refinements or Restructuring Plan of* TIDCORP had been valid for being authorized by Republic Act No. 6656; that Section 7 of Republic Act No. 8498 granted a continuing power to TIDCORP's Board of Directors to prescribe the agency's organizational structure, staffing pattern and compensation packages; and that such grant continued until declared invalid by a court of competent jurisdiction or revoked by Congress.

The CSC held, however, that TIDCORP's implementation of its reorganization did not comply with Section 6 of Republic Act No. 6656;[9] that although there was no diminution in Demigillo's rank, salary and status, there was nonetheless a demotion in her functions and authority, considering that the 2002 reorganization reduced her authority and functions from being the highest ranking legal officer in charge of all the legal and corporate affairs of TIDCORP to being the head of the RCMSS reporting to the Executive Vice President and having only two departments under her supervision; and that the functions of Demigillo's office were in fact transferred to the Operations Group.

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[7] *Id.*

[8] *Id.* at 108-133.

[9] *An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization (Approved June 10, 1998).*

The CSC further held that the dropping from the rolls of Demigillo did not comply with the mandatory requirement under Section 2, particularly 2.2 Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions Memorandum Circular No. 40, Series of 1998.

Subsequently, TIDCORP reinstated Demigillo to the position of Senior Vice President in RCMSS, a position she accepted without prejudice to her right to appeal the decision of the CSC.

Ruling of the CA

Both Demigillo and TIDCORP appealed the decision of the CSC to the Court of Appeals (CA). Demigillo's appeal was docketed as CA-G.R. SP No. 87285. On the other hand, TIDCORP's appeal was docketed as CA-G.R. SP No. 87295.

In CA-G.R. SP No. 87285, Demigillo partially assailed the CSC's decision, claiming that the CSC erred: (1) in holding that Section 7 of Republic Act No. 8494 granted the Board of Directors of TIDCORP a continuing power to reorganize; (2) in holding that the 2002 TIDCORP reorganization had been authorized by law; and (3) in not holding that the 2002 TIDCORP reorganization was void *ab initio* because it was not authorized by law and because the reorganization did not comply with Republic Act No. 6656.[10]

In CA-G.R. SP No. 87295, TIDCORP contended that the CSC erred: (1) in ruling that Demigillo had been demoted as a result of the 2002 TIDCORP reorganization; and (2) in ruling that TIDCORP had failed to observe the provisions of Section 2, particularly 2.2 Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions (Memorandum Circular No. 40, Series of 1998) on dropping from the rolls, to the prejudice of Demigillo's right to due process.[11]

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[10] *Rollo* (G.R. No. 168613), p. 88.

[11] *Rollo* (G.R. No. 185571), pp. 50-51.

On June 27, 2005, the CA's Fourth Division promulgated its decision in CA-G.R. SP No. 87285,[12] which, albeit affirming the ruling of the CSC, rendered a legal basis different from that given by the CSC, to wit:

> In numerous cases citing Section 20 and Section 31, Book III of Executive Order No. 292, otherwise known as the Administrative Code of 1987, the Supreme Court ruled in the affirmative that the President of the Philippines has the continuing authority to reorganize the administrative structure of the Office of the President.
>
> Hence, being the alter ego of the President of the Philippines, the Board of Directors of the private respondent-appellee is authorized by law to have a continuous power to reorganize its agency.[13]

Anent Demigillo's contention that the 2002 reorganization effected was invalid, the CA ruled:

> x x x In this jurisdiction, reorganizations have been regarded as valid provided they are pursued in good faith. Reorganization is carried out in good faith if it is for the purpose of economy or to make bureaucracy more efficient.
>
> In the case at bench, it is our considered opinion that except for her allegations, the petitioner-appellant (Demigillo) failed to present sufficient evidence that the reorganization effected in 2002 did not bear the earmarks of economy and efficiency. Good faith is always presumed.[14]

The CA held that Demigillo could not be reinstated to her previous position of Senior Vice President of the LCSD in view of the legality of the 2002 reorganization being upheld.[15]

With respect to CA-G.R. SP No. 87295, the CA's Special Former Thirteenth Division promulgated a decision on

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[12] *Rollo* (G.R. No. 168613), pp. 10-24; penned by Associate Justice Perlita J. Tria Tirona (retired), with Associate Justice Delilah Vidallon-Magtolis (retired) and Associate Justice Jose Reyes, Jr. concurring.

[13] *Id.* at 21-22.

[14] *Id.* at 22.

[15] *Id.* at 23.

November 28, 2008,[16] denying TIDCORP's appeal, and holding that Demigillo had been demoted and invalidly dropped from the rolls by TIDCORP, explaining:

> We do not need to stretch Our imagination that respondent Demigillo, one of the highest ranking officers of the corporation, was indeed demoted when she was designated to be the head of merely one sector. She may have retained her title as SVP, but she was deprived of the authority she previously enjoyed and stripped of the duties and responsibilities assigned to her under the Legal and Corporate Services. In utter disregard of respondent Demigillo's right to security of tenure, petitioner TIDCORP demoted her in the guise of "reorganization."
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> x x x x x x x x x
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> Next, petitioner TIDCORP asserts that respondent Demigillo was legally dropped from the rolls. *This is a delirious supposition which does not deserve merit at all*.
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> x x x x x x x x x
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> Petitioner TIDCORP did not bother to adduce proof that it complied with the rudiments of due process before dropping Demigillo from the rolls. She was not given the chance to present evidence refuting the contentious ratings as her employer refused to discuss how it arrived at such assessment. Her unceremonious dismissal was made even more apparent as she was never advised of the possibility that she may be separated from service if her rating would not improve for the next evaluation period.[17]

Issues

Demigillo filed before this Court a petition for review on *certiorari* assailing the CA decision in CA-G.R. SP No. 87285 (G.R. No. 168613), asserting that the CA gravely erred: (1) in holding that the Board of Directors of TIDCORP was an *alter ego* of the President who had the continuing authority to reorganize

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[16] *Rollo* (G.R. No. 185571), pp. 12-21; penned by Associate Justice Japar B. Dimaampao, and concurred in by Associate Justice Noel G. Tijam and Associate Justice Ramon R. Garcia.

[17] *Id.* at 17-20.

TIDCORP; and (2) in holding that the reorganization of TIDCORP effected in 2002 was valid considering her alleged failure to present evidence sufficiently showing that the reorganization did not bear the earmarks of economy and efficiency.[18] Corollarily, she sought her reinstatement to a position comparable to her former position as Senior Vice President in the LCSD.[19]

Likewise, TIDCORP appealed through a petition for review on *certiorari*, praying for the reversal of the decision promulgated in CA-G.R. SP No. 87295 (G.R. No. 185571), contending that the CA erred: (1) in ruling that Demigillo had been demoted as a result of the TIDCORP 2002 reorganization; and (2) in ruling that Demigillo had not been legally dropped from the rolls.[20]

On March 8, 2011, the Court *En Banc* consolidated G.R. No. 168613 and G.R. No. 185571.[21]

Ruling of the Court

We deny the petition for review of Demigillo (G.R. No. 168613) for its lack of merit, but grant the petition for review of TIDCORP (G.R. No. 185571).

G.R. No. 168613

In its comment in G.R. No. 168613,[22] TIDCORP argues for the application of the doctrine of qualified political agency, contending that the acts of the Board of Directors of TIDCORP, an attached agency of the Department of Finance whose head, the Secretary of Finance, was an *alter ego* of the President, were also the acts of the President.

TIDCORP's argument is unfounded.

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[18] *Rollo* (G.R. No. 168613), p. 35.

[19] *Id.* at 47.

[20] *Rollo* (G.R. No. 185571), pp. 31-32.

[21] *Rollo* (G.R. No. 168613), p. 544.

[22] *Id.* at 463.

The doctrine of qualified political agency, also known as the *alter ego* doctrine, was introduced in the landmark case of *Villena v. The Secretary of Interior*.[23] In said case, the Department of Justice, upon the request of the Secretary of Interior, investigated Makati Mayor Jose D. Villena and found him guilty of bribery, extortion, and abuse of authority. The Secretary of Interior then recommended to the President the suspension from office of Mayor Villena. Upon approval by the President of the recommendation, the Secretary of Interior suspended Mayor Villena. Unyielding, Mayor Villena challenged his suspension, asserting that the Secretary of Interior had no authority to suspend him from office because there was no specific law granting such power to the Secretary of Interior; and that it was the President alone who was empowered to suspend local government officials. The Court disagreed with Mayor Villena and upheld his suspension, holding that the doctrine of qualified political agency warranted the suspension by the Secretary of Interior. Justice Laurel, writing for the Court, opined:

> After serious reflection, we have decided to sustain the contention of the government in this case on the broad proposition, albeit not suggested, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, Section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. (Runkle *vs.* United States [1887], 122 U.S., 543; 30 Law. ed., 1167; 7 Sup. Ct. Rep., 1141; see also U.S. *vs.* Eliason [1839], 16 Pet., 291; 10 Law. ed., 968; Jones *vs.* U.S. [1890], 137 U.S., 202; 34

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[23] 67 Phil. 451, 463-464 (1939).

Law. ed., 691; 11 Sup. Ct., Rep., 80; Wolsey *vs.* Chapman [1880], 101 U.S., 755; 25 Law. ed., 915; Wilcox *vs.* Jackson [1836], 13 Pet., 498; 10 Law. ed., 264.)

Fear is expressed by more than one member of this court that the acceptance of the principle of qualified political agency in this and similar cases would result in the assumption of responsibility by the President of the Philippines for acts of any member of his cabinet, however illegal, irregular or improper may be these acts. The implications, it is said, are serious. Fear, however, is no valid argument against the system once adopted, established and operated. Familiarity with the essential background of the type of Government established under our Constitution, in the light of certain well-known principles and practices that go with the system, should offer the necessary explanation. With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence" (7 Writings, Ford ed., 498), and in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), "are subject to the direction of the President." Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, "each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority." (*Myers vs. United States*, 47 Sup. Ct. Rep., 21 at 30; 272 U.S. 52 at 133; 71 Law. Ed., 160). x x x

The doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the *alter egos* of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove

such acts. This doctrine is in recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.

But the doctrine of qualified political agency could not be extended to the acts of the Board of Directors of TIDCORP despite some of its members being themselves the appointees of the President to the Cabinet. Under Section 10 of Presidential Decree No. 1080, as further amended by Section 6 of Republic Act No. 8494,[24] the five *ex officio* members were the Secretary

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[24] Section 10. *Board of Directors, Composition*. — The powers and functions of the Corporation shall be exercised by a Board of Directors, hereinafter referred to as the "Board" which shall be composed of nine (9) members, as follows:

a) The Secretary of Finance, who shall be the Chairman of the Board. Whenever the Secretary of Finance is unable to attend a meeting of the Board, he shall designate an Undersecretary to attend as his alternate, who shall act as Chairman;

b) The President of the Corporation, who shall be the Vice-Chairman of the Board, shall assist the Chairman and act in his stead in case of absence or incapacity;

c) The Secretary of Trade and Industry. Whenever the Secretary of Trade and Industry is unable to attend a meeting of the Board, he shall designate an Undersecretary to attend as his alternate;

d) The Governor of the *Bangko Sentral ng Pilipinas*. Whenever the Governor of the *Bangko Sentral ng Pilipinas* is unable to attend a meeting of the Board, he shall designate a Deputy-Governor as his alternate;

e) The Director-General of the National Economic and Development Authority. Whenever the Director-General is unable to attend a meeting of the Board, he shall designate a Deputy-General of the Authority to attend as his alternate;

f) The Chairman of the Philippine Overseas Construction Board. Whenever the POCB Chairman is unable to attend a meeting of the Board, he shall designate the POCB Vice-Chairman to attend as his alternate; and

of Finance, the Secretary of Trade and Industry, the Governor of the Bangko Sentral ng Pilipinas, the Director-General of the National Economic and Development Authority, and the Chairman of the Philippine Overseas Construction Board, while the four other members of the Board were the three from the private sector (at least one of whom should come from the export community), who were elected by the *ex officio* members of the Board for a term of not more than two consecutive years, and the President of TIDCORP who was concurrently the Vice-Chairman of the Board. Such Cabinet members sat on the Board of Directors of TIDCORP *ex officio*, or by reason of their office or function, not because of their direct appointment to the Board by the President. Evidently, it was the law, not the President, that sat them in the Board.

Under the circumstances, when the members of the Board of Directors effected the assailed 2002 reorganization, they were acting as the responsible members of the Board of Directors of TIDCORP constituted pursuant to Presidential Decree No. 1080, as amended by Republic Act No. 8494, not as the *alter egos* of the President. We cannot stretch the application of a doctrine that already delegates an enormous amount of power. Also, it is settled that the delegation of power is not to be lightly inferred.[25]

Nonetheless, we uphold the 2002 reorganization and declare it valid for being done in accordance with the exclusive and final authority expressly granted under Republic Act No. 8494, further amending Presidential Decree No. 1080, the law creating TIDCORP itself, to wit:

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g) Three (3) representatives from the private sector, at least one of which shall come from the export community, who shall be elected by the *ex officio* members of the Board and who shall hold office for a term of not more than two (2) consecutive years: *Provided*, That the representative from the private sector should be of known probity in the sector he represents.

[25] *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 68-69; *NPC Drivers and Mechanics Association (NPC-DAMA) v. National Power Corporation (NPC)*, G.R. No. 156208, September 26, 2006, 503 SCRA 138, 149.

Section 7. The Board of Directors shall provide for an organizational structure and staffing pattern for officers and employees of the Trade and Investment Development Corporation of the Philippines (TIDCORP) and upon recommendation of its President, appoint and fix their remuneration, emoluments and fringe benefits: Provided, That the Board shall have exclusive and final authority to appoint, promote, transfer, assign and re-assign personnel of the TIDCORP, any provision of existing law to the contrary notwithstanding.

In this connection, too, we reiterate that we cannot disturb but must respect the ruling of the CSC that deals with specific cases coming within its area of technical knowledge and expertise,[26] absent a clear showing of grave abuse of discretion on its part. That clear showing was not made herein. Such deference proceeds from our recognition of the important role of the CSC as the central personnel agency of the Government having the familiarity with and expertise on the matters relating to the career service.

Worthy to stress, lastly, is that the reorganization was not arbitrary and whimsical. It had been formulated following lengthy consultations and close coordination with the affected offices within TIDCORP in order for them to come up with various functional statements relating to the new organizational setup. In fact, the Board of Directors decided on the need to reorganize in 2002 to achieve several worthy objectives, as follows:

(1) To make the organization more viable in terms of economy, efficiency, effectiveness and make it more responsive to the needs of its clientèles by eliminating or minimizing any overlaps and duplication of powers and functions;

(2) To come up with an organizational structure which is geared towards the strengthening of the Corporation's overall financial and business operations through resource allocation shift; and

(3) To rationalize corporate operations to maximize resources and achieve optimum sustainable corporate performance *vis-a-vis*

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[26] *Mendizabel v. Apao*, G.R. No. 143185, February 20, 2006, 482 SCRA 587, 609-610; *Basuel v. Fact-Finding and Intelligence Bureau (FFIB)*, G.R. No. 143664, June 30, 2006, 494 SCRA 118, 127.

revised corporate policies, objectives and directions by focusing the Corporation's efforts and resources to its vital and core functions.[27]

The result of the lengthy consultations and close coordination was the comprehensive reorganization plan that included a new organizational structure, position classification and staffing pattern, qualification standards, rules and regulations to implement the reorganization, separation incentive packages and timetable of implementation. Undoubtedly, TIDCORP effected the reorganization within legal bounds and in response to the perceived need to make the agency more attuned to the changing times.

Having found the 2002 reorganization to be valid and made pursuant to Republic Act No. 8494, we declare that there are no legal and practical bases for reinstating Demigillo to her former position as Senior Vice President in the LCSD. To be sure, the reorganization plan abolished the LCSD, and put in place a set-up completely different from the previous one, including a new staffing pattern in which Demigillo would be heading the RCMSS, still as a Senior Vice President of TIDCORP. With that abolition, reinstating her as Senior Vice President in the LCSD became legally and physically impossible.

Demigillo's contention that she was specifically appointed to the position of Senior Vice President in the LCSD was bereft of factual basis. The records indicate that her permanent appointment pertained only to the position of Senior Vice President.[28] Her appointment did not indicate at all that she was to hold that specific post in the LCSD. Hence, her reassignment to the RCMSS was by no means a diminution in rank and status considering that she maintained the same rank of Senior Vice President with an accompanying increase in pay grade.

The assignment to the RCMSS did not also violate Demigillo's security of tenure as protected by Republic Act No. 6656. We

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[27] *Rollo* (G.R. No. 168613), p. 441.

[28] *Id.* at 189.

have already upheld reassignments in the Civil Service resulting from valid reorganizations.[29] Nor could she claim that her reassignment was invalid because it caused the reduction in her rank, status or salary. On the contrary, she was reappointed as Senior Vice President, a position that was even upgraded like all the other similar positions to Pay Grade 16, Step 4, Level II.[30] In every sense, the position to which she was reappointed under the 2002 reorganization was comparable with, if not similar to her previous position.

That the RCMSS was a unit smaller than the LCSD did not necessarily result in or cause a demotion for Demigillo. Her new position was but the consequence of the valid reorganization, the authority to implement which was vested in the Board of Directors by Republic Act No. 8494. Indeed, we do not consider to be a violation of the civil servant's right to security of tenure the exercise by the agency where she works of the essential prerogative to change the work assignment or to transfer the civil servant to an assignment where she would be most useful and effective. More succinctly put, that prerogative inheres with the employer,[31] whether public or private.

G.R. No. 185571

As earlier stated, TIDCORP's petition for review in G.R. No. 185571 is meritorious.

Anent the first issue in G.R. No. 185571, we have already explained that Demigillo was not demoted because she did not suffer any diminution in her rank, status and salary under the reorganization. Her reassignment to the RCMSS, a smaller unit compared to the LCSD, maintained for her the same rank of

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[29] See *Pantranco North Express, Inc. v. NLRC*, G.R. No. 106516, September 21, 1999, 314 SCRA 740, 750; *Ignacio v. Civil Service Commission*, G.R. No. 163573, July 27, 2005, 464 SCRA 220, 230-231.

[30] *Rollo* (G.R. No. 168613), p. 315.

[31] See *Benguet Electric Cooperative v. Fianza*, G.R. No. 158606. March 9, 2004, 425 SCRA 41.

Senior Vice-President with a corresponding increase in pay grade. The reassignment resulted from the valid reorganization.

With respect to the second issue, Demigillo was validly dropped from the rolls by TIDCORP as the consequence of the application of the rules governing her employment. Section 2 (2.2), Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions (Memorandum Circular No. 40, Series of 1998) provides:

x x x x x x x x x

2.2 Unsatisfactory or Poor Performance

a. An official or employee who is given two (2) consecutive unsatisfactory ratings may be dropped from the rolls after due notice. Notice shall mean that the officer or employee concerned is informed in writing of his unsatisfactory performance for a semester and is sufficiently warned that a succeeding unsatisfactory performance shall warrant his separation from the service. Such notice shall be given not later than 30 days from the end of the semester and shall contain sufficient information which shall enable the employee to prepare an explanation.

b. An official or employee, who for one evaluation period is rated poor in performance, may be dropped from the rolls after due notice. Notice shall mean that the officer or employee is informed in writing of the status of his performance not later than the 4th month of that rating period with sufficient warning that failure to improve his performance within the remaining period of the semester shall warrant his separation from the service. Such notice shall also contain sufficient information which shall enable the employee to prepare an explanation.

Under Section (b), *supra*, an official or employee may be dropped from the rolls provided the following requisites are present, namely: (1) the official or employee was rated *poor* in performance for one evaluation period; (2) the official or employee was notified in writing of the status of her performance not later than the 4th month of the rating period with sufficient warning that failure to improve her performance within the remaining period of the semester shall warrant her separation from the

service; and (3) such notice contained adequate information that would enable her to prepare an explanation.

All of the requisites were duly established herein.

As to the first requisite, there is no dispute that President Valdes gave Demigillo a *poor performance* rating for the annual rating period from January 1, 2002 to December 31, 2002.

The second requisite speaks of a sixth-month or per semester rating period. Although Demigillo's *poor* rating was made on an annual basis, that was allowed by the implementing rules of Executive Order No. 292.[32] Regarding the need to give her the written notice of her performance status not later than the 4th month of the rating period, or at the half of the semester, the requirement did not apply here because her rating was made on an annual basis. By analogy, however, the written notice for an annual rating period could be sent on the 6th month or in the middle of the year. Nevertheless, this was not expressly provided for in the Civil Service rules. In any case, it is emphasized that the purpose of the written notice being sent to the affected officer or employee not later than the 4th month of the rating period has been to give her the sufficient time to improve her performance and thereby avert her separation from the service. That purpose is the very essence of due process.

In Demigillo's case, therefore, what was crucial was whether she had been allowed to enhance her performance within a sufficient time from her receipt of the written notice of the *poor performance* rating up to her receipt of the written notice of her dropping from the rolls. The records show that she was, indeed, given enough time for her to show improvement. She received on April 21, 2003 a letter from President Valdes

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[32] Section 3 (d), Rule IX, Omnibus Rules Implementing Book V of Executive Order No. 292 and other Pertinent Civil Service Laws: "Performance evaluation shall be done every six months ending on June 30 and December 31 of every year. However, if the organizational needs require a shorter or longer period, the minimum appraisal period shall be at least 90 days or three months. No appraisal period shall be longer than one year."

that indicated her *poor performance* rating for the period of January 1, 2002 to December 31, 2002.[33] The Board of Directors issued on August 15, 2003 the decision dropping her from rolls.[34] She received a copy of the decision on August 25, 2003.[35] Thereby, she was given almost four months to improve her performance before she was finally dropped from the rolls.

The second requisite further mentions that the written notice must contain sufficient warning that failure to improve her performance within the remaining period of the semester shall warrant separation from the service. Although the letter informing Demigillo of her *poor performance* rating did not expressly state such a warning to her, it stated her gross failures in the performance of her duties.[36] The Performance Evaluation Report Form corresponding to her, which was attached to the memorandum given to her, reflected her *poor performance*.[37] She was notified in writing of the denial of her appeal of the *poor* rating.[38] It cannot be denied that the letter of *poor* rating, the Performance Evaluation Report Form, and the denial of her appeal all signified to her that she could be removed from the service unless she would improve her performance. Thereby, she was given ample warning to improve, or else be separated from the service. In that regard, she was certainly not a witless person who could have missed the significance of such events. She was not only a lawyer.[39] She was also a mid-level ranking government official who had been in the government corporate sector for almost 20 years.[40] Her familiarity with the dire consequences of a failure to improve a *poor* rating under Civil Service rules was justifiably assumed.

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[33] *Rollo* (G.R. No. 185571), p. 155.

[34] *Id.* at 141-149.

[35] *Id.* at 157.

[36] *Id.* at 155.

[37] *Rollo* (G.R. No. 168613), pp. 256-259.

[38] *Rollo* (G.R. No. 185571) p. 156.

[39] *Id.* at 340.

[40] *Id.*

Anent the third requisite, the letter of President Valdes plainly stated the reasons for her *poor* rating. Her Performance Evaluation Report Form, which was attached to the letter, enumerated several criteria used in measuring her management skills and the corresponding rating per criterion. The letter even suggested that in order for her to enhance her performance she should undergo extensive training on business management, a comprehensive lecture program on Civil Service rules and regulations, and a training on effective public relations. The letter indicated that the contents of the Performance Evaluation Report had been discussed with her. Moreover, Demigillo formally appealed the *poor performance* rating, except that TIDCORP denied her appeal.[41] All these circumstances show that she was given more than enough information about the bases for her *poor performance* rating, enabling her to appeal properly.

WHEREFORE, we **DENY** the petition for review on *certiorari* in G.R. No. 168613; **AFFIRM** the decision promulgated on June 27, 2005 by the Court of Appeals in its CA-G.R. No. 87285; **GRANT** the petition for review on *certiorari* in G.R. No. 185571; **SET ASIDE** the decision promulgated on November 28, 2008 by the Court of Appeals in its CA-G.R. No. 87295; and **ORDER Atty. MA. ROSARIO MANALANG-DEMIGILLO** to pay the costs of suit.

SO ORDERED.

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

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

EN BANC

[G.R. No. 182249. March 5, 2013]

TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES, *petitioner*, *vs.* **CIVIL SERVICE COMMISSION,** *respondent*.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE COMMISSION (CSC); THE RULES THAT THE CSC FORMULATES MUST BE IN HARMONY WITH THE LAWS IT IS TASKED TO APPLY AND IMPLEMENT.—** The CSC's rule-making power, *albeit* constitutionally granted, is still limited to the implementation and interpretation of the laws it is tasked to enforce. The 1987 Constitution created the CSC as the central personnel agency of the government mandated to establish a career service and promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It is a constitutionally created administrative agency that possesses executive, quasi-judicial and quasi-legislative or rule-making powers. x x x The 1987 Administrative Code then spelled out the CSC's rule- making power in concrete terms in Section 12, Book V , Title I-A , which empowered the CSC to implement the civil service law and other pertinent laws, and to promulgate policies, standards and guidelines for the civil service. The CSC's rule-making power as a constitutional grant is an aspect of its independence as a constitutional commission. It places the grant of this power outside the reach of Congress, which cannot withdraw the power at any time. x x x But while the grant of the CSC's rule-making power is untouchable by Congress, the laws that the CSC interprets and enforces fall within the prerogative of Congress. As an administrative agency, the CSC's quasi-legislative power is subject to the same limitations applicable to other administrative bodies. The rules that the CSC formulates must not override, but must be in harmony with, the law it seeks to apply and implement.

2. **ID.; ID.; ID.; MEMORANDUM CIRCULAR NO. 40 AND RESOLUTION NO. 15 WERE ISSUED PURSUANT TO CSC'S RULE-MAKING POWER AND INVOLVE RULES ON POSITION CLASSIFICATION.—** We agree with the CSC's position that CSC Memorandum Circular No. 40, s. 1998, and CSC Resolution No. 15, s. 1999, were all issued pursuant to its rule-making power. x x x Both these memoranda govern appointments and personnel actions in the civil service. CSC Memorandum Circular No. 40, s. 1998, or the "Revised Omnibus Rules on Appointments and Other Personnel Actions," updated and consolidated the various issuances on appointments and other personnel actions and simplified their processing. This was subsequently amended by CSC Memorandum Circular No. 15, s. 1999. The assailed provisions in those memorandum circulars, however, involve position classification. Section 1(c), Rule III of CSC Memorandum Circular No. 40, s. 1998, requires, as a condition *sine qua non* for the approval of an appointment, that the position title indicated therein conform with the approved Position Allocation List. The position title should also be found in the Index of Occupational Service. According to National Compensation Circular No. 58, the Position Allocation List is a list prepared by the DBM which reflects the allocation of existing positions to the new position titles in accordance with the Index of Occupational Service, Position Titles and Salary Grades issued under National Compensation Circular No. 57. Both circulars were published by the DBM pursuant to its mandate from RA 6758 to establish a position classification system in the government.

3. **ID.; ID.; TRADE AND INVESTMENT CORPORATION OF THE PHILIPPINES (TIDCORP); TIDCORP'S CHARTER EXPRESSLY EXEMPTS IT FROM RULES INVOLVING POSITION CLASSIFICATION; R.A. 8494 CONSTRUED IN RELATION TO R.A. 6758.—** [T]he CSC's authority over TIDCORP is undisputed. The rules that the CSC formulates should implement and be in harmony with the law it seeks to enforce. In TIDCORP's case, the CSC should also consider TIDCORP's charter in addition to other civil service laws. Having said this, there remains the issue of how the CSC should apply the civil service law to TIDCORP, given the exemptions provided in the latter's charter. Does the wording of Section 7

of RA 8494 command TIDCORP to follow issued requirements pursuant to RA 6758 despite its exemption from laws involving position classification? We answer in the negative. "x x x The phrase "to endeavor" means to "to devote serious and sustained effort" and "to make an effort to do." It is synonymous with the words to strive, to struggle and to seek. The use of "to endeavor" in the context of Section 7 of RA 8494 means that despite TIDCORP's exemption from laws involving compensation, position classification and qualification standards, it should still strive to conform as closely as possible with the principles and modes provided in RA 6758. The phrase "as closely as possible," which qualifies TIDCORP's duty "to endeavor to conform," recognizes that the law allows TIDCORP to deviate from RA 6758, but it should still try to hew closely with its principles and modes. Had the intent of Congress been to require TIDCORP to fully, exactly and strictly comply with RA 6758, it would have so stated in unequivocal terms. Instead, the mandate it gave TIDCORP was to endeavor to conform to the principles and modes of RA 6758, and not to the entirety of this law. These inter-relationships render it clear, as a plain reading of Section 7 of RA 8494 itself would confirm, that TIDCORP is exempt from existing laws on compensation, position classification and qualification standards, including compliance with Section 1(c), Rule III of CSC Memorandum Circular No. 40, s. 1998.

APPEARANCES OF COUNSEL

The Government Crporate Counsel and *Isabelo G. Gumaru and Alvin N. Sto. Domingo* for petitioner.

The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] of Trade and Investment Development Corporation of the Philippines

[1] *Rollo,* pp. 29-60; under Rule 45 of the Rules of Court.

(*TIDCORP*) seeking the reversal of the decision[2] dated September 28, 2007 and the resolution[3] dated March 17, 2008 of the Court of Appeals (*CA*) in CA-G.R. SP. No. 81058. The assailed CA rulings affirmed the resolutions,[4] dated January 31, 2003 and October 7, 2003, of the Civil Service Commission (CSC), invalidating Arsenio de Guzman's appointment as Financial Management Specialist IV in TIDCORP. The CA subsequently denied the motion for reconsideration that followed.

Factual Antecedents

On August 30, 2001, De Guzman was appointed on a permanent status as Financial Management Specialist IV of TIDCORP, a government-owned and controlled corporation (*GOCC*) created pursuant to Presidential Decree No. 1080. His appointment was included in TIDCORP's Report on Personnel Actions (*ROPA*) for August 2001, which was submitted to the CSC-Department of Budget and Management (*DBM*) Field Office.[5]

In a letter[6] dated September 28, 2001, Director Leticia M. Bugtong disallowed De Guzman's appointment because the position of Financial Management Specialist IV was not included in the DBM's Index of Occupational Service.

TIDCORP's Executive Vice President Jane U. Tambanillo appealed[7] the invalidation of De Guzman's appointment to Director IV Agnes Padilla of the CSC-National Capital Region (*NCR*). According to Tambanillo, Republic Act No. (*RA*) 8494,

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[2] Penned by Associate Justice Normandie B. Pizarro, and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta; *id*. at 10-18.

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

[4] *Id.* at 108-114 and 120-122, respectively.

[5] *Id.* at 75.

[6] *Id.* at 91.

[7] *Id.* at 92-95.

which amended TIDCORP's charter, empowers its Board of Directors to create its own organizational structure and staffing pattern, and to approve its own compensation and position classification system and qualification standards. Specifically, Section 7 of RA 8494 provides:

> Section 7. The Board of Directors shall provide for an organizational structure and staffing pattern for officers and employees of the Trade and Investment Development Corporation of the Philippines (*TIDCORP*) and upon recommendation of its President, appoint and fix their remuneration, emoluments and fringe benefits: Provided, That the Board shall have exclusive and final authority to appoint, promote, transfer, assign and re-assign personnel of the TIDCORP, any provision of existing law to the contrary notwithstanding.
>
> All positions in TIDCORP shall be governed by a compensation and position classification system and qualification standards approved by TIDCORP's Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board no more than once every four (4) years without prejudice to yearly merit reviews or increases based on productivity and profitability. TIDCORP shall be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall, however, endeavor to make the system to conform as closely as possible to the principles and modes provided in Republic Act No. 6758.

On the basis of Section 7 of RA 8494, Tambanillo argued that TIDCORP is authorized to adopt an organizational structure different from that set and prescribed by the CSC. Section 7 exempts TIDCORP from existing laws on compensation, position classification and qualification standards, and is thus not bound by the DBM's Index of Occupational Service. Pursuant to this authority, TIDCORP's Board of Directors issued Resolution No. 1185, s. 1998 approving the corporation's re-organizational plan, under which De Guzman was appointed Financial

Management Specialist IV. De Guzman's appointment was valid because the plan providing for his position followed the letter of the law.

Tambanillo also noted that prior to De Guzman's appointment as Financial Management Specialist IV, the position had earlier been occupied by Ma. Loreto H. Mayor whose appointment was duly approved by Director Bugtong. Thus, Director Bugtong's invalidation of De Guzman's appointment is inconsistent with her earlier approval of Mayor's appointment to the same position.

The CSC-NCR's Ruling

Director Padilla denied Tambanillo's appeal because De Guzman's appointment failed to comply with Section 1, Rule III of CSC Memorandum Circular No. 40, s. 1998, which requires that the position title of an appointment submitted to the CSC must conform with the approved Position Allocation List and must be found in the Index of Occupational Service. Since the position of Financial Management Specialist IV is not included in the Index of Occupational Service, then De Guzman's appointment to this position must be invalid.[8]

Director Padilla pointed out that the CSC had already decided upon an issue similar to De Guzman's case in CSC Resolution No. 011495 *(Geronimo, Rolando S.C., Macapagal, Vivencio M. Tumangan, Panser E., Villar, Victor G., Ong, Elizabeth P., Re: Invalidated Appointments; Appeal)* where it invalidated the appointments of several Development Bank of the Philippines *(DBP)* employees because their position titles did not conform with the Position Allocation List and with the Index of Occupational Service. Like TIDCORP, the DBP's charter exempts the DBP from existing laws, rules, and regulations on compensation, position classification and qualification standards. It also has a similar duty to "endeavor to make its system conform

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

as closely as possible to the principles under [the] Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended)[.]"[9]

Lastly, Padilla stressed that the 1987 Administrative Code empowers[10] the CSC to formulate policies and regulations for the administration, maintenance and implementation of position, classification and compensation.

TIDCORP's appeal to the CSC-CO

In response to the CSC-NCR's ruling, TIDCORP's President and CEO Joel C. Valdes sent CSC Chairperson Karina Constantino-David a letter[11] appealing Director Padilla's decision to the CSC-Central Office *(CO)*. Valdes reiterated TIDCORP's argument that RA 8494 authorized its Board of Directors to determine its own organizational structure and staffing pattern, and exempted TIDCORP from all existing laws on compensation, position classification and qualification standards. Citing *Javellana v. The Executive Secretary, et al.*,[12] Valdes asserted that the wisdom of Congress in granting TIDCORP this authority and exemption is a political question that cannot be the subject of judicial review. Given TIDCORP's functions as the government's export credit agency, its Board of Directors has been provided flexibility in administering its personnel so that it can hire qualified employees from the private sector, such as banks and other financial institutions.

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[9] *Id.* at 98.

[10] Paragraph 4, Section 12, Chapter III, Subtitle A, Title I, Book V of the Administrative Code of 1987 provides: The Commission shall have the following powers and functions: x x x (4) Formulate policies and regulations for the administration, maintenance and implementation of position classification and compensation and set standards for the establishment, allocation and reallocation of pay scales, classes and positions[.]

[11] *Rollo*, pp. 100-107.

[12] 151-A Phil. 35 (1973).

In addition, prior actions of the CSC show that it recognized TIDCORP's exemption from all laws regarding compensation, position classification and qualification standards of its employees. The CSC has approved prior appointments of TIDCORP's officers under its July 1, 1998 re-organization plan. It also approved Mayor's previous appointment as Financial Management Specialist IV. Further, a memorandum dated October 29, 1998 issued by the CSC-NCR noted that "pursuant to Sec. 7 of RA 8494[,] TIDCORP is exempt from existing laws, rules and regulations on compensation, position classification and qualification standards."[13]

The CSC-CO's ruling

In its Resolution No. 030144,[14] the CSC-CO affirmed the CSC-NCR's decision that De Guzman's appointment should have complied with CSC Memorandum Circular No. 40, s. 1998, as amended by CSC Memorandum Circular No. 15, s. 1999. Rule III, Section 1 (c) is explicit in requiring that the position title indicated in the appointment should conform with the Position Allocation List and found in the Index of Occupational Service. Otherwise, the appointment shall be disapproved. In disallowing De Guzman's appointment, the CSC-CO held that Director Bugtong was simply following the letter of the law.

According to the CSC-CO, TIDCORP misconstrued the provisions of Section 7 of RA 8494 in its attempt to bypass the requirements of CSC Memorandum Circular No. 40, s. 1998. While RA 8494 gave TIDCORP staffing prerogatives, it would still have to comply with civil service rules because Section 7 did not expressly exempt TIDCORP from civil service laws.

The CSC-CO also supported the CSC-NCR's invocation of CSC Resolution No. 011495. Both the charters of the DBP and TIDCORP have similar provisions in the recruitment and administration of their human resources. Thus, the ruling in

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[13] *Rollo,* p. 109.

[14] *Id.* at 108-114.

CSC Resolution No. 011495 has been correctly applied in TIDCORP's appeal.

Lastly, the CSC-CO noted that the government is not bound by its public officers' erroneous application and enforcement of the law. Granting that the CSC-NCR had erroneously approved an appointment to the same position as De Guzman's appointment, the CSC is not estopped from correcting its officers' past mistakes.

TIDCORP moved to reconsider[15] the CSC-CO's decision, but this motion was denied,[16] prompting TIDCORP to file a Rule 65 petition for *certiorari*[17] with the CA. The petition asserted that the CSC-CO committed grave abuse of discretion in issuing Resolution No. 030144 and Resolution No. 031037.

The Appellate Court's Ruling

The CA denied[18] TIDCORP's petition and upheld the ruling of the CSC-CO in Resolution No. 030144 and Resolution No. 031037. The CA noted that filing a petition for *certiorari* was an improper recourse; TIDCORP should have instead filed a petition for review under Section 1, Rule 43 of the Rules of Court. The CA, however, brushed aside the procedural defect, ruling that the assailed resolutions should still stand as they are consistent with law and jurisprudence.

Citing *Central Bank of the Philippines v. Civil Service Commission*,[19] the CA stood by the CSC-CO's ruling that it has authority to approve and review De Guzman's appointment. The CSC has the power to ascertain whether the appointing authority complied with the requirements of the law; otherwise, it may revoke the appointment. As TIDCORP is a government-owned corporation, it is covered by civil service laws and is

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[15] *Id.* at 115-119.

[16] Resolution No. 031037 dated October 7, 2003; *id*. at 120-122.

[17] *Id.* at 123-136.

[18] *Supra* note 2.

[19] 253 Phil. 717 (1989).

therefore bound by the CSC's jurisdiction over all matters pertaining to personnel, including appointments.

Further, the CA cited the CSC's mandate under the 1987 Constitution to approve or disapprove appointments and to determine whether an appointee possesses civil service eligibility. As TIDCORP's charter does not expressly or impliedly divest the CSC of administrative authority over personnel concerns at TIDCORP, the latter is still covered by the existing civil service laws on compensation, position classification and qualification standards. Its appointment of De Guzman as Financial Management Specialist IV should have complied with these rules.

The CA thus concluded that the CSC was well-within its authority when it invalidated De Guzman's appointment. It held that an appointee's title to the office does not permanently vest until the appointee complies with the legal requirements of his appointment. The requirements include the submission of the appointment to the CSC for the determination of whether the appointee qualifies to the position and whether the procedure for appointment has been properly followed. Until these requirements are complied with, his appointment may still be recalled or withdrawn by the appointing authority.[20]

TIDCORP moved for reconsideration[21] but the CA denied the motion in a resolution[22] dated March 17, 2008.

The Present Petition

In its present petition for review on *certiorari*,[23] TIDCORP argued that the CSC's interpretation of the last sentence of Section 7 of RA 8494 (which mandates it to endeavor to make the system conform as closely as possible with the principles

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[20] *Tomali v. Civil Service Commission*, G.R. No. 110598, December 1, 1994, 238 SCRA 572, 576.

[21] *Rollo,* pp. 221-238.

[22] *Supra* note 3.

[23] *Supra* note 1.

provided in RA 6758) is misplaced. This provision does not bar TIDCORP from adopting a position classification system and qualification standards different from those prescribed by the CSC. TIDCORP asserts that it is not also duty bound to comply with civil service rules on compensation and position classification, as it is exempt from all these rules. Instead, TIDCORP is only required to furnish the CSC with its compensation and position classification system and qualification standards so that the CSC can be properly guided in processing TIDCORP's appointments, promotion and personnel action.

Insisting on its exemption from RA 6758 and CSC Memorandum Circular No. 40, s. 1998, TIDCORP emphasizes that the provisions of RA 6758, which the CSC applied to TIDCORP, is a general law, while TIDCORP's charter, RA 8494, is a special law. In interpreting conflicting provisions of a general law and a special law, the provisions of the two laws should be harmonized to give effect to both. But if these provisions cannot be reconciled, then the special law should prevail because it is a qualification to the general rule.

Further, RA 8494 is a later expression of Congress' intent as it was enacted nine years after RA 6758 was approved, and should therefore be construed in this light in its relation with the latter. A new statute should be interpreted in connection with those already existing in relation to the same subject matter and all should be made to harmonize and stand together — *interpretare et concordare legibus est optimus interpretandi*.

Under these principles, TIDCORP argued that Section 7 of RA 8494, the provision of a special law, should be interpreted as an exemption to RA 6758. Thus, CSC Memorandum Circular No. 40, s. 1998, which was issued pursuant to RA 6758, should not have been applied to limit TIDCORP's staffing prerogatives.

In its comment,[24] the CSC noted that CSC Memorandum Circular No. 40, series of 1998, as amended by CSC Memorandum Circular No. 15, s. 1999, was issued in accordance

[24] *Rollo,* pp. 276-286.

with its authority to prescribe rules and regulations to carry out the provisions of civil service laws and other pertinent laws (Administrative Code), and not pursuant to RA 6758.

The CSC maintained that Section 2 (1), Article IX-B of the Constitution includes government and controlled corporations as part of the civil service. TIDCORP, a GOCC, is therefore covered by the civil service rules and by the CSC. It should submit its Position Allocation List to the DBM, regardless of its exemption under RA 6758.

Lastly, the CSC argued that RA 8494 should not prevail over RA 6758 because the latter also applies to GOCCs like TIDCORP; RA 8494 even makes a reference to RA 6758.

Issues

The parties' arguments, properly joined, present to us the following issues:

1) Whether the Constitution empowers the CSC to prescribe and enforce civil service rules and regulations contrary to laws passed by Congress;

2) Whether the requirement in Section 1 (c), Rule III of CSC Memorandum Circular No. 40, s. 1998, as amended by CSC Memorandum Circular No. 15, s. 1999, applies to appointments in TIDCORP; and

3) Whether De Guzman's appointment as Financial Management Specialist IV in TIDCORP is valid.

The Court's Ruling

We find the petition meritorious.

Directly at issue is the application of Section 1 (c), Rule III of CSC Memorandum Circular No. 40, s. 1998, to appointments in TIDCORP. TIDCORP claims that its exemption, embodied in Section 7 of its charter, precludes the application of this requirement. The CSC, on the other hand, maintains its stance that appointments in a GOCC should follow the civil service laws on appointments, regardless of its exemption from the civil

service rules on compensation, position classification and qualification standards.

While the CSC has authority over personnel actions in GOCCs, the rules it formulates pursuant to this mandate should not contradict or amend the civil service laws it implements.

At the outset, we clarify that the CSC's authority over personnel actions in TIDCORP is uncontested. Both parties acknowledge this relationship in the pleadings they filed before the Supreme Court.[25] But while TIDCORP asserts that its charter exempts it from rules on compensation, position classification and qualification standards, the CSC argues that this exemption is irrelevant to the denial of De Guzman's appointment because the CSC's authority over TIDCORP's personnel actions requires it to comply with the CSC's rules on appointments.

The parties' arguments reveal an apparent clash between TIDCORP's charter, enacted by Congress, and the CSC rules, issued pursuant to the CSC's rule-making power. Does the CSC's constitutional authority over the civil service divest the Legislature of the power to enact laws providing exemptions to civil service rules?

We answer in the negative. The CSC's rule-making power, *albeit* constitutionally granted, is still limited to the implementation and interpretation of the laws it is tasked to enforce.

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[25] In its petition for review on *certiorari*, TIDCORP admitted that it never raised the issue of the CSC's authority over it, to wit:

> "To begin with, petitioner never raised the issue of the authority of respondent over petitioner. Petitioner agrees that the scope of power of respondent includes the approval/disapproval of appointments to determine if an appointee possesses the required qualifications and Civil Service eligibility. In the same light, the coverage of the Civil Service includes government-owned and controlled corporations with original charter such as petitioner." (*Id.* at 45-46.)

The 1987 Constitution created the CSC as the central personnel agency of the government mandated to establish a career service and promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service.[26] It is a constitutionally created administrative agency that possesses executive, quasi-judicial and quasi-legislative or rule-making powers.

While not explicitly stated, the CSC's rule-making power is subsumed under its designation as the government's "central personnel agency" in Section 3, Article IX-B of the 1987 Constitution. The original draft of Section 3 empowered the CSC to "promulgate and enforce policies on personnel actions, classify positions, prescribe conditions of employment except as to compensation and other monetary benefits which shall be provided by law." This, however, was deleted during the constitutional commission's deliberations because it was redundant to the CSC's nature as an administrative agency:[27]

MR. REGALADO. This is more for clarification. The original Section 3 states, among others, the functions of the Civil Service Commission — to promulgate and enforce policies on personnel actions. Will Commissioner Aquino kindly indicate to us the corresponding provisions and her proposed amendment which would encompass the powers to promulgate and enforce policies on personnel actions?

MS. AQUINO. It is my submission that the same functions are already subsumed under the concept of a central personnel agency.

MR. REGALADO. In other words, all those functions enumerated from line 35 on page 2 to line 1 of page 3, inclusive, are understood to be encompassed in the phrase "central personnel agency of the government."

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[26] Section 3, Article IX-B of the 1987 Constitution; and Section 1, Book V of the Administrative Code of 1987.

[27] *De Jesus v. Civil Service Commission*, 508 Phil. 599, 609 (2005), citing Record of Constitutional Commission, Vol. I, RCC No. 30, July 15, 1986, p. 593; see Bernas, *The Constitution of the Republic of the Philippines*, Vol. II (1st ed., 1988), p. 383.

MS. AQUINO. Yes, Mr. Presiding Officer, except that on line 40 of page 2 and line 1 of the subsequent page, it was only subjected to a little modification.

MR. REGALADO. May we, therefore, make it of record that the phrase ". . . promulgate and enforce policies on personnel actions, classify positions, prescribe conditions of employment except as to compensation and other monetary benefits which shall be provided by law" is understood to be subsumed under and included in the concept of a central personnel agency.

MS. AQUINO. I would have no objection to that.[28]

The 1987 Administrative Code then spelled out the CSC's rule-making power in concrete terms in Section 12, Book V, Title I-A, which empowered the CSC to implement the civil service law and other pertinent laws, and to promulgate policies, standards and guidelines for the civil service.[29]

The CSC's rule-making power as a constitutional grant is an aspect of its independence as a constitutional commission. It places the grant of this power outside the reach of Congress, which cannot withdraw the power at any time. As we said in *Gallardo v. Tabamo, Jr.*,[30] a case which upheld the validity of

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[28] Record of the Constitutional Commission, Vol. I, RCC No. 30, July 15, 1986, pp. 592-593.

[29] SECTION 12. Powers and Functions. — The Commission shall have the following powers and functions:

(1) Administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks in the Civil Service;

(2) Prescribe amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws;

(3) Promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government;

(4) Formulate policies and regulations for the administration, maintenance and implementation of position classification and compensation and set standards for the establishment, allocation and reallocation of pay scales, classes and positions;

[30] G.R. No. 104848, January 29, 1993, 218 SCRA 253, 264.

a resolution issued by the Commission on Elections (*COMELEC*), another constitutional commission:

> Hence, the present Constitution upgraded to a constitutional status the aforesaid statutory authority to grant the Commission broader and more flexible powers to effectively perform its duties and to insulate it further from legislative intrusions. Doubtless, if its rule-making power is made to depend on statutes, Congress may withdraw the same at any time. Indeed, the present Constitution envisions a truly independent Commission on Elections committed to ensure free, orderly, honest, peaceful and credible elections, and to serve as the guardian of the people's sacred right of suffrage — the citizenry's vital weapon in effecting a peaceful change of government and in achieving and promoting political stability. [citation omitted]

But while the grant of the CSC's rule-making power is untouchable by Congress, the laws that the CSC interprets and enforces fall within the prerogative of Congress. As an administrative agency, the CSC's quasi-legislative power is subject to the same limitations applicable to other administrative bodies. The rules that the CSC formulates must not override, but must be in harmony with, the law it seeks to apply and implement.[31]

For example, in *Grego v. Commission on Elections*,[32] we held that it was improper for the COMELEC, a constitutional body bestowed with rule-making power by the Constitution, to use the word "shall" in the rules it formulated, when the law it sought to implement uses the word "may." While rules issued by administrative bodies are entitled to great respect, "[t]he conclusive effect of administrative construction is not absolute. [T]he function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying the provisions of the law into effect. x x x [A]dministrative regulations cannot extend the law [nor] amend a legislative enactment; x x x

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[31] *Grego v. Commission on Elections*, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 498, citing *Commissioner of Internal Revenue v. Court of Appeals*, 240 SCRA 368 (1995).

[32] *Supra*, at 499.

administrative regulations must be in harmony with the provisions of the law[,]" and in a conflict between the basic law and an implementing rule or regulation, the former must prevail.[33]

CSC Memorandum Circular No. 40, s. 1998, and CSC Resolution No. 15, s. 1999, which were issued pursuant to the CSC's rule-making power, involve rules on position classification

Two questions logically follow our conclusion on the extent of the CSC's rule-making power. The *first* is whether Section 1 (c), Rule III of CSC Memorandum Circular No. 40, s. 1998, was issued pursuant to the CSC's rule-making power; the *second* is whether this provision involves compensation, position classification and/or qualification standards that TIDCORP claims to be exempt from. We answer both questions in the affirmative.

We agree with the CSC's position that CSC Memorandum Circular No. 40, s. 1998, and CSC Resolution No. 15, s. 1999, were all issued pursuant to its rule-making power. No less than the introductory clause of CSC Memorandum Circular No. 40, s. 1998, confirms this:

> Pursuant to Paragraphs 2 and 3, Section 12, Book V of Administrative Code of 1987 otherwise known as Executive Order No. 292, the Civil Service Commission hereby prescribes the following rules to govern the preparation, submission of, and actions to be taken on appointments and other personnel actions.[34]

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[33] *Land Bank of the Philippines v. Court of Appeals*, G.R. Nos. 118712 and 118745, October 6, 1995, 249 SCRA 149, 157-158, citing *Peralta v. Civil Service Commission*, G.R. No. 95832, August 10, 1992, 212 SCRA 425, 432, *Toledo v. Civil Service Commission*, G.R. Nos. 92646-47, October 4, 1991, 202 SCRA 507, 514, and *Shell Philippines, Inc. v. Central Bank of the Philippines*, G.R. No. 51353, June 27, 1988, 162 SCRA 628.

[34] CSC Memorandum Circular No. 40, s. 1998.

Both these memoranda govern appointments and personnel actions in the civil service. CSC Memorandum Circular No. 40, s. 1998, or the "Revised Omnibus Rules on Appointments and Other Personnel Actions," updated and consolidated the various issuances on appointments and other personnel actions and simplified their processing. This was subsequently amended by CSC Memorandum Circular No. 15, s. 1999.

The assailed provisions in those memorandum circulars, however, involve position classification. Section 1(c), Rule III of CSC Memorandum Circular No. 40,[35] s. 1998, requires, as a condition *sine qua non* for the approval of an appointment, that the position title indicated therein conform with the approved Position Allocation List. The position title should also be found in the Index of Occupational Service. According to National Compensation Circular No. 58, the Position Allocation List is a list prepared by the DBM which reflects the allocation of existing positions to the new position titles in accordance with the Index of Occupational Service, Position Titles and Salary Grades issued under National Compensation Circular No. 57.[36] Both circulars were published by the DBM pursuant to its mandate from RA 6758 to establish a position classification system in the government.[37]

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[35] RULE III. COMMON REQUIREMENTS FOR REGULAR APPOINTMENTS.

Section 1. Appointments submitted to the CSC office concerned should meet the requirements listed hereunder. Non-compliance with such requirements shall be ground for disapproval of said appointments.

x x x x x x x x x

(c) Position Title — The position title indicated in the appointment shall conform with the approved Position Allocation List and should be found in the Index of Occupational Service (IOS). The salary grade shall always be indicated after the position title.

[36] (2) In compliance with the above provision, the Department of Budget and Management has prepared the Position Allocation List (PAL) reflecting the allocation of existing positions to the new position titles in accordance with the Index of Occupational Service, Position Titles and Salary Grades under National Compensation Circular No. 57.

[37] Paragraph (1) of National Compensation Circular No. 57 provides: "(1) The attached Index of Occupational Service, Position Titles and Salary

Further, the CSC admitted in its comment that RA 6758 was the basis for the issuance of CSC Memorandum Circular No. 40, s. 1998, as amended by CSC Memorandum Circular No. 15, s. 1999. The CSC said:

> The abovecited Sections 4 and 6 of R.A. No. 6758 are the bases for respondent's issuance of CSC Memorandum Circular No. 40, series of 1998, as amended by CSC Memorandum Circular No. 15, series of 1999. To reiterate, the Circulars mandate that appointments should conform [to] the approved Position Allocation List (PAL) and at the same time be listed in the Index of Occupational Service (IOS).[38]

Section 7 of TIDCORP's charter exempts it from rules involving position classification

To comply with Section 1(c), Rule III of CSC Memorandum Circular No. 40, s. 1998, TIDCORP must conform with the circulars on position classification issued by the DBM. Section 7 of its charter, however, expressly exempts TIDCORP from existing laws on position classification, among others.

In its comment, the CSC would want us to disregard TIDCORP's exemption from laws involving position classification because RA 6758 applies to all GOCCs. It also noted that Section 7 of RA 8494, the provision TIDCORP invokes as the source of its exemption, also directs its Board of Directors to "endeavor to make its system conform as closely as possible with the principles [and modes provided in] Republic Act No. 6758[.]"[39] This reference of RA 6758 in Section 7 means

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Grades is hereby issued pursuant to RA 6758 entitled 'An Act Prescribing a Revised Compensation and Position Classification System in the Government and for other Purposes'"; while Paragraph (1) of National Compensation Circular No. 58 provides: "(1) Section 6 of RA 6758 provides that all positions in the government shall be allocated to their proper position titles and salary grades in accordance with the Index of Occupational Service, Position Titles and Salary Grades prepared by the Department of Budget and Management."

[38] *Rollo*, p. 284.

[39] *Id.* at 98.

that TIDCORP cannot simply disregard RA 6758 but must take its principles into account in providing for its own position classifications. This requirement, to be sure, does not run counter to Section 2(1), Article IX-B of the Constitution which provides that "the civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." The CSC shall still enforce position classifications at TIDCORP, but must do this under the terms that TIDCORP has itself established, based on the principles of RA 6758.

To further expound on these points, the CSC's authority over TIDCORP is undisputed. The rules that the CSC formulates should implement and be in harmony with the law it seeks to enforce. In TIDCORP's case, the CSC should also consider TIDCORP's charter in addition to other civil service laws. Having said this, there remains the issue of how the CSC should apply the civil service law to TIDCORP, given the exemptions provided in the latter's charter. Does the wording of Section 7 of RA 8494 command TIDCORP to follow issued requirements pursuant to RA 6758 despite its exemption from laws involving position classification?

We answer in the negative. "Under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or *verba legis* is derived from the *maxim index animi sermo est* (speech is the index of intention) and rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure."[40]

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[40] *Globe-Mackay Cable and Radio Corporation v. NLRC*, G.R. No. 82511, March 3, 1992, 206 SCRA 701, 711, citing Ruben E. Agpalo, *Statutory Construction*, p. 94 (1990); and *Aparri v. CA, et al.*, 212 Phil. 215, 224-225 (1984).

The phrase "to endeavor" means to "to devote serious and sustained effort" and "to make an effort to do." It is synonymous with the words to strive, to struggle and to seek.[41] The use of "to endeavor" in the context of Section 7 of RA 8494 means that despite TIDCORP's exemption from laws involving compensation, position classification and qualification standards, it should still strive to conform as closely as possible with the principles and modes provided in RA 6758. The phrase "as closely as possible," which qualifies TIDCORP's duty "to endeavor to conform," recognizes that the law allows TIDCORP to deviate from RA 6758, but it should still try to hew closely with its principles and modes. Had the intent of Congress been to require TIDCORP to fully, exactly and strictly comply with RA 6758, it would have so stated in unequivocal terms. Instead, the mandate it gave TIDCORP was to endeavor to conform to the principles and modes of RA 6758, and not to the entirety of this law.

These inter-relationships render it clear, as a plain reading of Section 7 of RA 8494 itself would confirm, that TIDCORP is exempt from existing laws on compensation, position classification and qualification standards, including compliance with Section 1(c), Rule III of CSC Memorandum Circular No. 40, s. 1998.

De Guzman's appointment as Financial Management Specialist IV is valid

With TIDCORP exempt from Section 1(c), Rule III of CSC Memorandum Circular No. 40, s. 1998, there remains the issue of whether De Guzman's appointment as Financial Management Specialist IV is valid. Since Section 1(c), Rule III of CSC Memorandum Circular No. 40, s. 1998, is the only requirement that De Guzman failed to follow, his appointment actually complied with all the requisites for a valid appointment. The

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[41] Endeavor Definition, Merriam Webster Dictionary, accessed on February 7, 2013 at http://www.merriam-webster.com/thesaurus/endeavor.

CSC, therefore, should have given due course to De Guzman's appointment.

WHEREFORE, all premises considered, we hereby **GRANT** the petition, and **REVERSE** and **SET ASIDE** the decision dated September 28, 2007 and the resolution dated March 17, 2008 of the Court of Appeals in CA-G.R. SP. No. 81058, as well as Resolution No. 030144 and Resolution No. 031037 of the Civil Service Commission that the Court of Appeals rulings affirmed. No costs.

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.

Peralta, J., no part.

EN BANC

[G.R. No. 190147. March 5, 2013]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **PILILLA WATER DISTRICT,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; THE PROVINCIAL WATER DISTRICT ACT OF 1973 (P.D. 198); P.D. 198 CANNOT BE RETROACTIVELY APPLIED AS TO PRECLUDE THE APPLICATION OF A LATER LAW (R.A. NO. 9286); A GENERAL MANAGER IN A WATER DISTRICT CANNOT BE TERMINATED AT THE PLEASURE OF THE BOARD.—** Section 23 of P.D. No. 198 was already amended by R.A. No. 9286 which now provides that the General Manager of a water district

shall not be removed from office except for cause and after due process. Said law, however, cannot be retroactively applied as to preclude the BOD from terminating its General Manager at the time the governing law was still P.D. No. 198[.] x x x In this case, respondent's BOD reappointed Rafanan as General Manager on April 8, 2005 when R.A . No. 9286 was already in force and the BOD no longer had the authority to terminate the General Manager at its pleasure or discretion.

2. **ID.; ID.; CIVIL SERVICE; PRIMARILY CONFIDENTIAL POSITION, NATURE OF.—** A position is considered to be primarily confidential when there is a primarily close intimacy between the appointing authority and the appointee, which ensures the highest degree of trust and unfettered communication and discussion on the most confidential of matters. Moreover, in classifying a position as primarily confidential, its functions must not be routinary, ordinary and day to day in character. A position is not necessarily confidential though the one in office may sometimes hold confidential matters or documents. x x x The tenure of a confidential employee is coterminous with that of the appointing authority, or is at the latter's pleasure. However, the confidential employee may be appointed or remain in the position even beyond the compulsory retirement age of 65 years.

3. **ID.; ID.; P.D. 198 IN RELATION TO CIVIL SERVICE LAW; THE POSITION OF GENERAL MANAGER OF A WATER DISTRICT IS PRIMARILY CONFIDENTIAL IN NATURE.—** In the case of the General Manager of a water district, Section 24 in relation to Section 23 of P.D. No. 198, as amended, reveals the close proximity of the positions of the General Manager and BOD. x x x While the BOD appoints by a majority vote the General Manager and specifies from time to time the duties he shall perform, it is the General Manager who exercises full supervision and control of the maintenance and operation of water district facilities. The BOD is confined to policy-making and prescribing a system of business administration and accounting for the water district patterned upon and in conformity to the standards established by the Local Water Utilities Administration (LWUA), and it is the General Manager who implements the plans and policies approved by the BOD. And while the BOD may not engage in the detailed management of the water district, it is empowered

to delegate to such officers or agents designated by it any executive, administrative or ministerial power, including entering to contracts under conditions and restrictions it may impose. Moreover, though the General Manager is vested with the power to appoint all personnel of the water district, the appointment of personnel in the supervisory level shall be subject to the approval of the BOD. It is likewise evident that the General Manager is directly accountable to the BOD which has disciplinary jurisdiction over him. The foregoing working relationship of the General Manager and BOD under the governing law of water districts clearly demands a high degree of trust and confidence between them. The CA therefore correctly concluded that the position of General Manager is primarily confidential in nature.

4. **ID.; ID.; ID.; THE POSITION OF GENERAL MANAGER OF A WATER DISTRICT FALLS UNDER THE NON-CAREER CLASSIFICATION WHOSE TENURE OF OFFICE IS COTERMINOUS WITH THAT OF THE APPOINTING AUTHORITY; CASE AT BAR.—** [A] coterminous employment falls under the non-career service classification of positions in the Civil Service, its tenure being limited or specified by law, or coterminous with that of the appointing authority, or at the latter's pleasure. Under R.A. No. 9286 in relation to Section 14 of the *Omnibus Rules Implementing Book V of the Administrative Code of 1987*, the coterminous appointment of the General Manager of a water district is based on the majority vote of the BOD and whose continuity in the service is based on the latter's trust and confidence or co-existent with its tenure. x x x On the basis of the foregoing, the logical conclusion is that the General Manager of a water district who is appointed on coterminous status may serve or hold office for a maximum of six years, which is the tenure of the appointing authority, subject to reappointment for another six years unless sooner removed by the BOD for loss of trust and confidence, or for any cause provided by law and with due process. It may also be mentioned that under Section 36 of P.D. No. 198, as amended, the LWUA is empowered to take over the operation and management of a water district which has defaulted on its loan obligations to LWUA. As the bondholder or creditor, and in fulfillment of its mandate to regulate water utilities in the country, LWUA

may designate its employees or any person or organization to assume all powers or policy-decision and the powers of management and administration to undertake all such actions as may be necessary for the water district's efficient operation. This further reinforces the conclusion that the position of General Manager of a water district is a non-career position.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
The Government Corporate Counsel for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 are the Decision[1] dated July 28, 2009 and Resolution[2] dated November 9, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 106031 which annulled and set aside Resolution Nos. 080942[3] and 081846[4] of the Civil Service Commission (CSC).

The factual background of this case is as follows:

Paulino J. Rafanan was first appointed General Manager on a coterminous status under Resolution No. 12 issued on August 7, 1998 by the Board of Directors (BOD) of respondent Pililla Water District (PWD). His appointment was signed by the BOD Acting Chairman and attested by the CSC Field Office-Rizal.[5]

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[1] *Rollo,* pp. 59-68. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Isaias P. Dicdican concurring.

[2] *Id.* at 70-71.

[3] *Id.* at 87-90.

[4] *Id.* at 91-94.

[5] CA *rollo,* pp. 45-46.

On October 4, 2001, petitioner issued Resolution No. 011624[6] amending and clarifying Section 12, Rule XIII of CSC Memorandum Circular No. 15, s. 1999, as follows:

> Section 12. a) No person who has reached the compulsory retirement age of 65 years can be appointed to any position in the government, subject only to the exception provided under sub-section (b) hereof.
>
> However, in meritorious cases, the Commission may allow the extension of service of a person who has reached the compulsory retirement age of 65 years, for a period of six (6) months only unless otherwise stated. Provided, that, such extension may be for a maximum period of one (1) year for one who will complete the fifteen (15) years of service required under the GSIS Law.
>
> A request for extension shall be made by the head of office and shall be filed with the Commission not later than three (3) months prior to the date of the official/employee's compulsory retirement.
>
> Henceforth, the only basis for Heads of Offices to allow an employee to continue rendering service after his/her 65th birthday is a Resolution of the Commission granting the request for extension. Absent such Resolution, the salaries of the said employee shall be for the personal account of the responsible official.
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> x x x x x x x x x
>
> b) A person who has already reached the compulsory retirement age of 65 can still be appointed to a **coterminous/primarily confidential position** in the government.
>
> A person appointed to a coterminous/primarily confidential position who reaches the age of 65 years is considered automatically extended in the service until the expiry date of his/her appointment or until his/her services are earlier terminated. (Emphasis supplied)

On April 2, 2004, Republic Act (R.A.) No. 9286[7] was approved and signed into law, Section 2 of which provides:

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[6] *Id.* at 47-49.

[7] AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 198, OTHERWISE KNOWN AS "THE PROVINCIAL WATER UTILITIES ACT OF 1973," AS AMENDED.

SEC. 2. Section 23 of Presidential Decree No. 198, as amended is hereby amended to read as follows:

> "SEC. 23. *The General Manager*. — At the first meeting of the Board, or as soon thereafter as practicable, the Board shall appoint, by a majority vote, a general manager and shall define [his] duties and fix his compensation. **Said officer shall not be removed from office, except for cause and after due process.**" (Emphasis supplied)

On June 16, 2004, the BOD approved Resolution No. 19,[8] Series of 2004, which reads:

EXTENSION OF SERVICES OF MR. PAULINO J. RAFANAN AS GENERAL MANAGER OF PILILLA WATER DISTRICT

WHEREAS[,] the General Manager, Mr. Paulino J. Rafanan[,] is reaching his age 65 this month of this year the Board, because of his good and honest performance in faithfully carrying out the policies of the Board resulting in the success of the District's expansion program, unanimously agreed to retain his services as General Manager at least up to December 31, 2008 co-terminus with the term of the Director last appointed after which period he may stay at the pleasure of the other Board.

THEREFORE[,] THE BOARD RESOLVED[,] AS IT HEREBY RESOLVED that the services of Mr. Paulino J. Rafanan as General Manager of Pililla Water District is extended up to December 31, 2008 as a reward for his honest and efficient services to the District.

In its Resolution No. 04-1271 dated November 23, 2004, petitioner denied the request of BOD Chairman Valentin E. Paz for the extension of service of Rafanan and considered the latter "separated from the service at the close of office hours on June 25, 2004, his 65th birthday." Petitioner also denied the motion for reconsideration filed by Chairman Paz under its Resolution No. 05-0118 dated February 1, 2005.[9]

On April 8, 2005, the BOD issued Resolution No. 09, Series of 2005 reappointing Rafanan as General Manager on coterminous

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

[9] *Id.* at 37.

status. Said reappointment was signed by Chairman Paz and attested by the CSC Field Office-Rizal.[10] A year later, the BOD approved Resolution No. 20 declaring the appointment of General Manager Rafanan as permanent[11] but this resolution was not implemented.

In a letter dated November 19, 2007, Pililla Mayor Leandro V. Masikip, Sr. questioned Rafanan's coterminous appointment as defective and void *ab initio* considering that he was appointed to a career position despite having reached the compulsory retirement age. Said letter-complaint was treated as an appeal from the appointment made by the BOD Chairman of respondent.

On May 19, 2008, petitioner issued Resolution No. 080942 invalidating the coterminous appointment issued to Rafanan as General Manager on April 8, 2005 on the ground that it was made in violation of Section 2 of R.A. No. 9286. Petitioner further observed that the appointment was issued to circumvent the denial of the several requests for extension of service of Rafanan.

Rafanan filed a motion for reconsideration which was denied by petitioner under its Resolution No. 081846 dated September 26, 2008.

Respondent filed in the CA a petition for review with application for temporary restraining order and/or writ of preliminary injunction under Rule 43 of the 1997 Rules of Civil Procedure, as amended. Insisting that Rafanan's coterminous appointment was based on CSC Resolution No. 011624, respondent contended that petitioner cannot usurp the power of appointment and removal of the appointing authority, and that petitioner failed to observe due process.

In the assailed Decision, the CA reversed the CSC and ruled that the position of General Manager in water districts remains primarily confidential in nature and hence respondent's BOD

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[10] *Id.* at 55-56.

[11] *Id.* at 37.

may validly appoint Rafanan to the said position even beyond the compulsory retirement age.

Petitioner filed a motion for reconsideration which the CA denied.

Hence, this petition submitting the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE POSITION OF GENERAL MANAGER OF A LOCAL WATER DISTRICT IS PRIMARILY CONFIDENTIAL IN NATURE.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE APRIL 8, 2005 APPOINTMENT OF RAFANAN IN A CO-TERMINOUS CAPACITY WAS VALID.[12]

Under Section 13, Rule V of the Omnibus Rules Implementing Book V of Executive Order No. 292 and other Pertinent Civil Service Laws and CSC Resolution No. 91-1631 issued on December 27, 1991, appointments in the civil service may either be of permanent or temporary status. A permanent appointment is issued to a person who meets all the requirements for the position to which he is being appointed/promoted, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof, while a temporary appointment may be extended to a person who possesses all the requirements for the position except the appropriate civil service eligibility and for a limited period not exceeding twelve months or until a qualified civil service eligible becomes available.

Section 14 of the same resolution provides for a coterminous appointment:

Sec. 14. An appointment may also be co-terminous which shall be issued to a person whose entrance and continuity in the service

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[12] *Rollo,* p. 161.

is based on the trust and confidence of the appointing authority or that which is **subject to his pleasure,** or co-existent with his tenure, or limited by the duration of project or subject to the availability of funds.

The co-terminous status may be further classified into the following:

(1) co-terminous with the project — when the appointment is co-existent with the duration of a particular project for which purpose employment was made or subject to the availability of funds for the same;

(2) co-terminous with the appointing authority — when appointment is co-existent with the tenure of the appointing authority **or at his pleasure;**

(3) co-terminous with the incumbent — when the appointment is co-existent with the appointee, in that after the resignation, separation or termination of the services of the incumbent the position shall be deemed automatically abolished; and

(4) co-terminous with a specific period — appointment is for a specific period and upon expiration thereof, the position is deemed abolished.

For the purpose of coverage or membership with the GSIS, or their right to security of tenure, co-terminous appointees, except those who are co-terminous with the appointing authority, shall be considered permanent. (Emphasis supplied)

Section 23 of Presidential Decree (P.D.) No. 198, otherwise known as "The Provincial Water Utilities Act of 1973" reads:

SEC. 23. *Additional Officers*. — At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a general manager, an auditor, and an attorney, and shall define their duties and fix their compensation. **Said officers shall serve at the pleasure of the board.** (Emphasis supplied)

The provision was subsequently amended by P.D. No. 768:[13]

SEC. 23. *The General Manager*. — At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint,

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[13] Promulgated on August 15, 1975.

by a majority vote, a general manager and shall define his duties and fix his compensation. **Said officer shall serve at the pleasure of the board.** (Emphasis supplied)

In the case of *Paloma v. Mora*,[14] we held that the nature of appointment of General Managers of Water Districts under Section 23 of P.D. No. 198 falls under Section 14 of the Omnibus Rules Implementing Book V of Executive Order No. 292, otherwise known as the "Administrative Code of 1987," that is, the General Manager serves at the pleasure of the BOD.

As mentioned, Section 23 of P.D. No. 198 was already amended by R.A. No. 9286 which now provides that the General Manager of a water district shall not be removed from office except for cause and after due process. Said law, however, cannot be retroactively applied as to preclude the BOD from terminating its General Manager at the time the governing law was still P.D. No. 198, thus:

Unfortunately for petitioner, Rep. Act No. 9286 is silent as to the retroactivity of the law to pending cases and must, therefore, be taken to be of prospective application. The general rule is that in an amendatory act, every case of doubt must be resolved against its retroactive effect. Since the retroactive application of a law usually divests rights that have already become vested, the rule in statutory construction is that all statutes are to be construed as having only a prospective operation unless the purpose and intention of the legislature to give them a retrospective effect is ***expressly*** declared or is necessarily implied from the language used.

First, there is nothing in Rep. Act No. 9286 which provides that it should retroact to the date of effectivity of P.D. No. 198, the original law. *Next*, neither is it necessarily implied from Rep. Act No. 9286 that it or any of its provisions should apply retroactively. *Third*, Rep. Act No. 9286 is a substantive amendment of P.D. No. 198 inasmuch as it has changed the grounds for termination of the General Manager of Water Districts who, under the then Section 23 of P.D. No. 198, "shall serve at the pleasure of the Board." Under the new law, however, said General Manager *shall not be removed from office, except for cause and after due process*. To apply Rep.

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[14] 507 Phil. 697, 708 (2005).

Act No. 9286 retroactively to pending cases, such as the case at bar, will rob the respondents as members of the Board of the Palompon, Leyte Water District of the right vested to them by P.D. No. 198 to terminate petitioner at their pleasure or discretion. Stated otherwise, **the new law can not be applied to make respondents accountable for actions which were valid under the law prevailing at the time the questioned act was committed.**

Prescinding from the foregoing premises, **at the time petitioner was terminated by the Board of Directors, the prevailing law was Section 23 of P.D. No. 198 prior to its amendment by Rep. Act No. 9286.**[15] (Italics in the original; emphasis supplied)

In this case, respondent's BOD reappointed Rafanan as General Manager on April 8, 2005 when R.A. No. 9286 was already in force and the BOD no longer had the authority to terminate the General Manager at its pleasure or discretion.

Petitioner assails the CA in upholding the April 8, 2005 reappointment of Rafanan as General Manager on coterminous status, arguing that the change of phraseology of Section 23 under R.A. No. 9286 *ipso facto* reclassified said position from non-career to career position. Petitioner points out that it issued CSC Memorandum Circular No. 13, Series of 2006 entitled "Considering the Position of General Manager Under the Career Service and Prescribing the Guidelines and Qualification Standards for the said Position Pursuant to R.A. No. 9286,"[16] which applies to respondent under local water district Medium Category:

D (SG-24) — Medium

Education	:	Master's degree
Experience	:	4 years in position/s involving management and supervision
Training	:	24 hours of training in management and supervision

[15] *Id.* at 710-711.

[16] *Rollo,* pp. 83-85.

Eligibility : Career Service (Professional)/Second Level Eligibility[17]

Respondent contends that the amendment introduced by R.A. No. 9286 is not in conflict with the coterminous appointment of Rafanan since the latter can be removed for "loss of confidence," which is "cause" for removal. As to the above-cited CSC Memorandum Circular No. 13, Series of 2006, the same should be applied only to appointments made after its issuance, and not to Rafanan who was already the incumbent General Manager before August 17, 2006. Respondent maintains that since the General Manager of a water district holds a primarily confidential position, Rafanan can be appointed to or remain in said position even beyond the compulsory retirement age of 65 years.

The threshold issue is whether under Section 23 of P.D. No. 198 as amended by R.A. No. 9286, the position of General Manager of a water district remains as primarily confidential.

In the 1950 case of *De los Santos v. Mallare*[18] a position that is primarily confidential in nature is defined as follows:

> x x x These positions [policy-determining, primarily confidential and highly technical positions], **involve the highest degree of confidence, or are closely bound up with and dependent on other positions to which they are subordinate, or are temporary in nature.** It may truly be said that the good of the service itself demands that appointments coming under this category be terminable at the will of the officer that makes them.
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> x x x x x x x x x
>
> Every appointment implies confidence, but much more than ordinary confidence is reposed in the occupant of a position that is primarily confidential. The latter phrase **denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of [discussion, delegation and reporting] without embarrassment or freedom**

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[17] *Id.* at 84.

[18] 87 Phil. 289 (1950).

from misgivings of betrayals of personal trust or confidential matters of state. x x x[19] (Emphasis supplied)

From the above case the "proximity rule" was derived. A position is considered to be primarily confidential when there is a primarily close intimacy between the appointing authority and the appointee, which ensures the highest degree of trust and unfettered communication and discussion on the most confidential of matters.[20] Moreover, in classifying a position as primarily confidential, its functions must not be routinary, ordinary and day to day in character. A position is not necessarily confidential though the one in office may sometimes hold confidential matters or documents.[21]

The case of *Piñero v. Hechanova*[22] laid down the doctrine that it is the nature of the position that finally determines whether a position is primarily confidential, policy determining or highly technical and that executive pronouncements can be no more than initial determinations that are not conclusive in case of conflict. As reiterated in subsequent cases, such initial determination through executive declaration or legislative fiat does not foreclose judicial review.[23]

More recently, in *Civil Service Commission v. Javier*,[24] we categorically declared that even petitioner's classification of confidential positions in the government is not binding on this Court:

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[19] *Id.* at 297-298.

[20] *Civil Service Commission v. Javier*, G.R. No. 173264, February 22, 2008, 546 SCRA 485, 507.

[21] *Id*. at 506, citing *Tria v. Sto. Tomas*, 276 Phil. 923 (1991) and *Ingles v. Mutuc*, 135 Phil. 177 (1968).

[22] 124 Phil. 1022, 1028 (1966).

[23] *Civil Service Commission v. Javier*, *supra* note 20, at 501-502; *Laurel v. Civil Service Commission*, G.R. No. 71562, October 28, 1991, 203 SCRA 195, 206.

[24] *Id.* at 499-500.

At present, there is no law enacted by the legislature that defines or sets definite criteria for determining primarily confidential positions in the civil service. Neither is there a law that gives an enumeration of positions classified as primarily confidential.

What is available is only petitioner's own classification of civil service positions, as well as jurisprudence which describe or give examples of confidential positions in government.

Thus, the corollary issue arises: should the Court be bound by a classification of a position as confidential already made by an agency or branch of government?

Jurisprudence establishes that the **Court is not bound by the classification of positions in the civil service made by the legislative or executive branches, or even by a constitutional body like the petitioner. The Court is expected to make its own determination as to the nature of a particular position, such as whether it is a primarily confidential position or not,** without being bound by prior classifications made by other bodies. The findings of the other branches of government are merely considered initial and not conclusive to the Court. Moreover, it is well-established that in case the findings of various agencies of government, such as the petitioner and the CA in the instant case, are in conflict, the Court must exercise its constitutional role as final arbiter of all justiciable controversies and disputes. (Emphasis supplied)

Applying the proximity rule and considering the nature of the duties of the office of the Corporate Secretary of the Government Service Insurance System (GSIS), we held in the above-cited case that said position in the GSIS or any government-owned or controlled corporation (GOCC) for that matter, is a primarily confidential position.[25]

In holding that the position of General Manager of a water district is primarily confidential in nature, the CA said:

x x x **we rule that the position of general manager remains primarily confidential in nature despite the amendment of Section 23 of P.D. No. 198 by R.A. No. 9286, which gave the occupant of said position security of tenure, in that said officer**

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[25] *Id.* at 504.

could only be removed from office for cause and after due process. The nature of the duties and functions attached to the position points to its confidential character. **First**, the general manager is directly appointed by the board of directors. **Second**, the general manager directly reports to the board of directors. **Third**, the duties and responsibilities of a general manager are determined by the board of directors, which is a clear indication of a closely intimate relationship that exists between him and the board. **Fourth**, the duties and responsibilities of a general manager are not merely clerical and routinary in nature. His work involves policy and decision making. **Fifth**, the compensation of the general manager is fixed by the board of directors. And **last**, the general manager is directly accountable for his actions and omissions to the board of directors. Under this situation, the general manager is expected to possess the highest degree of honesty, integrity and loyalty, which is crucial to maintaining trust and confidence between him and the board of directors. The loss of such trust or confidence could easily result in the termination of the general manager's services by the board of directors. To be sure, regardless of the security of tenure a general manager may now enjoy, his term may still be ended by the board of directors based on the ground of **"loss of confidence."**[26] (Emphasis in the original)

We sustain the ruling of the CA.

We stress that a primarily confidential position is characterized by the *close proximity of the positions* of the appointer and appointee as well as the *high degree of trust and confidence* inherent in their relationship.[27] The tenure of a confidential employee is coterminous with that of the appointing authority, or is at the latter's pleasure. However, the confidential employee may be appointed or remain in the position even beyond the compulsory retirement age of 65 years.[28]

Among those positions judicially determined as primarily confidential positions are the following: Chief Legal Counsel of the Philippine National Bank; Confidential Agent of the Office

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[26] *Rollo,* p. 66.

[27] *Civil Service Commission v. Javier*, *supra* note 20, at 509.

[28] *Id.* at 498.

of the Auditor, GSIS; Secretary of the *Sangguniang Bayan*; Secretary to the City Mayor; Senior Security and Security Guard in the Office of the Vice Mayor; Secretary to the Board of a government corporation; City Legal Counsel, City Legal Officer or City Attorney; Provincial Attorney; Private Secretary; and Board Secretary II of the Philippine State College of Aeronautics.[29] The Court in these instances focused on the nature of the functions of the office characterized by such "close intimacy" between the appointee and appointing power which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state.[30]

In the case of the General Manager of a water district, Section 24 in relation to Section 23 of P.D. No. 198, as amended, reveals the close proximity of the positions of the General Manager and BOD.

SEC. 24. *Duties*. — The duties of the General Manager and other officers shall be **determined and specified from time to time by the Board.** The General Manager, who shall not be a director, shall have **full supervision and control of the maintenance and operation of water district facilities,** with power and authority to appoint all personnel of the district: Provided, That the appointment of personnel in the supervisory level shall be subject to approval by the Board. (As amended by Sec. 10, PD 768) (Emphasis supplied)

While the BOD appoints by a majority vote the General Manager and specifies from time to time the duties he shall

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[29] *Id.* at 508-509, citing *Besa v. Philippine National Bank*, 144 Phil. 282 (1970); *Salazar v. Mathay, Sr.*, 165 Phil. 256 (1976); *Cortez v. Bartolome*, No. L-46629, September 11, 1980, 100 SCRA 1; *Samson v. Court of Appeals*, 230 Phil. 59, 65 (1986); *Borres v. Court of Appeals*, No. L-36845, August 21, 1987, 153 SCRA 120; *Gray v. De Vera*, 138 Phil. 279 (1969); *Pacete v. Acting Chairman of the Commission on Audit*, G.R. No. 39456, May 7, 1990, 185 SCRA 1; *Cadiente v. Santos*, 226 Phil. 211 (1986); *Hilario v. Civil Service Commission*, 312 Phil. 1157 (1995); *Griño v. Civil Service Commission*, G.R. No. 91602, February 26, 1991, 194 SCRA 458; and *Sec. Gloria v. Hon. De Guzman, Jr.*, 319 Phil. 217 (1995).

[30] See *Civil Service Commission v. Javier*, *id.* at 506.

perform, it is the General Manager who exercises full supervision and control of the maintenance and operation of water district facilities. The BOD is confined to policy-making and prescribing a system of business administration and accounting for the water district patterned upon and in conformity to the standards established by the Local Water Utilities Administration (LWUA), and it is the General Manager who implements the plans and policies approved by the BOD. And while the BOD may not engage in the detailed management of the water district, it is empowered to delegate to such officers or agents designated by it any executive, administrative or ministerial power,[31] including entering into contracts under conditions and restrictions it may impose. Moreover, though the General Manager is vested with the power to appoint all personnel of the water district, the appointment of personnel in the supervisory level shall be subject to the approval of the BOD. It is likewise evident that the General Manager is directly accountable to the BOD which has disciplinary jurisdiction over him. The foregoing working relationship of the General Manager and BOD under the governing law of water districts clearly demands a high degree of trust and confidence between them. The CA therefore correctly concluded that the position of General Manager is primarily confidential in nature.

Petitioner contends that the amendment introduced by R.A. No. 9286 in effect placed the position of General Manager of a water district in the category of career service. It posits that this can be inferred from the removal of the sentence "Said officer shall serve at the pleasure of the Board," and replaced it with the sentence "Said officer shall not be removed from office, except for cause and after due process." Accordingly, petitioner said it issued CSC MC No. 13, Series of 2006 prescribing guidelines for the implementation of the new law and qualification standards for the position of General Manager of a water district, whereby all incumbent general managers who hold appointments under coterminous status upon the

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[31] Sections 17, 18, 19 & 20, P.D. No. 198, as amended.

effectivity of R.A. No. 9286 were given two years to meet all the requirements for permanent status.

Such interpretation is incorrect.

To our mind, the amendment introduced by R.A. No. 9286 merely tempered the broad discretion of the BOD. In *Paloma v. Mora*[32] we noted the change brought about by the said law insofar as the grounds for terminating the General Manager of a water district. Whereas previously the General Manager may be removed at the pleasure or discretion of the BOD even without prior notice and due hearing, the amendatory law expressly demands that these be complied with. Such condition for the exercise of the power of removal implements the fundamental right of due process guaranteed by the Constitution. In *De los Santos v. Mallare*,[33] the Court simply recognized as a necessity that confidential appointments be "terminable at the will" of the appointing authority.

It is established that no officer or employee in the Civil Service shall be removed or suspended except for cause provided by law. However, this admits of exceptions for it is likewise settled that the right to security of tenure is not available to those employees whose appointments are contractual and coterminous in nature.[34] Since the position of General Manager of a water district remains a primarily confidential position whose term still expires upon loss of trust and confidence by the BOD provided that prior notice and due hearing are observed, it cannot therefore be said that the phrase "shall not be removed except for cause and after due process" converted such position into a permanent appointment. Significantly, loss of confidence may be predicated on other causes for removal provided in the civil service rules and other existing laws.

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[32] *Supra* note 14, at 711.

[33] *Supra* note 18, at 297.

[34] *Ong v. Office of the President*, G.R. No. 184219, January 30, 2012, 664 SCRA 413, 425, citing *De Tavera v. Philippine Tuberculosis Society, Inc., et al.*, 197 Phil. 919, 931 (1982) and *Civil Service Commission v. Magnaye, Jr.*, G.R. No. 183337, April 23, 2010, 619 SCRA 347, 357.

In *Tanjay Water District v. Quinit, Jr.*,[35] we said:

Indeed, no officer or employee in the Civil Service shall be removed or suspended except for cause provided by law. The phrase "cause provided by law," however, *includes* "*loss of confidence*." It is an established rule that the tenure of those holding primarily confidential positions ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures. Their termination can be justified on the ground of loss of confidence, in which case, their cessation from office involves no removal but the expiration of their term of office.

The Civil Service Law classifies the positions in the civil service into career and non-career service positions. Career positions are characterized by: (1) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.[36]

The Career Service shall include:[37]

(1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;

(2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;

(3) Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;

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[35] G.R. No. 160502, April 27, 2007, 522 SCRA 529, 545-546.

[36] *Civil Service Commission v. Javier*, *supra* note 20, at 497, citing ADMINISTRATIVE CODE of 1987 (Executive Order No. 292), Book V, Title I, Subtitle A, Chapter 2, Sec. 7.

[37] ADMINISTRATIVE CODE of 1987 (Executive Order No. 292), *id*.

(4) Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs;

(5) Commissioned officers and enlisted men of the Armed Forces which shall maintain a separate merit system;

(6) Personnel of government-owned or controlled corporations whether performing governmental or proprietary functions, *who do not fall under the non-career service*; and

(7) Permanent laborers, whether skilled, semi-skilled or unskilled. (Emphasis supplied)

On the other hand, non-career positions are defined by the Administrative Code of 1987[38] as follows:

SEC. 9. *Non-Career Service*. — The Non-Career Service shall be characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) ***tenure which is limited to a period specified by law, or which is coterminous with that of the appointing authority or subject to his pleasure***, or which is limited to the duration of a particular project for which purpose employment was made.

The Non-Career Service shall include:

(1) Elective officials and their personal or confidential staff;

(2) Secretaries and other officials of Cabinet rank who hold their positions at the pleasure of the President and their personal or confidential staff(s);

(3) Chairman and members of commissions and boards with fixed terms of office and their personal or confidential staff;

(4) Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job, requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year, and performs or accomplishes the specific work or job, under his own responsibility with a minimum of direction and supervision from the hiring agency; and

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[38] *Id.,* Sec. 9.

(5) Emergency and seasonal personnel. (Emphasis supplied)

As can be gleaned, a coterminous employment falls under the non-career service classification of positions in the Civil Service,[39] its tenure being limited or specified by law, or coterminous with that of the appointing authority, or at the latter's pleasure. Under R.A. No. 9286 in relation to Section 14 of the Omnibus Rules Implementing Book V of the Administrative Code of 1987,[40] the coterminous appointment of the General Manager of a water district is based on the majority vote of the BOD and whose continuity in the service is based on the latter's trust and confidence or co-existent with its tenure.

The term of office of the BOD members of water districts is fixed by P.D. No. 198 as follows:

SEC. 11. *Term of Office*. — Of the five initial directors of each newly-formed district, two shall be appointed for a maximum term of two years, two for a maximum term of four years, and one for a maximum term of six years. Terms of office of all directors in a given district shall be such that the term of at least one director, but not more than two, shall expire on December 31 of each even-numbered year. Regular terms of office after the initial terms shall be for **six years** commencing on January 1 of odd-numbered years. Directors may be removed for cause only, subject to review and approval of the Administration. (As amended by Sec. 5, P.D. No. 768.) (Emphasis supplied)

On the basis of the foregoing, the logical conclusion is that the General Manager of a water district who is appointed on coterminous status may serve or hold office for a maximum of six years, which is the tenure of the appointing authority, subject to reappointment for another six years unless sooner removed by the BOD for loss of trust and confidence, or for any cause provided by law and with due process.

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[39] *Orcullo, Jr. v. Civil Service Commission*, 410 Phil. 335, 339 (2001).

[40] CSC Resolution No. 91-1631 dated December 27, 1991.

It may also be mentioned that under Section 36[41] of P.D. No. 198, as amended, the LWUA is empowered to take over the operation and management of a water district which has defaulted on its loan obligations to LWUA. As the bondholder or creditor, and in fulfillment of its mandate to regulate water utilities in the country, LWUA may designate its employees or any person or organization to assume all powers or policy-decision and the powers of management and administration to undertake all such actions as may be necessary for the water district's efficient operation. This further reinforces the conclusion that the position of General Manager of a water district is a non-career position.

In fine, since the position of General Manager of a water district remains a primarily confidential position, Rafanan was validly reappointed to said position by respondent's BOD on April 8, 2005 under coterminous status despite having reached the compulsory retirement age, which is allowed under Section 12 (b), Rule XIII of CSC Memorandum Circular No. 15, s. 1999, as amended by Resolution No. 011624 dated October 4, 2001.

WHEREFORE, the petition for review on *certiorari* is **DENIED.** The Decision dated July 28, 2009 and Resolution dated November 9, 2009 of the Court of Appeals in CA-G.R. SP No. 106031 are **AFFIRMED and UPHELD.**

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[41] Sec. 36. Default. — In the event of the *default* by the district in the payment of principal or interest on its outstanding bonds or other obligations, any bondholder or creditor shall have the right to bring an action before the appropriate court to compel the payment of such obligations. If the bondholder or creditor concerned is the Administration, it may, without the necessity of judicial process, take over and operate the entire facilities, systems or properties of the district. For this purpose, the Administration may designate its employees or any person or organization to assume all powers of policy-decision and the powers of management and administration, including but not limited to the establishment of water rates and charges, the dismissal and hiring of personnel, the purchase of supplies, equipment and materials and such other actions as may be necessary to operate the utility efficiently.

No costs.

SO ORDERED.

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

Reyes, J., no part.

SECOND DIVISION

[A.M. No. RTJ-13-2342. March 6, 2013]
(Formerly: A.M. No. 11-8-152-RTC Re: Report on the Judicial Audit Conducted at the Regional Trial Court, Branch 49, Tagbilaran City, Bohol)

OFFICE OF THE COURT ADMINISTRATOR *vs.* **JUDGE FERNANDO G. FUENTES III, Regional Trial Court, Branch 49, Tagbilaran City**

[A.M. No. RTJ-12-2318. March 6, 2013]
(Formerly: OCA IPI No. 11-3755-RTJ)

PAULINO BUTAL, SR., *complainant*, *vs.* **JUDGE FERNANDO G. FUENTES III, Regional Trial Court, Branch 49, Tagbilaran City,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; DUTY TO PROMPTLY DECIDE AND RESOLVE CASES.—** Under the 1987 Constitution, trial judges are mandated to decide and resolve cases within 90 days from submission for decision or resolution. Corollary to this constitutional mandate, Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine

Judiciary requires judges to perform all judicial duties efficiently, fairly, and with reasonable promptness. The mandate to promptly dispose of cases or matters also applies to motions or interlocutory matters or incidents pending before the magistrate. Unreasonable delay of a judge in resolving a pending incident is a violation of the norms of judicial conduct and constitutes gross inefficiency that warrants the imposition of an administrative sanction against the defaulting magistrate.

2. **ID.; ID.; INEXCUSABLE FAILURE TO DECIDE CASES WITHIN THE PRESCRIBED PERIOD CONSTITUTES GROSS INEFFICIENCY; PROPER PENALTY.—** Judge Fuentes III concedes that there is no valid justification for the delay in resolving the cases pending in his court. Indeed, his frequent travels to his residence in Ozamis City, which led to travel fatigue and poor health, will not absolve him from liability. We have always reminded judges that the Court is not unmindful of the circumstances that may delay the disposition of the cases assigned to them. Thus, the Court remains sympathetic to seasonably filed requests for extension of time to decide cases. Unfortunately, no such requests were made by Judge Fuentes III until the judicial audit was conducted by the OCA and a directive was issued to him by the Court. x x x An inexcusable failure to decide a case within the prescribed 90-day period constitutes gross inefficiency, warranting the imposition of administrative sanctions such as suspension from office without pay or fine on the defaulting judge. The fines imposed vary in each case, depending chiefly on the number of cases not decided within the reglementary period and other factors, such as the presence of aggravating or mitigating circumstances, the damage suffered by the parties as a result of the delay, the health and age of the judge, and other analogous circumstances.

3. **D.; ID.; ID.; CIRCUMSTANCES CONSIDERED IN REDUCING THE PENALTY OF FINE.—** In the instant administrative matters, we deem the reduction of the fine proper considering that this is the first infraction of Judge Fuentes III in his more than 15 years in the service. We also take into consideration the fact that Judge Fuentes III exerted earnest effort to fully comply with the directives of the Court as contained in the resolution.

RESOLUTION

PEREZ, *J.*:

On 13 June 2011, a judicial audit was conducted at the Regional Trial Court (RTC), Branch 49, Tagbilaran City, Bohol, presided over by Judge Fernando G. Fuentes III (Judge Fuentes III).

The judicial audit report[1] of the team from the Office of the Court Administrator (OCA) revealed that as of 13 June 2011, the aforementioned court had 272 (138 criminal and 134 civil) pending cases in its docket. Of these cases, 83 (24 criminal and 59 civil) were deemed submitted for decision. The report also revealed that of the cases submitted for decision, 70 were already beyond the reglementary period to decide, with some cases submitted for decision as far back as 2003. Further, 31 of these 70 cases were appealed from the first level courts, with two criminal cases involving detention prisoners.

On 22 August 2011, the Court resolved, among others, to direct Presiding Judge Fuentes III, to:

a) CEASE and DESIST from hearing cases in his court and devote his time in deciding cases and resolving pending incidents/motions listed in matrices I and II of this Report, giving priority to Crim[inal] Case Nos. 14116 (*PP v. Sarabia*) and 14299 (*PP v. Formentera, Jr.*) which involve[d] detention prisoners, to continue until the above shall have all been finally disposed of, and to furnish the Court, through the OCA, copies of such decisions/orders related thereto; and that his salaries, allowances and other benefits be ordered WITHHELD pending full compliance with this directive;

b) RESOLVE the twenty-seven (27) pending incidents/motions in matrix number III; [and]

c) EXPLAIN in writing, within fifteen (15) days from notice, why no administrative sanction should be taken against him for his failure to decide/resolve the 83 cases enumerated in Nos. I and II and the 27 cases with pending motions enumerated in No. III;

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[1] *Rollo* of A.M. No. 11-8-152-RTC, pp. 1-9.

x x x x x x x x x[2]

In the same resolution, the Court designated Presiding Judge Suceso A. Arcamo, RTC, Branch 47, Tagbilaran City as assisting judge of RTC, Branch 49, same station, specifically to conduct hearings on all cases and attend to all interlocutory matters pending thereat. Such designation shall continue until full compliance by Judge Fuentes III of what he has been directed to do.[3]

Atty. Fara Ricarda Paras-Matuod (Atty. Paras-Matuod), Branch Clerk of Court, RTC, Branch 49, Tagbilaran City was also directed to apprise the judge concerned of the three cases where no further action was taken and to take appropriate action and/or include in the court calendar 64 cases with no further proceedings/resettings.

In his letter dated 7 October 2011, Judge Fuentes III explained that he is offering no justification for the adverse findings of the audit team. He alleged that the cases submitted for decision have always been reflected in the monthly reports of cases he is submitting to the Court. He averred that he is not a resident of Bohol but of Ozamis City. Thus, he had to go home from time to time upon proper leave to visit his family which process has affected his health and has greatly hampered his case disposition.

He considered the opportunity accorded to him by the Court to resolve his backlog of cases as a breath of life to his function as a judge. He expressed his sincerest gratitude with a commitment to comply with what the resolution mandates him to do.[4]

On 13 March 2012, Judge Fuentes III partially complied by submitting copies of his decisions/orders in 39 civil and 21 criminal cases mentioned in paragraph (a) of the resolution. He requested for an extension of time or until 16 April 2012 to fully comply with the directives of the Court.

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[2] *Id.* at 26.

[3] *Id.*

[4] *Id.* at 28.

In a resolution dated 11 April 2012, the Court noted the partial compliance of Judge Fuentes III and granted his prayer for extension of time to submit his full compliance.

On 9 July 2012, Judge Fuentes III submitted anew copies of his decisions in 23 civil and five criminal cases. He likewise submitted 20 orders relative to the cases included in paragraphs (a) and (b) of the resolution.

In a letter dated 16 July 2012, Judge Fuentes III made another request for extension of time from the given 16 April 2012 deadline to fully comply with the directive to submit copies of the remaining decisions and resolutions. He explained that his failure to decide the cases within the extended period was for the reason that his youngest son, Michael Philip Fuentes, an autistic child, became sick and had to be hospitalized for almost the whole month of March in Ozamis City. He, thereafter, had to go on leave for several days in March and June 2012 to bring his son to Manila for further treatment.

For her part, Atty. Paras-Matuod submitted copies of: (1) her letter to Judge Fuentes III apprising/informing him of the cases which have no further action; and (2) the notice of hearings of cases with no further proceedings/settings, in compliance with paragraphs 3 (a) and (b) of the 22 August 2011 resolution.

The OCA reported that since Atty. Paras-Matuod has fully complied with what was required from her, as stated in the 22 August 2011 resolution, the matter, insofar as she is concerned, may now be considered closed and terminated.

Meanwhile, on 21 September 2011, the OCA received a verified complaint from Paulino Butal, Sr. (complainant), charging Judge Fuentes III with delay in rendering a decision in Civil Case No. 7028, entitled "*Spouses Paulino Pombo Butal, Jr., et al. v. China Road and Bridge Corporation, et al.*" for damages and attorney's fees.

Complainant alleged that he is one of the plaintiffs in the aforesaid civil case pending before RTC, Branch 49, Tagbilaran

City. He claimed that the trial of the case was terminated on 28 January 2008 and the parties were given 30 days within which to submit their respective memorandum. Complainant filed his memorandum on 29 February 2008 while defendants submitted their respective memoranda on 28 February 2008 and 6 March 2008.

On 27 August 2009, the plaintiffs filed a Manifestation and Motion to Render Decision alleging therein that it had been 17 months since the case was submitted for decision. They prayed that judgment be rendered by the court.[5]

In his comment[6] dated 28 October 2011, Judge Fuentes III admitted that there was delay in rendering judgment in Civil Case No. 7028. He, however, alleged that the subject case was among the cases submitted for decision stated in the resolution dated 22 August 2011 in A.M. No. 11-8-152-RTC. He attached to his comment a copy of the 20 October 2011 decision he rendered in Civil Case No. 7028.

In the resolution dated 23 April 2012,[7] the Court adopted and approved the findings of fact and recommendations of the OCA and accordingly OCA IPI No. 11-3755-RTJ was re-docketed as A.M. No. RTJ-12-2318 and consolidated with A.M. No. 11-8-152-RTC.

In its report[8] dated 19 November 2012, the OCA recommended that Judge Fuentes III be: a) found guilty of gross inefficiency for his failure to decide 70 cases within the reglementary period, which includes Civil Case No. 7028 subject of A.M. No. RTJ-12-2318, and resolve 27 incidents submitted for resolution; b) fined in the amount of ₱50,000.00 to be deducted from his salaries; and c) sternly warned that the commission of a similar offense will be dealt with more severely. The OCA stated that:

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[5] *Rollo* of A.M. No. RTJ-12-2318, pp. 1-3.

[6] *Id.* at 48.

[7] *Id.* at 93-94.

[8] *Rollo* of A.M. No. 11-8-152-RTC, pp. 622-623.

x x x The duty of a judge is not only confined to hearing and trying cases. It is equally important to decide the same within the period mandated by law. Judge Fuentes III who, at the time of the judicial audit, is the Executive Judge, should have been the role model of a diligent, efficient, and hardworking judge. But on the contrary, he was the opposite thereof. If for some reason he could not dispose of cases within the reglementary period, all he had to do was to ask for a reasonable extension of time. x x x[9]

Under the 1987 Constitution, trial judges are mandated to decide and resolve cases within 90 days from submission for decision or resolution. Corollary to this constitutional mandate, Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary requires judges to perform all judicial duties efficiently, fairly, and with reasonable promptness. The mandate to promptly dispose of cases or matters also applies to motions or interlocutory matters or incidents pending before the magistrate. Unreasonable delay of a judge in resolving a pending incident is a violation of the norms of judicial conduct and constitutes gross inefficiency that warrants the imposition of an administrative sanction against the defaulting magistrate.[10]

Judge Fuentes III concedes that there is no valid justification for the delay in resolving the cases pending in his court. Indeed, his frequent travels to his residence in Ozamis City, which led to travel fatigue and poor health, will not absolve him from liability. We have always reminded judges that the Court is not unmindful of the circumstances that may delay the disposition of the cases assigned to them. Thus, the Court remains sympathetic to seasonably filed requests for extension of time to decide cases. Unfortunately, no such requests were made by Judge Fuentes III until the judicial audit was conducted by the OCA and a directive was issued to him by the Court.

In *Office of the Court Administrator v. Javellana*,[11] the Court held that a judge cannot choose his deadline for deciding cases

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[9] *Id.* at 620.

[10] *Pesayco v. Judge Layague*, 488 Phil. 455, 469 (2004).

[11] 481 Phil. 315, 327-328 (2004).

pending before him. Without an extension granted by the Court, the failure to decide even a single case within the required period constitutes gross inefficiency that merits administrative sanction. If a judge is unable to comply with the period for deciding cases or matters, he can, for good reasons, ask for an extension.

An inexcusable failure to decide a case within the prescribed 90-day period constitutes gross inefficiency, warranting the imposition of administrative sanctions such as suspension from office without pay or fine[12] on the defaulting judge. The fines imposed vary in each case, depending chiefly on the number of cases not decided within the reglementary period and other factors, such as the presence of aggravating or mitigating circumstances, the damage suffered by the parties as a result of the delay, the health and age of the judge, and other analogous circumstances.

In the instant administrative matters, we deem the reduction of the fine proper considering that this is the first infraction of Judge Fuentes III in his more than 15 years in the service. We also take into consideration the fact that Judge Fuentes III exerted earnest effort to fully comply with the directives of the Court as contained in the resolution.

With regard to his delay in rendering judgment in Civil Case No. 7028, we deem the same included in the penalty to be imposed in A.M. No. RTJ-12-2318. Otherwise, we will be penalizing Judge Fuentes III twice for the same offense or omission.

In conclusion, we exhort all judges to perform their judicial duties with reasonable promptness because the honor and integrity of the judicial system is measured not only by the fairness and correctness of the decisions rendered, but also by the expediency with which disputes are resolved.[13]

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[12] Section 9 (1) Rule 140 of the Rules of Court.

Section 9. xxx

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;

x x x x x x x x x

[13] *Delos Reyes v. Cruz*, A.M. No. RTJ-08-2152, 18 January 2010, 610 SCRA 255, 262.

WHEREFORE, we resolve to **RE-DOCKET** A.M. No. 11-8-152-RTC as a regular administrative matter against Judge Fernando G. Fuentes III, Regional Trial Court, Branch 49, Tagbilaran City, Bohol for gross inefficiency and impose upon him a **FINE** in the amount of Forty Thousand Pesos (₱40,000.00) with a **STERN WARNING** that a repetition of a similar offense shall be dealt with more severely. The Financial Management Office, Office of the Court Administrator is **DIRECTED** to release to Judge Fuentes III the salaries, allowances and other benefits that were withheld from him, after deducting the fine hereby imposed. The matter with respect to Atty. Fara Ricarda Paras-Matuod, branch clerk of court, same court, is considered **CLOSED** and **TERMINATED.**

The designation of Judge Suceso A. Arcamo, RTC, Branch 47, Tagbilaran City, Bohol as assisting judge of RTC, Branch 49, same station, is hereby **REVOKED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 169211. March 6, 2013]

STAR TWO (SPV-AMC), INC.,[1] *petitioner*, *vs.* **PAPER CITY CORPORATION OF THE PHILIPPINES,** *respondent*.

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[1] Motion to Change the Caption to Star-Two (SPV-AMC) v. Paper City Corporation filed by RCBC was noted by the Clerk of Court Second Division through an Internal Resolution dated 11 August 2010.

SYLLABUS

1. **CIVIL LAW; CONTRACTS; CONSTRUCTION; THE PLAIN LANGUAGE AND LITERAL INTERPRETATION MUST BE APPLIED.—** [T]he parties stipulated that the properties mortgaged by Paper City to RCBC are various parcels of land including the buildings and existing improvements thereon as well as the machineries and equipments, which as stated in the granting clause of the original mortgage, are "more particularly described and listed that is to say, the real and personal properties listed in Annexes 'A' and 'B' x x x of which the [Paper City] is the lawful and registered owner." Significantly, Annexes "A" and "B" are itemized listings of the buildings, machineries and equipments typed single spaced in twenty-seven pages of the document made part of the records. x x x The plain language and literal interpretation of the MTIs must be applied. The petitioner, other creditor banks and Paper City intended from the very first execution of the indentures that the machineries and equipments enumerated in Annexes "A" and "B" are included. Obviously, with the continued increase in the amount of the loan, totaling hundreds of millions of pesos, Paper City had to offer all valuable properties acceptable to the creditor banks.

2. **ID.; ID.; ID.; EQUIPMENTS THE CONTRACT EXPRESSLY STATES THAT THE EQUPMENTS AND MACHINERIES FORMED PART OF THE REAL ESTATE MORTGAGE AND CONSIDERED AS IMMOVABLE PROPERTIES.—** The plain and obvious inclusion in the mortgage of the machineries and equipments of Paper City escaped the attention of the CA which, instead, turned to another "plain language of the MTI" that "described the same as personal properties." It was error for the CA to deduce from the "description" exclusion from the mortgage. 1. The MTIs did not describe the equipments and machineries as personal property. x x x The word "personal" was deleted in the corresponding granting clauses in the Deed of Amendment and in the First, Second and Third Supplemental Indentures. 2. Law and jurisprudence provide and guide that even if not expressly so stated, the mortgage extends to the improvements. x x x 3. Contrary to the finding of the CA, the Extra-Judicial Foreclosure of Mortgage includes the machineries and equipments of respondent. x x x Considering that the Indenture which is the

> instrument of the mortgage that was foreclosed exactly states through the Deed of Amendment that the machineries and equipments listed in Annexes "A" and "B " form part of the improvements listed and located on the parcels of land subject of the mortgage, such machineries and equipments are surely part of the foreclosure of the "real estate properties, including all improvements thereon" as prayed for in the petition. x x x The real estate mortgage over the machineries and equipments is even in full accord with the classification of such properties by the Civil Code of the Philippines as immovable property.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo and Ongsiako for petitioner.
Y.F. Bautista & Associates Law Offices for respondent.

D E C I S I O N

PEREZ, *J.*:

For review before this Court is a Petition for Review on *Certiorari* filed by Rizal Commercial Banking Corporation now substituted by Star Two (SPV-AMC), Inc. by virtue of Republic Act No. 9182[2] otherwise known as the "Special Purpose Vehicle Act of 2002," assailing the 8 March 2005 Decision and 8 August 2005 Resolution of the Special Fourth Division of the Court of Appeals (CA) in CA-G.R. SP No. 82022 upholding the 15 August 2003 and 1 December 2003 Orders of the Valenzuela Regional Trial Court (RTC) ruling that the subject machineries and equipments of Paper City Corporation (Paper City) are movable properties by agreement of the parties and cannot be considered as included in the extrajudicial foreclosure sale of the mortgaged land and building of Paper City.[3]

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[2] An Act Granting Tax Exemptions and Fee Privileges to Special Purpose Vehicles which Acquire or Invest in Non-Performing Assets, Setting the Regulatory Framework Therefor, and for Other Purposes. By virtue of this law, RCBC sold the subject loan account to Star-Two (SPV-AMC); hence the latter became subrogated to the rights of RCBC. *Rollo*, p. 177.

[3] Petition for Review on *Certiorari*. *Id.* at 4-55.

The facts as we gathered from the records are:

Rizal Commercial Banking Corporation (RCBC), Metropolitan Bank and Trust Co. (Metrobank) and Union Bank of the Philippines (Union Bank) are banking corporations duly organized and existing under the laws of the Philippines.

On the other hand, respondent Paper City is a domestic corporation engaged in the manufacture of paper products particularly cartons, newsprint and clay-coated paper.[4]

From 1990-1991, Paper City applied for and was granted the following loans and credit accommodations in peso and dollar denominations by RCBC: ₱10,000,000.00 on 8 January 1990,[5] ₱14,000,000.00 on 19 July 1990,[6] ₱10,000,000.00 on 28 June 1991,[7] and ₱16,615,000.00 on 28 November 1991.[8] The loans were secured by four (4) Deeds of Continuing Chattel Mortgages on its machineries and equipments found inside its paper plants.

On **25 August 1992, a unilateral Cancellation of Deed of Continuing Chattel Mortgage on Inventory of Merchandise/ Stocks-in-Trade** was executed by RCBC through its Branch Operation Head Joey P. Singh and Asst. Vice President Anita O. Abad over the merchandise and stocks-in-trade covered by the continuing chattel mortgages.[9]

On **26 August 1992,** RCBC, Metrobank and Union Bank (creditor banks with RCBC instituted as the trustee bank) entered into a **Mortgage Trust Indenture** (MTI) with Paper City. In the said MTI, Paper City acquired an additional loan of One Hundred Seventy Million Pesos (₱170,000,000.00) from the creditor banks in addition to the previous loan from RCBC

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[4] Complaint of Paper City. CA *rollo*, pp. 56-57.

[5] *Id.* at 278-281.

[6] *Id.* at 290-292.

[7] *Id.* at 302-303.

[8] *Id.* at 315-316.

[9] *Id.* at 345-346.

amounting to ₱110,000,000.00 thereby increasing the entire loan to a total of ₱280,000,000.00. The old loan of ₱110,000,000.00 was partly secured by various parcels of land covered by TCT Nos. T-157743, V-13515, V-1184, V-1485, V-13518 and V-13516 situated in Valenzuela City pursuant to five (5) Deeds of Real Estate Mortgage dated 8 January 1990, 27 February 1990, 19 July 1990, 20 February 1992 and 12 March 1992.[10] The new loan obligation of ₱170,000,000.00 would be secured by the same five (5) Deeds of Real Estate Mortgage and additional real and personal properties described in an annex to MTI, Annex "B".[11] Annex "B" of the said MTI covered the machineries and equipments of Paper City.[12]

The MTI was later amended on **20 November 1992** to increase the contributions of the RCBC and Union Bank to ₱80,000,000.00 and ₱70,000,000.00, respectively. As a consequence, they executed a **Deed of Amendment to MTI**[13] but still included as part of the mortgaged properties by way of a first mortgage the various machineries and equipments located in and bolted to and/or forming part of buildings generally described as:

Annex "A"

A. Office Building
Building 1, 2, 3, 4, and 5
Boiler House
Workers' Quarter/Restroom
Canteen
Guardhouse, Parking Shed, Elevated Guard
Post and other amenities

B. Pollution Tank Nos. 1 and 2.
Reserve Water Tank and Swimming Pool
Waste Water Treatment Tank
Elevated Concrete Water Tank
And other Improvements listed in Annex "A"

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[10] MTI. *Id*. at 110-111.

[11] *Id.* at 113.

[12] Granting Clause. *Id*. at 112.

[13] *Id.* at 113-116.

C. Power Plants Nos. 1 and 2
Fabrication Building
Various Fuel, Water Tanks and Pumps
Transformers

Annex "B"

D. Material Handling Equipment
Paper Plant No. 3

A **Second Supplemental Indenture to the 26 August 1992 MTI** was executed on **7 June 1994** to increase the amount of the loan from ₱280,000,000.00 to ₱408,900,000.00 secured against the existing properties composed of land, building, machineries and equipments and inventories described in Annexes "A" and "B".[14]

Finally, a **Third Supplemental Indenture to the 26 August 1992 MTI** was executed on **24 January 1995** to increase the existing loan obligation of ₱408,900,000.00 to ₱555,000,000.00 with an additional security composed of a newly constructed two-storey building and other improvements, machineries and equipments located in the existing plant site.[15]

Paper City was able to comply with its loan obligations until July 1997. But economic crisis ensued which made it difficult for Paper City to meet the terms of its obligations leading to payment defaults.[16] Consequently, RCBC filed a **Petition for Extrajudicial Foreclosure Under Act No. 3135 Against the Real Estate Mortgage** executed by Paper City on **21 October 1998**.[17] This petition was for the extra-judicial foreclosure of **eight (8) parcels of land including all improvements thereon** enumerated as TCT Nos. V-9763, V-13515, V-13516, V-13518, V-1484, V-1485, V-6662 and V-6663 included in the MTI dated 26 August 1992, Supplemental MTI dated 20 November 1992,

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[14] *Id.* at 150-152.

[15] *Id.* at 218-220.

[16] Complaint. *Id.* at 58.

[17] *Id.* at 238-247.

Second Supplemental Indenture on the MTI dated 7 June 1994 and Third Supplemental Indenture on the MTI dated 24 January 1995.[18] Paper City then had an outstanding obligation with the creditor banks adding up to Nine Hundred One Million Eight Hundred One Thousand Four Hundred Eighty-Four and 10/100 Pesos (₱901,801,484.10), inclusive of interest and penalty charges.[19]

A **Certificate of Sale** was executed on **8 February 1999** certifying that the eight (8) parcels of land with improvements thereon were sold on 27 November 1998 in the amount of Seven Hundred Two Million Three Hundred Fifty-One Thousand Seven Hundred Ninety-Six Pesos and 28/100 (₱702,351,796.28) in favor of the creditor banks RCBC, Union Bank and Metrobank as the highest bidders.[20]

This foreclosure sale prompted Paper City to file a Complaint[21] docketed as Civil Case No. 164-V-99 on 15 June 1999 against the creditor banks alleging that the extra-judicial sale of the properties and plants was null and void due to lack of prior notice and attendance of gross and evident bad faith on the part of the creditor banks. In the alternative, it prayed that in case the sale is declared valid, to render the whole obligation of Paper City as fully paid and extinguished. Also prayed for was the return of ₱5,000,000.00 as excessive penalty and the payment of damages and attorney's fees.

In the meantime, Paper City and Union Bank entered into a Compromise Agreement which was later approved by the trial court on 19 November 2001. It was agreed that the share of Union Bank in the proceeds of the foreclosure shall be up to 34.23% of the price and the remaining possible liabilities of Paper City shall be condoned by the bank. Paper City likewise waived all its claim and counter charges against Union Bank

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[18] *Id.*

[19] *Id.* at 245.

[20] *Id.* at 248-250.

[21] *Id.* at 56-67.

and agreed to turn-over its proportionate share over the property within 120 days from the date of agreement.[22]

On the other hand, the negotiations between the other creditor banks and Paper City remained pending. During the interim, Paper City filed with the trial court a Manifestation with Motion to Remove and/or Dispose Machinery on 18 December 2002 reasoning that the [machineries] located inside the foreclosed land and building were deteriorating. It posited that since the machineries were not included in the foreclosure of the real estate mortgage, it is appropriate that it be removed from the building and sold to a third party.[23]

Acting on the said motion, the trial court, on 28 February 2003 issued an Order denying the prayer and ruled that the machineries and equipments were included in the annexes and form part of the MTI dated 26 August 1992 as well as its subsequent amendments. Further, the machineries and equipments are covered by the Certificate of Sale issued as a consequence of foreclosure, the certificate stating that the **properties described therein with improvements thereon were sold to creditor banks [to the defendants] at public auction.**[24]

Paper City filed its Motion for Reconsideration[25] on 4 April 2003 which was **favorably granted** by the trial court in its **Order dated 15 August 2003**. The court justified the reversal of its order on the finding that the disputed machineries and equipments are chattels by agreement of the parties through their inclusion in the four (4) Deeds of Chattel Mortgage dated 28 January 1990, 19 July 1990, 28 June 1991 and 28 November 1991. It further ruled that the deed of cancellation executed by RCBC on 25 August 1992 was not valid because it was done unilaterally and without the consent of Paper City and the

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[22] *Id.* at 531-533.

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

[24] *Id.* at 269-270.

[25] *Id.* at 271-277.

cancellation only refers to the merchandise/stocks-in-trade and not to machineries and equipments.[26]

RCBC in turn filed its Motion for Reconsideration to persuade the court to reverse its 15 August 2003 Order. However, the same was denied by the trial court through its 1 December 2003 Order reiterating the finding and conclusion of the previous Order.[27]

Aggrieved, RCBC filed with the CA a Petition for *Certiorari* under Rule 65 to annul the Orders dated 15 August 2003 and 1 December 2003 of the trial court,[28] for the reasons that:

I. [Paper City] gave its conformity to consider the subject machineries and equipment as real properties when the president and Executive Vice President of Paper City signed the Mortgage Trust Indenture as well as its subsequent amendments and all pages of the annexes thereto which itemized all properties that were mortgaged.[29]

II. Under Section 8 of Act No. 1508, otherwise known as "The Chattel Mortgage Law" the consent of the mortgagor (Paper City) is not required in order to cancel a chattel mortgage. Thus the "Cancellation of Deed of Continuing Chattel Mortgage on Inventory of Merchandise/Stocks-in-Trade" dated August 25, 1992 is valid and binding on the [Paper City] even assuming that it was executed unilaterally by petitioner RCBC.[30]

III. The four (4) Deeds of Chattel Mortgage that were attached as Annexes "A" to "D" to the December 18, 2003 "Manifestation with Motion to Remove and/or Dispose of Machinery" were executed from January 8, 1990 until November 28, 1991. On the other hand, the "Cancellation of Deed of Continuing Chattel Mortgage" was executed on

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

[27] *Id.* at 55.

[28] *Id.* at 2-52.

[29] *Id.* at 11.

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

August 25, 1992 while the MTI and the subsequent supplemental amendments thereto were executed from August 26, 1992 until January 24, 1995. It is of the contention of RCBC that [Paper City's] unreasonable delay of ten (10) years in assailing that the disputed machineries and equipments were personal amounted to estoppel and ratification of the characterization that the same were real properties.[31]

IV. The removal of the subject machineries or equipment is not among the reliefs prayed for by the [Paper City] in its June 11, 1999 Complaint. The [Paper City] sought the removal of the subject machineries and equipment only when it filed its December 18, 2002 Manifestation with Motion to Remove and/or Dispose of Machinery.[32]

V. [Paper City] did not specify in its various motions filed with the respondent judge the subject machineries and equipment that are allegedly excluded from the extrajudicial foreclosure sale.[33]

VI. The machineries and equipments mentioned in the four (4) Deeds of Chattel Mortgage that were attached on the Manifestation with Motion to Remove and/or Dispose of Machinery are the same machineries and equipments included in the MTI and supplemental amendments, hence, are treated by agreement of the parties as real properties.[34]

In its Comment,[35] Paper City refuted the claim of RCBC that it gave its consent to consider the machineries and equipments as real properties. It alleged that the disputed properties remained within the purview of the existing chattel mortgages which in fact were acknowledged by RCBC in the MTI particularly in Section 11.07 which reads:

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

[32] *Id.* at 26.

[33] *Id.* at 27.

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

[35] *Id.* at 497-503.

Section 11.07. This INDENTURE in respect of the MORTGAGE OBLIGATIONS in the additional amount not exceeding TWO HUNDRED TWENTY MILLION SIX HUNDRED FIFTEEN THOUSAND PESOS (₱220,615,000.00) shall be registered with the Register of Deeds of Valenzuela, Metro Manila, apportioned based on the corresponding loanable value of the MORTGAGED PROPERTIES, *viz.*:

a. Real Estate Mortgage — ₱206,815,000.00
b. Chattel Mortgage — ₱13,800,000.00[36]

Paper City argued further that the subject machineries and equipments were not included in the foreclosure of the mortgage on real properties particularly the eight (8) parcels of land. Further, the Certificate of Sale of the Foreclosed Property referred only to "lands and improvements" without any specification and made no mention of the inclusion of the subject properties.[37]

In its Reply,[38] RCBC admitted that there was indeed a provision in the MTI mentioning a chattel mortgage in the amount of ₱13,800,000.00. However, it justified that its inclusion in the MTI was merely for the purpose of ascertaining the amount of the loan to be extended to Paper City.[39] It reiterated its position that the machineries and equipments were no longer treated as chattels but already as real properties following the MTI.[40]

On 8 March 2005, the CA affirmed[41] the challenged orders of the trial court. The dispositive portion reads:

WHEREFORE, finding no grave abuse of discretion committed by public respondent, the instant petition is hereby DISMISSED

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[36] *Id.* at 499.

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

[38] *Id.* at 527-530.

[39] *Id.* at 527.

[40] *Id.* at 528.

[41] Penned by Associate Justice Perlita J. Tria-Tirona with Associate Justices Delilah Vidallon-Magtolis and Jose C. Reyes, Jr. concurring. *Rollo,* pp. 57-71.

for lack of merit. The assailed Orders dated 15 August and 2 December 2003, issued by Hon. Judge Floro P. Alejo are hereby AFFIRMED. No costs at this instance.[42]

The CA relied on the "plain language of the MTIs:

Undoubtedly, nowhere from any of the MTIs executed by the parties can [w]e find the alleged "**express**" agreement adverted to by petitioner. There is no provision in any of the parties' MTI, which expressly states to the effect that the parties shall treat the equipments and machineries as real property. On the contrary, the plain and unambiguous language of the aforecited MTIs, which described the same as personal properties, contradicts petitioner's claims.[43]

It was also ruled that the subject machineries and equipments were not included in the extrajudicial foreclosure sale. The claim of inclusion was contradicted by the very caption of the petition itself, **"Petition for Extra-Judicial Foreclosure of Real Estate Mortgage Under Act No. 3135 As Amended."** It opined further that this inclusion was further stressed in the Certificate of Sale which enumerated only the mortgaged real properties bought by RCBC without the subject properties.[44]

RCBC sought reconsideration but its motion was denied in the CA's Resolution dated 8 August 2005.

RCBC before this Court reiterated all the issues presented before the appellate court:

1. ***Whether the unreasonable delay of ten (10) years in assailing that the disputed machineries and equipments were personal properties amounted to estoppel on the part of Paper City;***
2. ***Whether the Cancellation of Deed of Continuing Mortgage dated 25 August 1992 is valid despite the fact that it was executed without the consent of the mortgagor Paper City;***

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[42] *Id.* at 71.

[43] *Id.* at 68.

[44] *Id.* at 69.

3. ***Whether the subsequent contracts of the parties such as Mortgage Trust Indenture dated 26 August 1992 as well as the subsequent supplementary amendments dated 20 November 1992, 7 June 1992, and 24 January 1995 included in its coverage of mortgaged properties the subject machineries and equipment; and***

4. ***Whether the subject machineries and equipments were included in the extrajudicial foreclosure dated 21 October 1998 which in turn were sold to the creditor banks as evidenced by the Certificate of Sale dated 8 February 1999.***

We grant the petition.

By contracts, all uncontested in this case, machineries and equipments are included in the mortgage in favor of RCBC, in the foreclosure of the mortgage and in the consequent sale on foreclosure also in favor of petitioner.

The mortgage contracts are the original MTI of 26 August 1992 and its amendments and supplements on 20 November 1992, 7 June 1994, and 24 January 1995. The clear agreements between RCBC and Paper City follow:

The **original MTI dated 26 August 1992** states that:

MORTGAGE TRUST INDENTURE

This MORTGAGE TRUST INDENTURE, executed on this day of August 26, 1992, by and between:

PAPER CITY CORPORATION OF THE PHILIPPINES, x x x hereinafter referred to as the "MORTGAGOR");

-and-

RIZAL COMMERCIAL BANKING CORPORATION, x x x (hereinafter referred to as the "TRUSTEE").

x x x x x x x x x

WHEREAS, against the same mortgaged properties and additional real and personal properties more particularly described in ANNEX "B" hereof, the MORTGAGOR desires to increase their borrowings to TWO HUNDRED EIGHTY MILLION PESOS (₱280,000,000.00) or an increase of ONE HUNDRED SEVENTY MILLION PESOS (₱170,000,000.00) x x x from various banks/financial institutions;

x x x x x x x x x

GRANTING CLAUSE

NOW, THEREFORE, this INDENTURE witnesseth:

THAT **the MORTGAGOR** in consideration of the premises and of the acceptance by the TRUSTEE of the trust hereby created, and in order to secure the payment of the MORTGAGE OBLIGATIONS which shall be incurred by the MORTGAGOR pursuant to the terms hereof x x x hereby states that with the execution of this INDENTURE it will assign, transfer and convey as it has hereby ASSIGNED, TRANSFERRED and CONVEYED by way of a registered first mortgage unto [RCBC] **x x x the various parcels of land covered by several Transfer Certificates of Title issued by the Registry of Deeds, including the buildings and existing improvements thereon, as well as of the machinery and equipment more particularly described and listed that is to say, the real and personal properties listed in Annexes "A" and "B" hereof of which the MORTGAGOR is the lawful and registered owner.**[45] (Emphasis and underlining ours)

The **Deed of Amendment to MTI dated 20 November 1992** expressly provides:

NOW, THEREFORE, premises considered, the parties considered have amended and by these presents do further amend the Mortgage Trust Indenture dated August 26, 1992 including the Real Estate Mortgage as follows:

x x x x x x x x x

2. The Mortgage Trust Indenture and the Real Estate Mortgage are hereby amended to include as part of the Mortgage Properties, by way of a first mortgage and for **pari-passu** and **pro-rata benefit** of the existing and new creditors, **various machineries and equipment owned by the [Paper City], located in and bolted to and forming part of the following, generally describes as x x x more particularly described and listed in Annexes "A" and "B" which are attached and made integral parts of this Amendment. The machineries and equipment listed in Annexes "A" and "B" form part of the improvements listed above and located on the parcels of land**

[45] CA *rollo*, pp. 110-112.

subject of the Mortgage Trust Indenture and the Real Estate Mortgage.[46] (Emphasis and underlining ours)

A **Second Supplemental Indenture to the 26 August 1992 MTI** executed on 7 **June 1994** to increase the amount of loan from ₱280,000,000.00 to ₱408,900,000.00 also contains a similar provision in this regard:

> WHEREAS, the [Paper City] desires to increase its borrowings to be secured by the INDENTURE from PESOS: TWO HUNDRED EIGHTY MILLION (₱280,000,000.00) to PESOS: FOUR HUNDRED EIGHT MILLION NINE HUNDRED THOUSAND (₱408,900,000.00) or an increase of PESOS: ONE HUNDRED TWENTY EIGHT MILLION NINE HUNDRED THOUSAND (₱128,900,000.00) x x x which represents additional loan/s granted to the [Paper City] **to be secured against the existing properties composed of land, building, machineries and equipment and inventories more particularly described in Annexes "A" and "B"** of the INDENTURE x x x.[47] (Emphasis and underlining ours)

Finally, a **Third Supplemental Indenture to the 26 August 1992 MTI** executed on **24 January 1995** contains a similar provision:

> WHEREAS, in order to secure NEW/ADDITIONAL LOAN OBLIGATION under the Indenture, **there shall be added to the collateral pool subject of the Indenture properties of the [Paper City] composed of newly constructed two (2)-storey building, other land improvements and machinery and equipment all of which are located at the existing Plant Site in Valenzuela, Metro Manila and more particularly described in Annex "A" hereof** x x x[48] (Emphasis and underlining ours)

Repeatedly, the parties stipulated that the properties mortgaged by Paper City to RCBC are various parcels of land including the buildings and existing improvements thereon as well as the machineries and equipments, which as stated in the granting

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[46] *Id.* at 113-115.

[47] *Id.* at 151.

[48] *Id.* at 218-220.

clause of the original mortgage, are "more particularly described and listed that is to say, the real and personal properties listed in Annexes 'A' and 'B' x x x of which the [Paper City] is the lawful and registered owner." Significantly, Annexes "A" and "B" are itemized listings of the buildings, machineries and equipments typed single spaced in twenty-seven pages of the document made part of the records.

As held in *Gateway Electronics Corp. v. Land Bank of the Philippines*,[49] the rule in this jurisdiction is that the contracting parties may establish any agreement, term, and condition they may deem advisable, provided they are not contrary to law, morals or public policy. The right to enter into lawful contracts constitutes one of the liberties guaranteed by the Constitution.

It has been explained by the Supreme Court in *Norton Resources and Development Corporation v. All Asia Bank Corporation*[50] in reiteration of the ruling in *Benguet Corporation v. Cabildo*[51] that:

> x x x A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law. x x x

Then till now the pronouncement has been that if the language used is as clear as day and readily understandable by any ordinary reader, there is no need for construction.[52]

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[49] 455 Phil. 196, 210 (2003).

[50] G.R. No. 162523, 25 November 2009, 605 SCRA 370.

[51] G.R. No. 151402, 22 August 2008, 563 SCRA 25, 37 citing *Abad v. Goldloop Properties, Inc.*, G.R. No. 168108, 13 April 2007, 521 SCRA 131, 143.

[52] *Insular Investment and Trust Corporation v. Capital One Equities Corp. (now known as Capital One Holdings Corp.) and Planters Development Bank*, G.R. No. 183308, 25 April 2012, 671 SCRA 112, 126.

The case at bar is covered by the rule.

The plain language and literal interpretation of the MTIs must be applied. The petitioner, other creditor banks and Paper City intended from the very first execution of the indentures that the machineries and equipments enumerated in Annexes "A" and "B" are included. Obviously, with the continued increase in the amount of the loan, totaling hundreds of millions of pesos, Paper City had to offer all valuable properties acceptable to the creditor banks.

The plain and obvious inclusion in the mortgage of the machineries and equipments of Paper City escaped the attention of the CA which, instead, turned to another "plain language of the MTI" that "described the same as personal properties." It was error for the CA to deduce from the "description" exclusion from the mortgage.

1. The MTIs did not describe the equipments and machineries as personal property. Had the CA looked into Annexes "A" and "B" which were referred to by the phrase "real and personal properties," it could have easily noted that the captions describing the listed properties were "Buildings," "Machineries and Equipments," "Yard and Outside," and "Additional Machinery and Equipment." No mention in any manner was made in the annexes about "personal property." Notably, while "personal" appeared in the granting clause of the original MTI, the subsequent Deed of Amendment specifically stated that:

> x x x The machineries and equipment listed in Annexes "A" and "B" form part of the improvements listed above and located on the parcels of land subject of the Mortgage Trust Indenture and the Real Estate Mortgage.

The word "personal" was deleted in the corresponding granting clauses in the Deed of Amendment and in the First, Second and Third Supplemental Indentures.

2. Law and jurisprudence provide and guide that even if not expressly so stated, the mortgage extends to the improvements.

Article 2127 of the Civil Code provides:

Art. 2127. The mortgage extends to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due, and to the amount of the indemnity granted or owing to the proprietor from the insurers of the property mortgaged, or in virtue of expropriation for public use, with the declarations, amplifications and limitations established by law, whether the estate remains in the possession of the mortgagor, or it passes into the hands of a third person. (Underlining ours)

In the early case of *Bischoff v. Pomar and Cia. General de Tabacos*,[53] the Court ruled that even if the machinery in question was not included in the mortgage expressly, Article 111 of the [old] Mortgage Law provides that chattels permanently located in a building, either useful or ornamental, or for the service of some industry even though they were placed there after the creation of the mortgage shall be considered as mortgaged with the estate, provided they belong to the owner of said estate. The provision of the old Civil Code was cited. Thus:

Article 1877 provides that a mortgage includes the natural accessions, improvements, growing fruits, and rents not collected when the obligation is due, and the amount of the indemnities granted or due the owner by the underwriters of the property mortgaged or by virtue of the exercise of eminent domain by reason of public utility, with the declarations, amplifications, and limitations established by law, in case the estate continues in the possession of the person who mortgaged it, as well as when it passes into the hands of a third person.[54]

The case of *Cu Unjieng e Hijos v. Mabalacat Sugar Co*.[55] relied on this provision. The issue was whether the machineries and accessories were included in the mortgage and the subsequent sale during public auction. This was answered in the affirmative

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[53] 12 Phil. 691, 699 (1909).

[54] *Id.* at 698.

[55] 58 Phil. 439, 443 (1933).

by the Court when it ruled that the machineries were integral parts of said sugar central hence included following the principle of law that the accessory follows the principal.

Further, in the case of *Manahan v. Hon. Cruz,*[56] this Court denied the prayer of Manahan to nullify the order of the trial court including the building in question in the writ of possession following the public auction of the parcels of land mortgaged to the bank. It upheld the inclusion by relying on the principles laid upon in *Bischoff v. Pomar and Cia. General de Tabacos*[57] *and Cu Unjieng e Hijos v. Mabalacat Sugar Co.*[58]

In Spouses *Paderes v. Court of Appeals*,[59] we reiterated once more the *Cu Unjieng e Hijos* ruling and approved the inclusion of machineries and accessories installed at the time the mortgage, as well as all the buildings, machinery and accessories belonging to the mortgagor, installed after the constitution thereof.

3. Contrary to the finding of the CA, the Extra-Judicial Foreclosure of Mortgage includes the machineries and equipments of respondent. While captioned as a "Petition for Extra-Judicial Foreclosure of Real Estate Mortgage Under Act No. 3135 as Amended," the averments state that the petition is based on "x x x the Mortgage Trust Indenture, the Deed of Amendment to the Mortgage Trust Indenture, the Second Supplemental Indenture to the Mortgage Trust Indenture, and the Third Supplemental Indenture to the Mortgage Trust Indenture (hereinafter collectively referred to as the Indenture) duly notarized and entered as x x x."[60] Noting that herein respondent has an outstanding obligation in the total amount of Nine Hundred One Million Eight Hundred One Thousand Four Hundred Eighty Four and 10/100 Pesos (₱901,801,484.10), the petition for foreclosure prayed that a foreclosure proceedings "x x x on the

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[56] 158 Phil. 799, 803-804 (1974).

[57] *Supra* note 53.

[58] *Supra* note 55.

[59] 502 Phil. 76, 96 (2005).

[60] CA *rollo*, p. 238.

aforesaid real properties, including all improvements thereon covered by the real estate mortgage be undertaken and the appropriate auction sale be conducted x x x."[61]

Considering that the Indenture which is the instrument of the mortgage that was foreclosed exactly states through the Deed of Amendment that the machineries and equipments listed in Annexes "A" and "B" form part of the improvements listed and located on the parcels of land subject of the mortgage, such machineries and equipments are surely part of the foreclosure of the "real estate properties, including all improvements thereon" as prayed for in the petition.

Indeed, the lower courts ought to have noticed the fact that the chattel mortgages adverted to were dated 8 January 1990, 19 July 1990, 28 June 1991 and 28 November 1991. The real estate mortgages which specifically included the machineries and equipments were subsequent to the chattel mortgages dated 26 August 1992, 20 November 1992, 7 June 1994 and 24 January 1995. Without doubt, the real estate mortgages superseded the earlier chattel mortgages.

The real estate mortgage over the machineries and equipments is even in full accord with the classification of such properties by the Civil Code of the Philippines as immovable property. Thus:

Article 415. The following are immovable property:

(1) Land, buildings, roads and constructions of all kinds adhered to the soil;

x x x x x x x x x

(5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;

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[61] *Id.* at 245-246. (Underlining supplied)

WHEREFORE, the petition is **GRANTED.** Accordingly, the Decision and Resolution of the Court of Appeals dated 8 March 2005 and 8 August 2005 upholding the 15 August 2003 and 1 December 2003 Orders of the Valenzuela Regional Trial Court are hereby **REVERSED** and **SET ASIDE** and the original Order of the trial court dated 28 February 2003 denying the motion of respondent to remove or dispose of machinery is hereby **REINSTATED.**

SO ORDERED.

Sereno,[*] *C.J., Carpio (Chairperson), del Castillo*, and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 171664. March 6, 2013]

BANKARD, INC., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION-FIRST DIVISION, PAULO BUENCONSEJO, BANKARD EMPLOYEES UNION-AWATU,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF LABOR OFFICIALS WHEN AFFIRMED BY THE COURT OF APPEALS ARE GENERALLY CONCLUSIVE ON THE SUPREME COURT; EXCEPTION, APPLIED.— Well-settled is the rule that "factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial

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[*] Designated additional member per Raffle dated 14 January 2013.

evidence." Furthermore, the factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court. When the petitioner, however, persuasively alleges that there is insufficient or insubstantial evidence on record to support the factual findings of the tribunal or court *a quo*, then the Court, exceptionally, may review factual issues raised in a petition under Rule 45 in the exercise of its discretionary appellate jurisdiction. This case involves determination of whether or not Bankard committed acts considered as ULP.

2. **ID.; EVIDENCE; BURDEN OF PROOF; THE UNION HAS THE BURDEN OF PROVING EMPLOYER'S UNFAIR LABOR PRACTICE BY SUBSTANTIAL EVIDENCE; THE UNION FAILED TO DISCHARGE THE BURDEN.—** The general principle is that the one who makes an allegation has the burden of proving it. While there are exceptions to this general rule, in ULP cases, the alleging party has the burden of proving the ULP; and in order to show that the employer committed ULP under the Labor Code, substantial evidence is required to support the claim. Such principle finds justification in the fact that ULP is punishable with both civil and/or criminal sanctions. Aside from the bare allegations of the Union, nothing in the records strongly proves that Bankard intended its program, the MRP, as a tool to drastically and deliberately reduce union membership. Contrary to the findings and conclusions of both the NLRC and the CA, there was no proof that the program was meant to encourage the employees to disassociate themselves from the Union or to restrain them from joining any union or organization. There was no showing that it was intentionally implemented to stunt the growth of the Union or that Bankard discriminated, or in any way singled out the union members who had availed of the retirement package under the MRP. True, the program might have affected the number of union membership because of the employees' voluntary resignation and availment of the package, but it does not necessarily follow that Bankard indeed purposely sought such result. It must be recalled that the MRP was implemented as a valid cost-cutting measure, well within the ambit of the so-called management prerogatives. Bankard contracted an independent agency to meet business exigencies. In the absence of any showing that Bankard was motivated by ill will, bad faith or malice, or that it was aimed at interfering

with its employees' right to self-organize, it cannot be said to have committed an act of unfair labor practice. "Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise." Unfortunately, the Union, which had the burden of adducing substantial evidence to support its allegations of ULP, failed to discharge such burden.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; MANAGEMENT PREROGATIVE; CONTRACTING OUT OF SERVICES IS AN EXERCISE OF MANAGEMENT PREROGATIVE ABSENT ANY PROOF THAT IT WAS CARRIED OUT MALICIOUSLY OR ARBITRARILY.—** The employer's right to conduct the affairs of its business, according to its own discretion and judgment, is well-recognized. Management has a wide latitude to conduct its own affairs in accordance with the necessities of its business. x x x Contracting out of services is an exercise of business judgment or management prerogative. Absent any proof that management acted in a malicious or arbitrary manner, the Court will not interfere with the exercise of judgment by an employer. Furthermore, bear in mind that ULP is punishable with both civil and/or criminal sanctions. As such, the party so alleging must necessarily prove it by substantial evidence. The Union, as earlier noted, failed to do this. Bankard merely validly exercised its management prerogative. Not shown to have acted maliciously or arbitrarily, no act of ULP can be imputed against it.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.

D E C I S I O N

MENDOZA, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to review, reverse and set aside the

October 20, 2005 Decision[1] and the February 21, 2006 Resolution[2] of the Court of Appeals (*CA*), in CA-G.R. SP No. 68303, which affirmed the May 31, 2001 Resolution[3] and the September 24, 2001 Order[4] of the National Labor Relations Commission (*NLRC*) in Certified Cases No. 000-185-00 and 000-191-00.

The Facts

On June 26, 2000, respondent Bankard Employees Union-AWATU (*Union*) filed before the National Conciliation and Mediation Board (*NCMB*) its first Notice of Strike (*NOS*), docketed as NS-06-225-00,[5] alleging commission of unfair labor practices by petitioner Bankard, Inc. (*Bankard*), to wit: 1) job contractualization; 2) outsourcing/contracting-out jobs; 3) manpower rationalizing program; and 4) discrimination.

On July 3, 2000, the initial conference was held where the Union clarified the issues cited in the NOS. On July 5, 2000, the Union held its strike vote balloting where the members voted in favor of a strike. On July 10, 2000, Bankard asked the Office of the Secretary of Labor to assume jurisdiction over the labor dispute or to certify the same to the NLRC for compulsory arbitration. On July 12, 2000, Secretary Bienvenido Laguesma (*Labor Secretary*) of the Department of Labor and Employment (*DOLE*) issued the order certifying the labor dispute to the NLRC.[6]

On July 25, 2000, the Union declared a CBA bargaining deadlock. The following day, the Union filed its second NOS,

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[1] *Rollo*, pp. 31-38. Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring.

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

[3] *Id.* at 69-76.

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

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

[6] *Id.* at 32.

docketed as NS-07-265-00,[7] alleging bargaining in bad faith on the part of Bankard. Bankard then again asked the Office of the Secretary of Labor to assume jurisdiction, which was granted. Thus, the Order, dated August 9, 2000, certifying the labor dispute to the NLRC, was issued.[8]

The Union, despite the two certification orders issued by the Labor Secretary enjoining them from conducting a strike or lockout and from committing any act that would exacerbate the situation, went on strike on August 11, 2000.[9]

During the conciliatory conferences, the parties failed to amicably settle their dispute. Consequently, they were asked to submit their respective position papers. Both agreed to the following issues:

1. Whether job contractualization or outsourcing or contracting-out is an unfair labor practice on the part of the management.
2. Whether there was bad faith on the part of the management when it bargained with the Union.[10]

As regards the first issue, it was Bankard's position that job contractualization or outsourcing or contracting-out of jobs was a legitimate exercise of management prerogative and did not constitute unfair labor practice. It had to implement new policies and programs, one of which was the Manpower Rationalization Program (*MRP*) in December 1999, to further enhance its efficiency and be more competitive in the credit card industry. The MRP was an invitation to the employees to tender their voluntary resignation, with entitlement to separation pay equivalent to at least two (2) months salary for every year of service. Those eligible under the company's retirement plan would still receive additional pay. Thereafter, majority of the Phone Center and the Service Fulfilment Division availed of the MRP.

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[7] *Id.* at 46-47.

[8] *Id.* at 32-33.

[9] *Id.* at 33.

[10] *Id.* at 71-72.

Thus, Bankard contracted an independent agency to handle its call center needs.[11]

As to the second issue, Bankard denied that there was bad faith on its part in bargaining with the Union. It came up with counter-offers to the Union's proposals, but the latter's demands were far beyond what management could give. Nonetheless, Bankard continued to negotiate in good faith until the Memorandum of Agreement (*MOA*) re-negotiating the provisions of the 1997-2002, Collective Bargaining Agreement (*CBA*) was entered into between Bankard and the Union. The CBA was overwhelmingly ratified by the Union members. For said reason, Bankard contended that the issue of bad faith in bargaining had become moot and academic.[12]

On the other hand, the Union alleged that contractualization started in Bankard in 1995 in the Records Communications Management Division, particularly in the mailing unit, which was composed of two (2) employees and fourteen (14) messengers. They were hired as contractual workers to perform the functions of the regular employees who had earlier resigned and availed of the MRP.[13] According to the Union, there were other departments in Bankard utilizing messengers to perform work load considered for regular employees, like the Marketing Department, Voice Authorizational Department, Computer Services Department, and Records Retention Department. The Union contended that the number of regular employees had been reduced substantially through the management scheme of freeze-hiring policy on positions vacated by regular employees on the basis of cost-cutting measures and the introduction of a more drastic formula of streamlining its regular employees through the MRP.[14]

With regard to the second issue, the Union averred that Bankard's proposals were way below their demands, showing

[11] *Id.* at 71.

[12] *Id.* at 73.

[13] *Id.*

[14] *Id.* at 73-74.

that the management had no intention of reaching an agreement. It was a scheme calculated to force the Union to declare a bargaining deadlock.[15]

On May 31, 2001, the NLRC issued its Resolution[16] declaring that the management committed acts considered as unfair labor practice (*ULP*) under Article 248 (c) of the Labor Code. It ruled that:

> The act of management of reducing its number of employees thru application of the Manpower Rationalization Program and subsequently contracting the same to other contractual employees defeats the purpose or reason for streamlining the employees. The ultimate effect is to reduce the number of union members and increasing the number of contractual employees who could never be members of the union for lack of qualification. Consequently, the union was effectively restrained in their movements as a union on their rights to self-organization. Management had successfully limited and prevented the growth of the Union and the acts are clear violation of the provisions of the Labor Code and could be considered as Unfair Labor Practice in the light of the provisions of Article 248 paragraph (c) of the Labor Code.[17]

The NLRC, however, agreed with Bankard that the issue of bargaining in bad faith was rendered moot and academic by virtue of the finalization and signing of the CBA between the management and the Union.[18]

Unsatisfied, both parties filed their respective motions for partial reconsideration. Bankard assailed the NLRC's finding of acts of ULP on its part. The Union, on the other hand, assailed the NLRC ruling on the issue of bad faith bargaining.

On September 24, 2001, the NLRC issued the Order[19] denying both parties' motions for lack of merit.

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[15] *Id.* at 74.

[16] *Id.* at 69-76.

[17] *Id.* at 75.

[18] *Id.*

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

On December 28, 2001, Bankard filed a petition for *certiorari* under Rule 65 with the CA arguing that the NLRC gravely abused its discretion amounting to lack or excess of jurisdiction when:

1. It issued the Resolution, dated May 31, 2001, particularly in finding that Bankard committed acts of unfair labor practice; and,
2. It issued the Order dated September 24, 2001 denying Bankard's partial motion for reconsideration.[20]

The Union filed two (2) comments, dated January 22, 2002, through its NCR Director, Cornelio Santiago, and another, dated February 6, 2002, through its President, Paulo Buenconsejo, both praying for the dismissal of the petition and insisting that Bankard's resort to contractualization or outsourcing of contracts constituted ULP. It further alleged that Bankard committed ULP when it conducted CBA negotiations in bad faith with the Union.

Ruling of the Court of Appeals

The CA dismissed the petition, finding that the NLRC ruling was supported by substantial evidence.

The CA agreed with Bankard that job contracting, outsourcing and/or contracting out of jobs did not *per se* constitute ULP, especially when made in good faith and for valid purposes. Despite Bankard's claim of good faith in resorting to job contractualization for purposes of cost-efficient operations and its non-interference with the employees' right to self-organization, the CA agreed with the NLRC that Bankard's acts impaired the employees right to self-organization and should be struck down as illegal and invalid pursuant to Article 248 (c)[21] of the Labor Code. The CA thus, ruled in this wise:

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[20] *Id.* at 54-55.

[21] Art. 248. UNFAIR LABOR PRACTICES OF EMPLOYERS. — It shall be unlawful for an employer to commit any of the following unfair labor practices:

x x x x x x x x x

We cannot agree more with public respondent. Incontrovertible is the fact that petitioner's acts, particularly its promotion of the program enticing employees to tender their voluntary resignation in exchange for financial packages, resulted to a union dramatically reduced in numbers. Coupled with the management's policy of "freeze-hiring" of regular employees and contracting out jobs to contractual workers, petitioner was able to limit and prevent the growth of the Union, an act that clearly constituted unfair labor practice.[22]

In its assailed decision, the CA affirmed the May 31, 2001 Resolution and the September 24, 2001 Order of the NLRC.

Aggrieved, Bankard filed a motion for reconsideration. The CA subsequently denied it for being a mere repetition of the grounds previously raised. Hence, the present petition bringing up this lone issue:

THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER BANKARD, INC. COMMITTED ACTS OF UNFAIR LABOR PRACTICE WHEN IT DISMISSED THE PETITION FOR *CERTIORARI* AND DENIED THE MOTION FOR RECONSIDERATION FILED BY PETITIONER.[23]

Ruling of the Court

The Court finds merit in the petition.

Well-settled is the rule that "factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence."[24] Furthermore, the factual findings of the NLRC,

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(c) to contract out services or function being performed by union member when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization.

x x x x x x x x x

[22] *Rollo*, p. 36.

[23] *Id.* at 17.

[24] *Prince Transport, Inc. v. Garcia*, G.R. No. 167291, January 12, 2011, 639 SCRA 312, 324.

when affirmed by the CA, are generally conclusive on this Court.[25] When the petitioner, however, persuasively alleges that there is insufficient or insubstantial evidence on record to support the factual findings of the tribunal or court *a quo*, then the Court, exceptionally, may review factual issues raised in a petition under Rule 45 in the exercise of its discretionary appellate jurisdiction.[26]

This case involves determination of whether or not Bankard committed acts considered as ULP. The underlying concept of ULP is found in Article 247 of the Labor Code, to wit:

Article 247. 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. x x x

The Court has ruled that the prohibited acts considered as ULP relate to the workers' right to self-organization and to the observance of a CBA. It refers to "acts that violate the workers' right to organize."[27] Without that element, the acts, even if unfair, are not ULP.[28] Thus, an employer may only be held liable for unfair labor practice if it can be shown that his

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[25] *Career Philippines Shipmanagement, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, citing *Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 541.

[26] *Id.*

[27] *Culili v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 165381, February 9, 2011, 642 SCRA 338, 360, citing *Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery v. Asia Brewery, Inc.*, G.R. No. 162025, August 3, 2010, 626 SCRA 376, 388.

[28] *General Santos Coca-Cola Plant Free Workers Union-Tupas v. Coca-Cola Bottlers Phils., Inc.* (*General Santos City*), G.R. No. 178647, February 13, 2009, 579 SCRA 414, 419, citing *Philcom Employees Union v. Philippine Global Communication*, 527 Phil. 540, 557 (2006).

acts affect in whatever manner the right of his employees to self-organize.[29]

In this case, the Union claims that Bankard, in implementing its MRP which eventually reduced the number of employees, clearly violated Article 248 (c) of the Labor Code which states that:

> **Art. 248.** *Unfair labor practices of employers.* — It shall be unlawful for an employer to commit any of the following unfair labor practice:
>
> x x x x x x x x x
>
> (c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization;
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> x x x x x x x x x

Because of said reduction, Bankard subsequently contracted out the jobs held by former employees to other contractual employees. The Union specifically alleges that there were other departments in Bankard, Inc. which utilized messengers to perform work load considered for regular employees like the Marketing Department, Voice Authorizational Department, Computer Services Department, and Records Retention Department.[30] As a result, the number of union members was reduced, and the number of contractual employees, who were never eligible for union membership for lack of qualification, increased.

The general principle is that the one who makes an allegation has the burden of proving it. While there are exceptions to this general rule, in ULP cases, the alleging party has the burden of proving the ULP;[31] and in order to show that the employer committed ULP under the Labor Code, substantial evidence is

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[29] *Supra* note 27, at 361, citing *Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation*, 362 Phil. 452, 464 (1999).

[30] *Rollo*, p. 208.

[31] *UST Faculty Union v. UST*, G.R. No. 180892, April 7, 2009, 584 SCRA 648, 656.

required to support the claim.[32] Such principle finds justification in the fact that ULP is punishable with both civil and/or criminal sanctions.[33]

Aside from the bare allegations of the Union, nothing in the records strongly proves that Bankard intended its program, the MRP, as a tool to drastically and deliberately reduce union membership. Contrary to the findings and conclusions of both the NLRC and the CA, there was no proof that the program was meant to encourage the employees to disassociate themselves from the Union or to restrain them from joining any union or organization. There was no showing that it was intentionally implemented to stunt the growth of the Union or that Bankard discriminated, or in any way singled out the union members who had availed of the retirement package under the MRP. True, the program might have affected the number of union membership because of the employees' voluntary resignation and availment of the package, but it does not necessarily follow that Bankard indeed purposely sought such result. It must be recalled that the MRP was implemented as a valid cost-cutting measure, well within the ambit of the so-called management prerogatives. Bankard contracted an independent agency to meet business exigencies. In the absence of any showing that Bankard was motivated by ill will, bad faith or malice, or that it was aimed at interfering with its employees' right to self-organize, it cannot be said to have committed an act of unfair labor practice.[34]

"Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise."[35]

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[32] *Id.,* citing *Standard Chartered Bank Employees Union (NUBE) v. Confesor*, 476 Phil. 346, 367 (2004).

[33] *Id.,* citing Labor Code, Art. 247.

[34] *General Santos Coca-Cola Plant Free Workers Union-Tupas v. Coca-Cola Bottlers Phil., Inc.* (*General Santos City*), *supra* note 28.

[35] *Niña Jewelry Manufacturing of Metal Arts, Inc. v. Montecillo*, G.R. No. 188169, November 28, 2011, 661 SCRA 416, 432, citing *Honorable*

Unfortunately, the Union, which had the burden of adducing substantial evidence to support its allegations of ULP, failed to discharge such burden.[36]

The employer's right to conduct the affairs of its business, according to its own discretion and judgment, is well-recognized.[37] Management has a wide latitude to conduct its own affairs in accordance with the necessities of its business.[38] As the Court once said:

> The Court has always respected a company's exercise of its prerogative to devise means to improve its operations. Thus, we have held that management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, supervision and transfer of employees, working methods, time, place and manner of work.
>
> This is so because the law on unfair labor practices is not intended to deprive employers of their fundamental right to prescribe and enforce such rules as they honestly believe to be necessary to the proper, productive and profitable operation of their business.[39]

Contracting out of services is an exercise of business judgment or management prerogative. Absent any proof that management acted in a malicious or arbitrary manner, the Court will not interfere with the exercise of judgment by an employer.[40] Furthermore, bear in mind that ULP is punishable with both civil and/or criminal sanctions.[41] As such, the party so alleging

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Ombudsman Simeon Marcelo v. Leopoldo Bungubung, G.R. No. 175201, April 23, 2008, 552 SCRA 589, 608.

[36] *Supra* note 28.

[37] *The Coca-Cola Export Corporation v. Gacayan*, G.R. No. 149433, December 15, 2010, 638 SCRA 377, 398.

[38] *Julie's Bakeshop v. Arnaiz*, G.R. No. 173882, February 15, 2012, 666 SCRA 101, 104.

[39] *Philcom Employees Union v. Philippine Global Communications*, 527 Phil. 540, 562-563 (2006).

[40] *Manila Electric Company v. Quisumbing*, 383 Phil. 47, 60 (2000).

[41] *UST Faculty Union v. UST*, *supra* note 31.

must necessarily prove it by substantial evidence. The Union, as earlier noted, failed to do this. Bankard merely validly exercised its management prerogative. Not shown to have acted maliciously or arbitrarily, no act of ULP can be imputed against it.

WHEREFORE, the petition is **GRANTED.** The Decision of the Court of Appeals in CA-G.R. SP No. 68303, dated October 20, 2005, and its Resolution, dated February 21, 2006, are **REVERSED** and **SET ASIDE.** Petitioner Bankard, Inc. is hereby declared as not having committed any act constituting Unfair Labor Practice under Article 248 of the Labor Code.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 173297. March 6, 2013]

STRONGHOLD INSURANCE COMPANY, INC., *petitioner*, *vs*. **TOMAS CUENCA, MARCELINA CUENCA, MILAGROS CUENCA, BRAMIE T. TAYACTAC, and MANUEL D. MARAÑON, JR.,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; EVERY ACTION MUST BE PROSECUTED OR DEFENDED IN THE NAME OF REAL PARTY IN INTEREST; REASON FOR THE RULE.—** To ensure the observance of the mandate of the Constitution, Section 2, Rule 3 of the *Rules of Court* requires that unless otherwise authorized by law or the *Rules of Court* every action must be prosecuted or defended in the

name of the real party in interest. Under the same rule, a real party in interest is one who stands to be benefited or injured by the judgment in the suit, or one who is entitled to the avails of the suit. Accordingly, a person, to be a real party in interest in whose name an action must be prosecuted, should appear to be the present real owner of the right sought to be enforced, that is, his interest must be a present substantial interest, not a mere expectancy, or a future, contingent, subordinate, or consequential interest. Where the plaintiff is not the real party in interest, the ground for the motion to dismiss is lack of cause of action. The reason for this is that the courts ought not to pass upon questions not derived from any actual controversy. Truly, a person having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action. Nor does a court acquire jurisdiction over a case where the real party in interest is not present or impleaded.

2. **ID.; ID.; ID.; ID.; PURPOSES OF THE REQUIREMENT FOR THE REAL PARTY IN INTEREST PROSECUTING OR DEFENDING AN ACTION.—** The purposes of the requirement for the real party in interest prosecuting or defending an action at law are: (*a*) to prevent the prosecution of actions by persons without any right, title or interest in the case; (*b*) to require that the actual party entitled to legal relief be the one to prosecute the action; (*c*) to avoid a multiplicity of suits; and (*d*) to discourage litigation and keep it within certain bounds, pursuant to sound public policy. Indeed, considering that all civil actions must be based on a cause of action, defined as the act or omission by which a party violates the right of another, the former as the defendant must be allowed to insist upon being opposed by the real party in interest so that he is protected from further suits regarding the same claim. Under this rationale, the requirement benefits the defendant because "the defendant can insist upon a plaintiff who will afford him a setup providing good *res judicata* protection if the struggle is carried through on the merits to the end." The rule on real party in interest ensures, therefore, that the party with the legal right to sue brings the action, and this interest ends when a judgment involving the nominal plaintiff will protect the defendant from a subsequent identical

action. Such a rule is intended to bring before the court the party rightfully interested in the litigation so that only real controversies will be presented and the judgment, when entered, will be binding and conclusive and the defendant will be saved from further harassment and vexation at the hands of other claimants to the same demand.

3. **ID.; ID.; ID.; ID.; GAIN FROM THE LITIGATION IS NOT THE CONTROLLING FACTOR TO DETERMINE A PERSON'S INTEREST IN A CASE; A PERSON'S INTEREST IN THE CONTROVERSY, EXPLAINED.—** [T]he real party in interest need not be the person who ultimately will benefit from the successful prosecution of the action. Hence, to aid itself in the proper identification of the real party in interest, the court should first ascertain the nature of the substantive right being asserted, and then must determine whether the party asserting that right is recognized as the real party in interest under the rules of procedure. Truly, that a party stands to gain from the litigation is not necessarily controlling. It is fundamental that the courts are established in order to afford reliefs to persons whose rights or property interests have been invaded or violated, or are threatened with invasion by others' conduct or acts, and to give relief only at the instance of such persons. The jurisdiction of a court of law or equity may not be invoked by or for an individual whose rights have not been breached. The remedial right or the remedial obligation is the person's interest in the controversy. The right of the plaintiff or other claimant is alleged to be violated by the defendant, who has the correlative obligation to respect the right of the former. Otherwise put, without the right, a person may not become a party plaintiff; without the obligation, a person may not be sued as a party defendant; without the violation, there may not be a suit. In such a situation, it is legally impossible for any person or entity to be both plaintiff and defendant in the same action, thereby ensuring that the controversy is actual and exists between adversary parties. Where there are no adversary parties before it, the court would be without jurisdiction to render a judgment.

4. **ID.; ID.; ID.; ID.; STOCKHOLDERS ARE NOT THE REAL PARTIES IN INTEREST TO CLAIM AND RECOVER DAMAGES ARISING FROM THE WRONGFUL**

ATTACHMENT OF THE CORPORATION'S ASSETS.— There is no dispute that the properties subject to the levy on attachment belonged to Arc Cuisine, Inc. alone, not to the Cuencas and Tayactac in their own right. They were only stockholders of Arc Cuisine, Inc., which had a personality distinct and separate from that of any or all of them. The damages occasioned to the properties by the levy on attachment, wrongful or not, prejudiced Arc Cuisine, Inc., not them. As such, only Arc Cuisine, Inc. had the right under the substantive law to claim and recover such damages. This right could not also be asserted by the Cuencas and Tayactac unless they did so in the name of the corporation itself. But that did not happen herein, because Arc Cuisine, Inc. was not even joined in the action either as an original party or as an intervenor. The Cuencas and Tayactac were clearly not vested with any direct interest in the personal properties coming under the levy on attachment by virtue alone of their being stockholders in Arc Cuisine, Inc. Their stockholdings represented only their proportionate or aliquot interest in the properties of the corporation, but did not vest in them any legal right or title to any specific properties of the corporation. Without doubt, Arc Cuisine, Inc. remained the owner as a distinct legal person. Given the separate and distinct legal personality of Arc Cuisine, Inc., the Cuencas and Tayactac lacked the legal personality to claim the damages sustained from the levy of the former's properties. x x x That Marañon knew that Arc Cuisine, Inc. owned the properties levied on attachment but he still excluded Arc Cuisine, Inc. from his complaint was of no consequence now. The Cuencas and Tayactac still had no right of action even if the affected properties were then under their custody at the time of the attachment, considering that their custody was only incidental to the operation of the corporation.

APPEARANCES OF COUNSEL

Mendoza Taguian & Garces for petitioner.

Anunciacion G. Ayo and *Elizabeth R. Pulumbarit* for Marcelina Cuenca, Milagros Cuenca and Bramie B. Tayactac.

De Castro and Cagampang Law Offices for Manuel D. Marañon, Jr.

DECISION

BERSAMIN, *J.*:

The personality of a corporation is distinct and separate from the personalities of its stockholders. Hence, its stockholders are not themselves the real parties in interest to claim and recover compensation for the damages arising from the wrongful attachment of its assets. Only the corporation is the real party in interest for that purpose.

The Case

Stronghold Insurance Company, Inc. (Stronghold Insurance), a domestic insurance company, assails the decision promulgated on January 31, 2006,[1] whereby the Court of Appeals (CA) in CA-G.R. CV No. 79145 affirmed the judgment rendered on April 28, 2003 by the Regional Trial Court in Parañaque City (RTC) holding Stronghold Insurance and respondent Manuel D. Marañon, Jr. jointly and solidarily liable for damages to respondents Tomas Cuenca, Marcelina Cuenca, Milagros Cuenca (collectively referred to as Cuencas), and Bramie Tayactac, upon the latter's claims against the surety bond issued by Stronghold Insurance for the benefit of Marañon.[2]

Antecedents

On January 19, 1998, Marañon filed a complaint in the RTC against the Cuencas for the collection of a sum of money and damages. His complaint, docketed as Civil Case No. 98-023, included an application for the issuance of a writ of preliminary attachment.[3] On January 26, 1998, the RTC granted the application for the issuance of the writ of preliminary attachment

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[1] *Rollo,* pp. 48-61; penned by Associate Justice Mariano C. del Castillo (now a Member of the Court), and concurred in by Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice/retired) and Associate Justice Magdangal M. de Leon.

[2] *Id.* at 205-210.

[3] *Id.* at 49.

conditioned upon the posting of a bond of ₱1,000,000.00 executed in favor of the Cuencas. Less than a month later, Marañon amended the complaint to implead Tayactac as a defendant.[4]

On February 11, 1998, Marañon posted SICI Bond No. 68427 JCL (4) No. 02370 in the amount of ₱1,000,000.00 issued by Stronghold Insurance. Two days later, the RTC issued the writ of preliminary attachment.[5] The sheriff served the writ, the summons and a copy of the complaint on the Cuencas on the same day. The service of the writ, summons and copy of the complaint were made on Tayactac on February 16, 1998.[6]

Enforcing the writ of preliminary attachment on February 16 and February 17, 1998, the sheriff levied upon the equipment, supplies, materials and various other personal property belonging to Arc Cuisine, Inc. that were found in the leased corporate office-cum-commissary or kitchen of the corporation.[7] On February 19, 1998, the sheriff submitted a report on his proceedings,[8] and filed an *ex parte* motion seeking the transfer of the levied properties to a safe place. The RTC granted the *ex parte* motion on February 23, 1998.[9]

On February 25, 1998, the Cuencas and Tayactac presented in the RTC a *Motion to Dismiss and to Quash Writ of Preliminary Attachment* on the grounds that: (1) the action involved intra-corporate matters that were within the original and exclusive jurisdiction of the Securities and Exchange Commission (SEC); and (2) there was another action pending in the SEC as well as a criminal complaint in the Office of the City Prosecutor of Parañaque City.[10]

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[4] *Id.*

[5] *Id.* at 50.

[6] *Id.* at 51.

[7] *Id.* at 366-367.

[8] *Id.* at 51.

[9] *Id.*

[10] *Id.*

On March 5, 1998, Marañon opposed the motion.[11]

On August 10, 1998, the RTC denied the *Motion to Dismiss and to Quash Writ of Preliminary Attachment*, stating that the action, being one for the recovery of a sum of money and damages, was within its jurisdiction.[12]

Under date of September 3, 1998, the Cuencas and Tayactac moved for the reconsideration of the denial of their *Motion to Dismiss and to Quash Writ of Preliminary Attachment*, but the RTC denied their motion for reconsideration on September 16, 1998.

Thus, on October 14, 1998, the Cuencas and Tayactac went to the CA on *certiorari* and prohibition to challenge the August 10, 1998 and September 16, 1998 orders of the RTC on the basis of being issued with grave abuse of discretion amounting to lack or excess of jurisdiction (C.A.-G.R. SP No. 49288).[13]

On June 16, 1999, the CA promulgated its assailed decision in C.A.-G.R. SP No. 49288,[14] granting the petition. It annulled and set aside the challenged orders, and dismissed the amended complaint in Civil Case No. 98-023 for lack of jurisdiction, to wit:

> **WHEREFORE,** the Orders herein assailed are hereby **ANNULLED AND SET ASIDE**, and the judgment is hereby rendered **DISMISSING** the Amended Complaint in Civil Case No. 98-023 of the respondent court, for lack of jurisdiction.
>
> **SO ORDERED.**

On December 27, 1999, the CA remanded to the RTC for hearing and resolution of the Cuencas and Tayactac's claim

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[11] *Id.* at 51-52.

[12] *Id.* at 52.

[13] *Id.*

[14] *Id.* at 177-182; penned by Associate Justice Hector L. Hofileña (retired), and concurred in by Associate Justice Omar U. Amin (retired) and Associate Justice Presbitero J. Velasco, Jr. (now a Member of the Court).

for the damages sustained from the enforcement of the writ of preliminary attachment.[15]

On February 17, 2000,[16] the sheriff reported to the RTC, as follows:

> On the scheduled inventory of the properties (February 17, 2000) and to comply with the Resolution of the Court of Appeals dated December 24, 1999 ordering the delivery of the attached properties to the defendants, the proceedings thereon being:
>
> 1. With the assistance for (sic) the counsel of Cuencas, Atty. Pulumbarit, Atty. Ayo, defendant Marcelina Cuenca, and two Court Personnel, Robertson Catorce and Danilo Abanto, went to the warehouse where Mr. Marañon recommended for safekeeping the properties in which he personally assured its safety, at No. 14, Marian II Street, East Service Road, Parañaque Metro Manila.
>
> 2. That to our surprise, said warehouse is now tenanted by a new lessee and the properties were all gone and missing.
>
> 3. That there are informations (sic) that the properties are seen at Conti's Pastry & Bake Shop owned by Mr. Marañon, located at BF Homes in Parañaque City.

On April 6, 2000, the Cuencas and Tayactac filed a *Motion to Require Sheriff to Deliver Attached Properties and to Set Case for Hearing*,[17] praying that: (1) the Branch Sheriff be ordered to immediately deliver the attached properties to them; (2) Stronghold Insurance be directed to pay them the damages being sought in accordance with its undertaking under the surety bond for ₱1,000,0000.00; (3) Marañon be held personally liable to them considering the insufficiency of the amount of the surety bond; (4) they be paid the total of ₱1,721,557.20 as actual damages representing the value of the lost attached properties because they, being accountable for the properties, would be turning that amount over to Arc Cuisine, Inc.; and (5) Marañon

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[15] *Id.* at 52.

[16] *Id.* at 52-53.

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

be made to pay ₱200,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱100,000.00 as attorney's fees.

Stronghold Insurance filed its answer and opposition on April 13, 2000. In turn, the Cuencas and Tayactac filed their reply on May 5, 2000.

On May 25, 2000, Marañon filed his own comment/opposition to the *Motion to Require Sheriff to Deliver Attached Properties and to Set Case for Hearing* of the Cuencas and Tayactac, arguing that because the attached properties belonged to Arc Cuisine, Inc. 50% of the stockholding of which he and his relatives owned, it should follow that 50% of the value of the missing attached properties constituted liquidating dividends that should remain with and belong to him. Accordingly, he prayed that he should be required to return only ₱100,000.00 to the Cuencas and Tayactac.[18]

On June 5, 2000, the RTC commanded Marañon to surrender all the attached properties to the RTC through the sheriff within 10 days from notice; and directed the Cuencas and Tayactac to submit the affidavits of their witnesses in support of their claim for damages.[19]

On June 6, 2000, the Cuencas and Tayactac submitted their *Manifestation and Compliance*.[20]

Ruling of the RTC

After trial, the RTC rendered its judgment on April 28, 2003, holding Marañon and Stronghold Insurance jointly and solidarily liable for damages to the Cuencas and Tayactac,[21] *viz.*:

WHEREFORE, premises considered, as the defendants were able to preponderantly prove their entitlement for damages by reason of the unlawful and wrongful issuance of the writ of attachment,

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[18] *Id.* at 54.

[19] *Id.*

[20] *Id.* at 54-55.

[21] *Id.* at 210.

MANUEL D. MARAÑON, JR., plaintiff and defendant, Stronghold Insurance Company, Inc., are found to be jointly and solidarily liable to pay the defendants the following amount to wit:

(1) PhP1,000,000.00 representing the amount of the bond;

(2) PhP100,000.00 as moral damages;

(3) PhP50,000.00 as exemplary damages;

(4) Php100,000.00 as attorney's fees; and

(5) To pay the cost of suit.

SO ORDERED.

Ruling of the CA

Only Stronghold Insurance appealed to the CA (C.A.-G.R. CV No. 79145), assigning the following errors to the RTC, to wit:

I.

THE LOWER COURT ERRED IN ORDERING SURETY-APPELLANT TO PAY THE AMOUNT OF ₱1,000,000.00 REPRESENTING THE AMOUNT OF THE BOND AND OTHER DAMAGES TO THE DEFENDANTS.

II.

THE LOWER COURT ERRED IN NOT TAKING INTO ACCOUNT THE INDEMNITY AGREEMENT (EXH. "2-SURETY") EXECUTED BY MANUEL D. MARAÑON, JR. IN FAVOR OF STRONGHOLD WHEREIN HE BOUND HIMSELF TO INDEMNIFY STRONGHOLD OF WHATEVER AMOUNT IT MAY BE HELD LIABLE ON ACCOUNT OF THE ISSUANCE OF THE ATTACHMENT BOND.[22]

On January 31, 2006, the CA, finding no reversible error, promulgated its decision affirming the judgment of the RTC.[23]

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[22] *Id.* at 230.

[23] *Supra* note 1.

Stronghold Insurance moved for reconsideration, but the CA denied its motion for reconsideration on June 22, 2006.

Issues

Hence, this appeal by petition for review on *certiorari* by Stronghold Insurance, which submits that:

I.

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR AND DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND APPLICABLE DECISIONS OF THE HONORABLE COURT CONSIDERING THAT THE COURT OF APPEALS AFFIRMED THE ERRONEOUS DECISION OF THE TRIAL COURT HOLDING RESPONDENT MARA[Ñ]ON AND PETITIONER STRONGHOLD JOINTLY AND SOLIDARILY LIABLE TO PAY THE RESPONDENTS CUENCA, *et al.*, FOR PURPORTED DAMAGES BY REASON OF THE ALLEGED UNLAWFUL AND WRONGFUL ISSUANCE OF THE WRIT OF ATTACHMENT, DESPITE THE FACT THAT:

A) RESPONDENT CUENCA, *et al.*, ARE NOT THE OWNERS OF THE PROPERTIES ATTACHED AND THUS, ARE NOT THE PROPER PARTIES TO CLAIM ANY PURPORTED DAMAGES ARISING THEREFROM.

B) THE PURPORTED DAMAGES BY REASON OF THE ALLEGED UNLAWFUL AND WRONGFUL ISSUANCE OF THE WRIT OF ATTACHMENT WERE CAUSED BY THE NEGLIGENCE OF THE BRANCH SHERIFF OF THE TRIAL COURT AND HIS FAILURE TO COMPLY WITH THE PROVISIONS OF THE RULES OF COURT PERTAINING TO THE ATTACHMENT OF PROPERTIES.

C) THE TRIAL COURT GRAVELY ERRED WHEN IT HELD PETITIONER STRONGHOLD TO BE SOLIDARILY LIABLE WITH RESPONDENT MARA[Ñ]ON TO RESPONDENTS CUENCA, *et al.*, FOR MORAL DAMAGES, EXEMPLARY DAMAGES, ATTORNEY'S FEES AND COST OF SUIT DESPITE THE FACT THAT THE GUARANTY OF PETITIONER

STRONGHOLD PURSUANT TO ITS SURETY BOND IS LIMITED ONLY TO THE AMOUNT OF ₱1,000,000.00.

II.

IN ANY EVENT, THE DECISION OF THE COURT OF APPEALS SHOULD HAVE HELD RESPONDENT MARA[Ñ]ON TO BE LIABLE TO INDEMNIFY PETITIONER STRONGHOLD FOR ALL PAYMENTS, DAMAGES, COSTS, LOSSES, PENALTIES, CHARGES AND EXPENSES IT SUSTAINED IN CONNECTION WITH THE INSTANT CASE, PURSUANT TO THE INDEMNITY AGREEMENT ENTERED INTO BY PETITIONER STRONGHOLD AND RESPONDENT MARA[Ñ]ON.[24]

On their part, the Cuencas and Tayactac counter:

A. Having actively participated in the trial and appellate proceedings of this case before the Regional Trial Court and the Court of Appeals, respectively, petitioner Stronghold is legally and effectively BARRED by ESTOPPEL from raising for the first time on appeal before this Honorable Court a defense and/or issue not raised below.[25]

B. Even assuming *arguendo* without admitting that the principle of estoppel is not applicable in this instant case, the assailed Decision and Resolution find firm basis in law considering that the writ of attachment issued and enforced against herein respondents has been declared ILLEGAL, NULL AND VOID for having been issued beyond the jurisdiction of the trial court.

C. There having been a factual and legal finding of the illegality of the issuance and consequently, the enforcement of the writ of attachment, Marañon and his surety Stronghold, consistent with the facts and the law, including the contract of suretyship they entered into, are JOINTLY AND SEVERALLY liable for the damages sustained by herein respondents by reason thereof.

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

[25] *Id.* at 388.

D. Contrary to the allegations of Stronghold, its liability as surety under the attachment bond without which the writ of attachment shall not issue and be enforced against herein respondent if prescribed by law. In like manner, the obligations and liability on the attachment bond are also prescribed by law and not left to the discretion or will of the contracting parties to the prejudice of the persons against whom the writ was issued.

E. Contrary to the allegations of Stronghold, its liability for the damages sustained by herein respondents is both a statutory and contractual obligation and for which, it cannot escape accountability and liability in favor of the person against whom the illegal writ of attachment was issued and enforced. To allow Stronghold to delay, excuse or exempt itself from liability is unconstitutional, unlawful, and contrary to the basic tenets of equity and fair play.

F. While the liability of Stronghold as surety indeed covers the principal amount of ₱1,000,000.00, nothing in the law and the contract between the parties limit or exempt Stronghold from liability for other damages. Including costs of suit and interest.[26]

In his own comment,[27] Marañon insisted that he could not be personally held liable under the attachment bond because the judgment of the RTC was rendered without jurisdiction over the subject matter of the action that involved an intra-corporate controversy among the stockholders of Arc Cuisine, Inc.; and that the jurisdiction properly pertained to the SEC, where another action was already pending between the parties.

Ruling

Although the question of whether the Cuencas and Tayactac could themselves recover damages arising from the wrongful attachment of the assets of Arc Cuisine, Inc. by claiming against the bond issued by Stronghold Insurance was not raised in the CA, we do not brush it aside because the actual legal interest

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[26] *Id.* at 392-393.

[27] *Id.* at 353-356.

of the parties in the subject of the litigation is a matter of substance that has jurisdictional impact, even on appeal before this Court.

The petition for review is meritorious.

There is no question that a litigation should be disallowed immediately if it involves a person without any interest at stake, for it would be futile and meaningless to still proceed and render a judgment where there is no actual controversy to be thereby determined. Courts of law in our judicial system are not allowed to delve on academic issues or to render advisory opinions. They only resolve actual controversies, for that is what they are authorized to do by the Fundamental Law itself, which forthrightly ordains that the judicial power is wielded only to settle actual controversies involving rights that are legally demandable and enforceable.[28]

To ensure the observance of the mandate of the Constitution, Section 2, Rule 3 of the *Rules of Court* requires that unless otherwise authorized by law or the *Rules of Court* every action must be prosecuted or defended in the name of the real party in interest.[29] Under the same rule, a real party in interest is one who stands to be benefited or injured by the judgment in the suit, or one who is entitled to the avails of the suit. Accordingly, a person, to be a real party in interest in whose name an action must be prosecuted, should appear to be the present real owner of the right sought to be enforced, that is, his interest must be a present substantial interest, not a mere expectancy, or a future, contingent, subordinate, or consequential interest.[30] Where the

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[28] Section 1, Article VIII, 1987 Constitution.

[29] Section 2. Parties in interest. — A real party in interest is the party who stands to be benefitted or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)

[30] *Rayo vs. Metropolitan Bank and Trust Company*, G.R. No. 165142, December 10, 2007, 539 SCRA 571, 578-579; *Northeastern College Teachers and Employees Association vs. Northeastern College, Inc.*, G.R. No. 152923, January 19, 2009, 576 SCRA 149, 174.

plaintiff is not the real party in interest, the ground for the motion to dismiss is lack of cause of action.[31] The reason for this is that the courts ought not to pass upon questions not derived from any actual controversy. Truly, a person having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action.[32] Nor does a court acquire jurisdiction over a case where the real party in interest is not present or impleaded.

The purposes of the requirement for the real party in interest prosecuting or defending an action at law are: *(a)* to prevent the prosecution of actions by persons without any right, title or interest in the case; *(b)* to require that the actual party entitled to legal relief be the one to prosecute the action; *(c)* to avoid a multiplicity of suits; and *(d)* to discourage litigation and keep it within certain bounds, pursuant to sound public policy.[33] Indeed, considering that all civil actions must be based on a cause of action,[34] defined as the act or omission by which a party *violates* the right of another,[35] the former as the defendant must be allowed to insist upon being opposed by the real party in interest so that he is protected from further suits regarding the same claim.[36] Under this rationale, the requirement benefits the defendant because "the defendant can insist upon a plaintiff who will afford him a setup providing good *res judicata* protection if the struggle is carried through on the merits to the end."[37]

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[31] *Sustiguer v. Tamayo*, G.R. No. 29341, Aug. 21, 1989, 176 SCRA 579, 588-589.

[32] *Oco v. Limbaring*, G.R. No. 161298, January 31, 2006, 481 SCRA 348, 358.

[33] *Ortiz v. San Miguel Corporation*, G.R. Nos. 151983-84, July 31, 2008, 560 SCRA 654, 672-673.

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

[35] Section 2, Rule 2, *Rules of Court*.

[36] Friedenthal, Kane & Miller, *Civil Procedure*, West Group, Hornbook Series, 2nd Edition, §6.3, p. 321.

[37] *Id.*

The rule on real party in interest ensures, therefore, that the party with the legal right to sue brings the action, and this interest ends when a judgment involving the nominal plaintiff will protect the defendant from a subsequent identical action. Such a rule is intended to bring before the court the party rightfully interested in the litigation so that only real controversies will be presented and the judgment, when entered, will be binding and conclusive and the defendant will be saved from further harassment and vexation at the hands of other claimants to the same demand.[38]

But the real party in interest need not be the person who ultimately will benefit from the successful prosecution of the action. Hence, to aid itself in the proper identification of the real party in interest, the court should first ascertain the nature of the substantive right being asserted, and then must determine whether the party asserting that right is recognized as the real party in interest under the rules of procedure. Truly, that a party stands to gain from the litigation is not necessarily controlling.[39]

It is fundamental that the courts are established in order to afford reliefs to persons whose rights or property interests have been invaded or violated, or are threatened with invasion by others' conduct or acts, and to give relief only at the instance of such persons. The jurisdiction of a court of law or equity may not be invoked by or for an individual whose rights have not been breached.[40]

The remedial right or the remedial obligation is the person's interest in the controversy. The right of the plaintiff or other claimant is alleged to be violated by the defendant, who has the correlative obligation to respect the right of the former. Otherwise put, without the right, a person may not become a party plaintiff; without the obligation, a person may not be sued as a party defendant; without the violation, there may not be a suit. In such a situation, it is legally impossible for any person or entity

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[38] 59 Am Jur 2nd, Parties, § 35.

[39] Friedenthal, Kane & Miller, *op. cit.*, p. 320.

[40] 59 Am Jur 2d, Parties, § 30.

to be both plaintiff and defendant in the same action, thereby ensuring that the controversy is actual and exists between adversary parties. Where there are no adversary parties before it, the court would be without jurisdiction to render a judgment.[41]

There is no dispute that the properties subject to the levy on attachment belonged to Arc Cuisine, Inc. alone, not to the Cuencas and Tayactac in their own right. They were only stockholders of Arc Cuisine, Inc., which had a personality distinct and separate from that of any or all of them.[42] The damages occasioned to the properties by the levy on attachment, wrongful or not, prejudiced Arc Cuisine, Inc., not them. As such, only Arc Cuisine, Inc. had the right under the substantive law to claim and recover such damages. This right could not also be asserted by the Cuencas and Tayactac unless they did so in the name of the corporation itself. But that did not happen herein, because Arc Cuisine, Inc. was not even joined in the action either as an original party or as an intervenor.

The Cuencas and Tayactac were clearly not vested with any direct interest in the personal properties coming under the levy on attachment by virtue alone of their being stockholders in Arc Cuisine, Inc. Their stockholdings represented only their proportionate or aliquot interest in the properties of the corporation, but did not vest in them any legal right or title to any specific properties of the corporation. Without doubt, Arc Cuisine, Inc. remained the owner as a distinct legal person.[43]

Given the separate and distinct legal personality of Arc Cuisine, Inc., the Cuencas and Tayactac lacked the legal personality to claim the damages sustained from the levy of the former's properties. According to *Asset Privatization Trust v. Court of Appeals,*[44] even when the foreclosure on the assets of the

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[41] *Id.* § 6.

[42] Section 2, *Corporation Code*; see *Traders Royal Bank v. Court of Appeal*s, G.R. No. 78412, September 26, 1989, 177 SCRA 788, 792.

[43] *Magsaysay-Labrador v. Court of Appeals*, G.R. No. 58168, December 19, 1989, 180 SCRA 266, 271-272.

[44] G.R. No. 121171, December 29, 1998, 300 SCRA 579, 617.

corporation was wrongful and done in bad faith the stockholders had no standing to recover for themselves moral damages; otherwise, they would be appropriating and distributing part of the corporation's assets prior to the dissolution of the corporation and the liquidation of its debts and liabilities. Moreover, in *Evangelista v. Santos*,[45] the Court, resolving whether or not the minority stockholders had the right to bring an action for damages against the principal officers of the corporation for their own benefit, said:

> As to the second question, the complaint shows that the action is for damages resulting from mismanagement of the affairs and assets of the corporation by its principal officer, it being alleged that defendant's maladministration has brought about the ruin of the corporation and the consequent loss of value of its stocks. **The injury complained of is thus primarily to the corporation, so that the suit for the damages claimed should be by the corporation rather than by the stockholders** (3 Fletcher, Cyclopedia of Corporation pp. 977-980). **The stockholders may not directly claim those damages for themselves** for that would result in the appropriation by, and the distribution among them of part of the corporate assets before the dissolution of the corporation and the liquidation of its debts and liabilities, something which cannot be legally done in view of Section 16 of the Corporation Law, which provides:
>
> > No corporation shall make or declare any stock or bond dividend or any dividend whatsoever except from the surplus profits arising from its business, or divide or distribute its capital stock or property other than actual profits among its members or stockholders until after the payment of its debts and the termination of its existence by limitation or lawful dissolution.
>
> x x x x x x x x x
>
> In the present case, **the plaintiff stockholders have brought the action not for the benefit of the corporation but for their own benefit,** since they ask that the defendant make good the losses occasioned by his mismanagement and pay to them the value of their respective participation in the corporate assets on the basis of

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[45] 86 Phil. 387 (1950).

their respective holdings. **Clearly, this cannot be done until all corporate debts, if there be any, are paid and the existence of the corporation terminated by the limitation of its charter or by lawful dissolution in view of the provisions of Section 16 of the Corporation Law.** (Emphasis ours)

It results that plaintiff's complaint shows no cause of action in their favor so that the lower court did not err in dismissing the complaint on that ground.

While plaintiffs ask for remedy to which they are not entitled unless the requirement of Section 16 of the Corporation Law be first complied with, we note that the action stated in their complaint is susceptible of being converted into a derivative suit for the benefit of the corporation by a mere change in the prayer. Such amendment, however, is not possible now, since the complaint has been filed in the wrong court, so that the same has to be dismissed.[46]

That Marañon knew that Arc Cuisine, Inc. owned the properties levied on attachment but he still excluded Arc Cuisine, Inc. from his complaint was of no consequence now. The Cuencas and Tayactac still had no right of action even if the affected properties were then under their custody at the time of the attachment, considering that their custody was only incidental to the operation of the corporation.

It is true, too, that the Cuencas and Tayactac could bring in behalf of Arc Cuisine, Inc. a proper action to recover damages resulting from the attachment. Such action would be one directly brought in the name of the corporation. Yet, that was not true here, for, instead, the Cuencas and Tayactac presented the claim in their own names.

In view of the outcome just reached, the Court deems it unnecessary to give any extensive consideration to the remaining issues.

WHEREFORE, the Court **GRANTS** the petition for review; and **REVERSES** and **SETS ASIDE** the decision of the Court of Appeals in CA-G.R. CV No. 79145 promulgated on January 31, 2006.

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[46] *Id.* at 393-395.

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. 173926. March 6, 2013]

HEIRS OF LORENZO BUENSUCESO, represented by German Buensuceso, as substituted by Iluminada Buensuceso, Ryan Buensuceso and Philip Buensuceso, *petitioners*, *vs.* **LOVY PEREZ, substituted by Erlinda Perez-Hernandez, Teodoro G. Perez and Candida Perez-Atacador,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE LOWER COURTS ARE CONCLUSIVE ON THE SUPREME COURT; EXCEPTION, APPLIED.—** The rules invoked by the respondents are well settled: a Rule 45 petition is limited to questions of law, and the factual findings of the lower courts are, as a rule, conclusive on this Court. The question of who, between German and the respondents, is entitled to the continued possession of the disputed lot involves factual issues and is not the proper subject of a Rule 45 petition. Despite this Rule 45 requirement, however, our pronouncements have likewise recognized exceptions, such as the situation obtaining here – where the tribunals below conflict in their factual findings. We note that the DARAB (in its resolution) in effect reversed its earlier decision and the PARAD's ruling while the CA , in turn, set aside the DARAB's September 4, 2003 resolution. In this light, we cannot support the procedural objection raised.

2. **LABOR AND SOCIAL LEGISLATION; R.A. NO. 6657 IN RELATION TO P.D. NO. 27; CERTIFICATE OF LAND TRANSFER (CLT) DOES NOT VEST FULL OWNERSHIP ON THE HOLDER; HOLDER OF THE CLT MERELY POSSESSES INCHOATE RIGHT SUBJECT TO COMPLIANCE WITH CERTAIN CONDITIONS FOR ACQUIRING FULL OWNERSHIP; APPLICATION.—** We agree with the CA that the mere issuance of the CLT does not vest full ownership on the holder and does not automatically operate to divest the landowner of all of his rights over the landholding. The holder must first comply with certain mandatory requirements to effect a transfer of ownership. Under R.A. No. 6657 in relation with P.D. No. 27 and E.O. No. 228, the title to the landholding shall be issued to the tenant-farmer only upon the satisfaction of the following requirements: *(1) payment in full of the just compensation for the landholding, duly determined by final judgment of the proper court; (2) possession of the qualifications of a farmer-beneficiary under the law; (3) full-pledged membership of the farmer-beneficiary in a duly recognized farmers' cooperative; and (4) actual cultivation of the landholding*. We explained in several cases that while a tenant with a CLT is **deemed the owner** of a landholding, **the CLT does not vest full ownership on him**. The tenant-holder of a CLT merely possesses an inchoate right that is subject to compliance with certain legal preconditions for perfecting title and acquiring full ownership. For these reasons, we hold that Lorenzo's right and claim to ownership over the disputed lot were, at most, inchoate. In the same vein, we hold that German – as Lorenzo's heir – is not automatically rendered the owner of the disputed lot. German must also still first comply with certain procedural and mandatory requirements in order to acquire Lorenzo's rights under the CLT, including the right to acquire ownership of the disputed lot. Under *Section 27 of R.A. No. 6657*, lands not yet fully paid by the beneficiary may be transferred, with prior approval of the DAR, to any heir of the beneficiary who, as a condition for such transfer, shall cultivate the land for himself.

3. **ID.; ID.; FAILURE OF THE CLT HOLDER TO COMPLY WITH HIS OBLIGATIONS DID NOT AUTOMATICALLY RESULT IN THE CANCELLATION OF THE CLT NOR**

REVERSION OF THE LOT TO THE LANDOWNER.— We agree with the DARAB, in its resolution, that Garces had no authority to execute the lease contract. While Garces, as landowner, retained an interest over the disputed lot, any perceived failure on Lorenzo's part to comply with his obligations under the CLT did not cause the automatic cancellation of the CLT nor of the disputed lot's reversion to Garces. "[L]and[s] acquired under P.D. No. 27 [do] not revert to the landowner," and this is true even if the CLT is cancelled. The land must be transferred back to the government and Garces could not, by himself, institute Lovy as the new tenant-beneficiary.

4. **ID.; ID.; ID.; THE PROPER PROCEDURE FOR RELOCATION OF THE LOT BY REASON OF ABANDONMENT OR REFUSAL TO BECOME A BENEFICIARY MUST BE FOLLOWED; EFFECT OF FAILURE TO COMPLY WITH THE PROCEDURE.—** Pursuant to *R.A. No. 6657* in relation with *P.D. No. 27*, any sale or disposition of agricultural lands made after the effectivity of R.A . No. 6657 which has been found contrary to its provisions shall be null and void. **The proper procedure for the reallocation of the disputed lot must be followed** to ensure that there indeed exist grounds for the cancellation of the CLT or for forfeiture of rights under it, and that the lot is subsequently awarded to a qualified farmer-tenant pursuant to the law. Under Ministry Memorandum Circular No. 04-83 in relation with Ministry Memorandum Circular No. 08-80 and Ministry Memorandum Circular No. 07-79, the x x x procedures must be observed for the reallocation of farmholdings covered by P.D. No. 27 by reason of abandonment or the refusal to become a beneficiary[.] x x x In the event of the farmer-beneficiary's death, the transfer or reallocation of his landholding to his heirs shall be governed by *Ministry Memorandum Circular No. 19-78*. In the present case, as Associate Justice Estela M. Perlas-Bernabe observed in her Reflections, Lorenzo's CLT was not shown to have been properly cancelled in light of the failure to observe the required procedures or processes. Thus, we declare the lease contract between Garces and Lovy as void. Consequently, we cannot recognize Lovy's claim that she is the present and actual agricultural lessee of the disputed lot.

5. ID.; ID.; REQUISITES OF ABANDONMENT AS A GROUND FOR TERMINATION OF TENANCY RELATIONS; PRESENT IN CASE AT BAR.— We find merit in the respondents' argument that Lorenzo had long abandoned the disputed lot, thus, depriving him and his heirs of possession over it. Abandonment is a ground for the termination of tenancy relations under Section 8 of *R.A. No. 3844*, and, under *Section 22 of R.A. No. 6657* as well as under *DAR Administrative Order No. 02-94* in relation to *Section 22, R.A. 6657*, disqualifies the beneficiary of lots awarded under P.D. No. 27 from its coverage. To additionally reiterate what we have discussed above, actual cultivation of the farmholding is a mandatory condition for the transfer of rights under the CLT to qualify the transferee as a beneficiary under Section 22 of R.A. No. 6657. For abandonment to exist, the following requisites must concur: (1) a clear intent to abandon; and (2) an external act showing such intent. The term is defined as the "willful failure of the ARB, together with his farm household, to cultivate, till, or develop his land to produce any crop, or to use the land for any specific economic purpose continuously for a period of two calendar years." It entails, among others, the relinquishment of possession of the lot for at least two (2) calendar years and the failure to pay the amortization for the same period. "What is critical in abandonment is intent which must be shown to be deliberate and clear." The intent must be established by the factual failure to work on the landholding absent any valid reason as well as a clear intent, which is shown as a separate element. In the present case, Lorenzo, in allowing and acquiescing to the execution of the lease contract through his signature, with presumed full awareness of its implications, effectively surrendered his rights over the disputed lot. His signing of the lease contract constitutes the external act of abandonment.

APPEARANCES OF COUNSEL

Candido G. Del Rosario and Associates Law Office for petitioners.

Law Firm of Mario M. Pangilinan & Associates for respondents.

DECISION

BRION, *J*.:

We resolve the petition for review on *certiorari*[1] filed by the Heirs of Lorenzo Buensuceso (*Lorenzo*), represented by German Buensuceso (*German*), to nullify the decision[2] dated April 27, 2006 and the resolution[3] dated August 4, 2006 of the Court of Appeals (*CA*) in CA-G.R. SP No. 85931 insofar as it reversed the September 4, 2003 resolution[4] of the Department of Agrarian Reform Adjudication Board (*DARAB*) in DARAB Case No. 7178. The DARAB resolution set aside its earlier decision[5] and the decision of the Provincial Agrarian Reform Adjudication Board (*PARAD*)[6] dismissing German's complaint for recovery of possession[7] against Lovy Perez.

The Factual Antecedents

As the CA summarized in the assailed decision, German was the son and heir of Lorenzo Buensuceso, the farmer-beneficiary of an agricultural lot, one point thirty-seven (1.37) hectares in area, situated in Sto. Cristo, Gapan, Nueva Ecija (*disputed lot*). The disputed lot was awarded to Lorenzo pursuant to Operation

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[1] Dated and filed on September 20, 2006 under Rule 45 of the Rules of Court; *rollo*, pp. 8-13.

[2] Penned by Associate Justice Lucas P. Bersamin (now a member of this Court), and concurred in by Associate Justices Renato C. Dacudao and Magdangal M. de Leon; *id.* at 15-23.

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

[4] Penned by Assistant Secretary and Vice-Chairman Lorenzo R. Reyes; *id.* at 34-37. The DARAB set aside its January 16, 2001 decision upon the petitioner's motion for reconsideration.

[5] Per the CA decision, the DARAB's January 16, 2001 decision affirmed *in toto* the PARAD's decision.

[6] Dated July 31, 1997; *rollo*, pp. 30-33.

[7] Petition for Recovery of Possession with prayer for Temporary Restraining Order and Preliminary Mandatory Injunction dated May 26, 1997; *id.* at 27-28.

Land Transfer under Presidential Decree (*P.D.*) No. 27, and covered by Certificate of Land Transfer No. 049645 (*CLT*)[8] issued on July 28, 1973. Upon Lorenzo's death, German allegedly immediately occupied the disputed lot and had been cultivating and residing within its premises since then. German claimed that, in 1989, Lovy Perez forcibly entered the disputed lot, thus, compelling him to file a petition for recovery of possession with the PARAD.

In her answer with counterclaim, Lovy argued that she is the real and lawful tenant of the disputed lot as evidenced by: (1) the duly acknowledged and registered contract of leasehold (*lease contract*)[9] dated October 5, 1988, between her and the landowner, Joaquin Garces, which Lorenzo signed as a witness; and (2) the certifications issued by the Municipal Agrarian Reform Officer (*MARO*) of the Department of Agrarian Reform (*DAR*),[10] Gapan, Nueva Ecija, and by the *Barangay* Agrarian Reform Council[11] stating that she is the disputed lot's registered agricultural lessee. She also claimed that she has been paying the lease rentals to Garces, as shown by receipts,[12] and the irrigation services[13] beginning 1984 as certified to by the National Irrigation Administration, and that she is a bona fide member of the *Samahang Nayon*.

On July 31, 1997, the PARAD dismissed the petition, ruling that German failed to prove that he or his father, Lorenzo, was the farm helper or the regular tenant-lessee of the disputed lot. In contrast, Lovy successfully proved that she was the lawful

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[8] CA *rollo*, pp. 50-51.

[9] Denominated as "*Kasunduan Buwisan Sa Sakahan*," dated October 10, 1988; attached as Annex "A" to the respondents' Comment; *rollo*, pp. 57-58.

[10] Dated August 9, 1996; *id.* at 60.

[11] Dated November 20, 1996; *id.* at 61.

[12] As noted by the CA, from the January 16, 2001 decision of the DARAB; *id.* at 22.

[13] As certified by the National Irrigation Administration, dated November 1996 (exact date, unreadable); *id.* at 59.

tenant-lessee from all of her documentary evidence, particularly the lease contract, which established the tenancy relation between her and Garces. German appealed the dismissal to the DARAB.

The Ruling of the DARAB

On January 16, 2001, the DARAB affirmed *in toto* the PARAD's decision. German sought reconsideration, which he obtained in due course.

In its resolution, the DARAB set aside its earlier decision and ordered Lovy to surrender possession of the disputed lot to German. This time, the DARAB considered the CLT as clear evidence of the Government's recognition of Lorenzo as the tenant-beneficiary of the disputed lot entitled to avail of the statutory mechanisms under P.D. No. 27 for acquiring its ownership. It maintained the presumption of the CLT's continued validity, as the record neither showed that it was cancelled nor that grounds exist for its cancellation. Also, the DARAB refused to recognize the personality of Garces to execute the lease contract and declared it void. It held that Lorenzo is deemed the owner of the disputed lot from the time the CLT was issued in 1973. When the DARAB denied her motion for reconsideration, Lovy filed a petition for review[14] with the CA.

While the case was pending before the CA, Lovy died and was substituted by her heirs — Erlinda Perez-Hernandez, Teodoro G. Perez and Candida Perez-Atacador (*respondents*).

The Ruling of the CA

The CA granted Lovy's appeal and reversed the DARAB resolution. As the decisions of the PARAD and the DARAB earlier did, the CA ruled that Lorenzo had long abandoned the disputed lot, which he confirmed when he signed as a witness to the lease contract between Garces and Lovy; that, with the execution of the lease contract, Lovy became the qualified farmer-beneficiary, who then cultivated the disputed lot on her own account.

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[14] Petition for review under Rule 43 of the Rules of Court.

Additionally, the CA declared that Lorenzo's CLT was not sufficient to constitute him as the owner of the disputed lot since Lorenzo failed to comply with the obligation to pay the lease rentals that Section 26 of Republic Act (*R.A.*) No. 3844 requires. The CA denied German's motion for reconsideration in its August 4, 2006 resolution,[15] prompting the present recourse.

The Petition

German faults the CA for not upholding the validity and legality of Lorenzo's CLT. He argues that, as holder of the CLT, he — as Lorenzo's heir — was entitled not only to the possession of the disputed lot[16] but also to the full benefits of a farmer-tenant under P.D. No. 27. He also argues that nothing on the records showed that the CLT had been cancelled; that Lorenzo had failed to comply with his obligations as tenant-beneficiary; or that he or Lorenzo had abandoned the disputed lot.[17]

On October 16, 2006, [18] during the pendency of the case before the Court, German died and was substituted by his wife, Iluminada, and his sons, Ryan and Philip (a minor), all surnamed Buensuceso.[19]

The Case for the Respondents

In their defense, the respondents argue that: *first*, a petition for review under Rule 45 is restricted to questions of law. The question of who between Lorenzo and German, on the one hand, and Lovy, on the other, actually tilled and cultivated the disputed lot is a clear question of fact that is not proper for a Rule 45 petition.[20]

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[15] *Supra* note 3.

[16] *Rollo*, pp. 106-107.

[17] *Id.* at 10-11.

[18] As shown by the Death Certificate; *id.* at 102.

[19] Per the Notice of Death with Motion for Substitution; *id.* at 100-101.

[20] *Id.* at 44-45 and 123-125.

Second, no cogent reason exists to modify or reverse the CA's decision as the duly notarized and registered lease contract, among others, indisputably shows that Lovy had been actually cultivating the disputed lot since 1984.[21]

Third, the factual findings of the PARAD, the DARAB (in its earlier January 16, 2001 decision) and the CA are binding and conclusive on this Court, especially when, as in this case, they are supported by substantial evidence.[22]

Lastly, on the issue of ownership, the respondents maintain that Lorenzo's CLT is not sufficient to constitute him as owner of the disputed lot since he must first comply with certain requisites and conditions before he can acquire absolute ownership over it. By abandoning the disputed lot, Lorenzo failed to comply with his obligations as a CLT holder, thus disqualifying him from its possession.[23]

The Court's Ruling

We first address the procedural matters raised.

The rules invoked by the respondents are well settled: a Rule 45 petition is limited to questions of law, and the factual findings of the lower courts are, as a rule, conclusive on this Court.[24]

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[21] *Id.* at 46-48.

[22] *Id.* at 48-53 and 125-127.

[23] Comprehensive Agrarian Reform Law, approved on June 14, 1990. Set forth under Presidential Decree No. 27 and R.A. No. 6657.

[24] Section 1, Rule 45 of the Rules of Court provides:

Section 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition shall raise only questions of law which must be distinctly set forth.** [emphasis ours; italics supplied]

See *Maylem v. Ellano*, G.R. No. 162721, July 13, 2009, 592 SCRA 440, 448-449; *Buada v. Cement Center, Inc*., G.R. No. 180374, January 22, 2010, 610 SCRA 622, 629; and *Oarde v. Court of Appeals*, 345 Phil. 457, 466 (1997).

The question of who, between German and the respondents, is entitled to the continued possession of the disputed lot involves factual issues and is not the proper subject of a Rule 45 petition.

Despite this Rule 45 requirement, however, our pronouncements have likewise recognized exceptions, such as the situation obtaining here — where the tribunals below conflict in their factual findings.[25] We note that the DARAB (in its resolution) in effect reversed its earlier decision and the PARAD's ruling while the CA, in turn, set aside the DARAB's September 4, 2003 resolution. In this light, we cannot support the procedural objection raised.

On the merits, German, as substituted by his heirs, asserts possession and ownership over the disputed lot, emphasizing the issuance of and the continued validity of Lorenzo's CLT. They invoke *P.D. No. 27* to justify their position, arguing that as holder in due course of a CLT, Lorenzo remains a qualified beneficiary under the Act.

The respondents, on the other hand, claim entitlement to the continued possession of the disputed lot following the declarations of the PARAD, the DARAB (in its earlier decision) and the CA that Lovy is the disputed lot's lawful tenant. Also, they insist that Lorenzo or his heirs cannot be the owners of the disputed lot because Lorenzo failed to comply with his obligations under the CLT. Neither can German possess the disputed lot because Lorenzo had long abandoned it.

On the issue of ownership of the disputed lot

We agree with the CA that the mere issuance of the CLT does not vest full ownership on the holder[26] and does not automatically operate to divest the landowner of all of his rights over the landholding. The holder must first comply

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[25] *Esquivel v. Atty. Reyes*, 457 Phil. 509, 516 (2003); and *Oarde v. Court of Appeals*, *supra*, at 466-467.

[26] *Dela Cruz v. Quiazon*, G.R. No. 171961, November 28, 2008, 572 SCRA 681, 692-693.

with certain mandatory requirements to effect a transfer of ownership. Under R.A. No. 6657[27] in relation with P.D. No.

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[27] The pertinent portions of R.A. No. 6657 are as follows:

SECTION 16. *Procedure for Acquisition of Private Lands*. — x x x.

x x x x x x x x x

SECTION 17. *Determination of Just Compensation*. — x x x

x x x x x x x x x

SECTION 18. *Valuation and Mode of Compensation*. — The LBP shall compensate the landowner in such amounts as may be agreed upon by the landowner and the DAR and the LBP, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land.

x x x x x x x x x

SECTION 22. *Qualified Beneficiaries*. — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *barangay*, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;
(b) regular farmworkers;
(c) seasonal farmworkers;
(d) other farmworkers;
(e) actual tillers or occupants of public lands;
(f) collectives or cooperatives of the above beneficiaries; and
(g) others directly working on the land.

Provided, *however*, That the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents: and *Provided*, *further*, That actual tenant-tillers in the landholdings shall not be ejected or removed therefrom.

Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under this Program.

A basic qualification of a beneficiary shall be his willingness, aptitude, and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. x x x

x x x x x x x x x

SECTION 24. *Award to Beneficiaries*. — The rights and responsibilities of the beneficiary shall commence from the time the DAR makes an award

27[28] and E.O. No. 228,[29] the title to the landholding shall be issued to the tenant-farmer only upon the satisfaction of the following requirements: *(1) payment in full of the just compensation for the landholding, duly determined by final judgment of the proper court; (2) possession of the qualifications of a farmer-beneficiary under the law; (3) full-pledged membership of the farmer-beneficiary in a duly recognized farmers' cooperative; and (4) actual cultivation of the landholding*. We explained in several cases that while a tenant with a CLT is **deemed the owner** of a landholding, **the CLT**

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of the land to him, which award shall be completed within one hundred eighty (180) days from the time the DAR takes actual possession of the land. Ownership of the beneficiary shall be evidenced by a Certificate of Land Ownership Award, which shall contain the restrictions and conditions provided for in this Act, and shall be recorded in the Register of Deeds concerned and annotated on the Certificate of Title.

x x x x x x x x x

SECTION 26. *Payment by Beneficiaries*. — Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in thirty (30) annual amortizations at six percent (6%) interest per annum. [italics supplied]

[28] P.D. No. 27, in part, provides:

"**The total cost of the land**, including interest at the rate of six (6) per centum per annum, **shall be paid by the tenant** in fifteen (15) years of fifteen (15) equal annual amortizations;

"In case of default, the amortization due shall be paid by the farmers' cooperative in which the defaulting tenant-farmer is a member, with the cooperative having a right of recourse against him;

x x x x x x x x x

"No title to the land owned by the tenant-farmers under this Decree **shall be actually issued to a tenant-farmer unless and until the tenant-farmer has become a full-fledged member of a duly recognized farmer's cooperative[.]"** [emphases ours]

[29] DECLARING FULL LAND OWNERSHIP TO QUALIFIED FARMER BENEFICIARIES COVERED BY PRESIDENTIAL DECREE NO. 27: DETERMINING THE VALUE OF REMAINING UNVALUED RICE AND CORN LANDS SUBJECT TO P.D. NO. 27; AND PROVIDING FOR THE MANNER OF PAYMENT BY THE FARMER BENEFICIARY AND MODE OF COMPENSATION TO THE LANDOWNER.

does not vest full ownership on him.[30] The tenant-holder of a CLT merely possesses an inchoate right that is subject to compliance with certain legal preconditions for perfecting title and acquiring full ownership. For these reasons, we hold that Lorenzo's right and claim to ownership over the disputed lot were, at most, inchoate.[31]

In the same vein, we hold that German — as Lorenzo's heir — is not automatically rendered the owner of the disputed lot. German must also still first comply with certain procedural and mandatory requirements in order to acquire Lorenzo's rights under the CLT, including the right to acquire ownership of the disputed lot. Under *Section 27 of R.A. No. 6657*, lands not yet fully paid by the beneficiary may be transferred, with prior approval of the DAR, to any heir of the beneficiary who, as a condition for such transfer, shall cultivate the land for himself.

On the validity of the lease contract between Garces and Lovy

We agree with the DARAB, in its resolution, that Garces had no authority to execute the lease contract. While Garces, as landowner, retained an interest over the disputed lot, any perceived failure on Lorenzo's part to comply with his obligations under the CLT did not cause the automatic cancellation of the CLT nor of the disputed lot's reversion to Garces. "[L]and[s] acquired under P.D. No. 27 [do] not revert to the landowner,"[32] and this is true even if the CLT is cancelled. The land must be transferred back to the government and Garces could not, by himself, institute Lovy as the new tenant-beneficiary.

Pursuant to *R.A. No. 6657* in relation with *P.D. No. 27*,[33] any sale or disposition of agricultural lands made after the

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[30] *Levardo v. Yatco*, G.R. No. 165494, March 20, 2009, 582 SCRA 93, 106; *Dela Cruz v. Quiazon*, *supra* note 26, at 692-693; *Martillano v. Court of Appeals*, G.R. No. 148277, June 29, 2004, 433 SCRA 195, 203-204; and *Heirs of Batongbacal v. Court of Appeals*, 438 Phil. 283, 294 (2002).

[31] *Dela Cruz v. Quiazon*, *supra* note 26, at 692-693.

[32] *Id.* at 693.

[33] The pertinent provisions of R.A. No. 6657, in part, provide:

effectivity of R.A. No. 6657 which has been found contrary to its provisions shall be null and void. **The proper procedure for the reallocation of the disputed lot must be followed** to ensure that there indeed exist grounds for the cancellation of the CLT or for forfeiture of rights under it, and that the lot is subsequently awarded to a qualified farmer-tenant pursuant to the law.[34]

Under Ministry Memorandum Circular No. 04-83 in relation with Ministry Memorandum Circular No. 08-80 and Ministry Memorandum Circular No. 07-79, the following procedures must be observed for the reallocation of farmholdings covered by P.D. No. 27 by reason of abandonment or the refusal to become a beneficiary, among others:

I. Investigation Procedure

1. The conduct of **verification** by the concerned Agrarian Reform Team Leader (*ARTL*) to ascertain the reasons for the refusal. All efforts shall be exerted to convince the tenant-farmer to become a beneficiary and to comply with his obligations as such beneficiary.

2. If the tenant-farmer still refuses, the ARTL shall **determine the substitute.** The ARTL shall first consider the immediate

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SECTION 6. *Retention Limits*. — x x x

x x x x x x x x x

Upon the effectivity of this Act, any sale, disposition, lease, management, contract or transfer of possession of private lands executed by the original landowner in violation of the Act shall be null and void: . x x x

x x x x x x x x x

SECTION 70. *Disposition of Private Agricultural Lands*. — x x x

Any sale or disposition of agricultural lands after the effectivity of this Act found to be contrary to the provisions hereof shall be null and void.

x x x x x x x x x

SECTION 75. *Suppletory Application of Existing Legislation*. — The provisions of Republic Act No. 3844 as amended, Presidential Decree Nos. 27 and 266 as amended, Executive Order Nos. 228 and 229, both Series of 1987; and other laws not inconsistent with this Act shall have suppletory effect. [italics supplied]

[34] *Estolas v. Mabalot*, 431 Phil. 462, 472 (2002).

member of the tenant-farmer's family who assisted in the cultivation of the land, and who is willing to be substituted to all the rights and obligations of the tenant-farmer. In the absence or refusal of such member, the ARTL shall choose one from a list of at least three qualified tenants recommended by the President of the Samahang Nayon or, in default, any organized farmer association, subject to the award limits under P.D. No. 27.

3. **Formal notice** of the report shall be given to the concerned farmer-beneficiary together with all the pertinent documents and evidences.

4. The ARTL shall **submit the records of the case** with his report and recommendation **to the District Officer** within 5 days from the ARTL's determination of the substitute. The District Officer shall likewise submit his report and recommendation to the Regional Director and the latter to the Bureau of Agrarian Legal Assistance, for review, evaluation, and preparation of the final draft decision for final approval.

5. The **decision** shall declare the **cancellation of the CLT** if issued.[35]

In the event of the farmer-beneficiary's death, the transfer or reallocation of his landholding to his heirs shall be governed by *Ministry Memorandum Circular No. 19-78*.

In the present case, as Associate Justice Estela M. Perlas-Bernabe observed in her Reflections, Lorenzo's CLT was not shown to have been properly cancelled in light of the failure to observe the required procedures or processes. Thus, we declare the lease contract between Garces and Lovy as void. Consequently, we cannot recognize Lovy's claim that she is the present and actual agricultural lessee of the disputed lot.

As to whether Lorenzo abandoned the disputed lot

We find merit in the respondents' argument that Lorenzo had long abandoned the disputed lot, thus, depriving him and

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[35] See Ministry Memorandum Circular No. 04-83 in relation to Ministry Memorandum Circular No. 08-80 and Ministry Memorandum Circular No. 07-79.

his heirs of possession over it. Abandonment is a ground for the termination of tenancy relations under *Section 8* of *R.A. No. 3844*,[36] and, under *Section 22* of *R.A. No. 6657* as well as under *DAR Administrative Order No. 02-94* in relation to *Section 22, R.A. 6657*, disqualifies the beneficiary of lots awarded under P.D. No. 27 from its coverage. To additionally reiterate what we have discussed above, actual cultivation of the farmholding is a mandatory condition for the transfer of rights under the CLT to qualify the transferee as a beneficiary under *Section 22* of *R.A. No. 6657*.

For abandonment to exist, the following requisites must concur: (1) a clear intent to abandon; and (2) an external act showing such intent.[37] The term is defined as the "willful failure of the ARB, together with his farm household, to cultivate, till, or develop his land to produce any crop, or to use the land for any specific economic purpose continuously for a period of two calendar years."[38] It entails, among others, the relinquishment of possession of the lot for at least two (2) calendar years and the failure to pay the amortization for the same period.[39] "What

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[36] R.A. No. 3844, entitled "AN ACT TO ORDAIN THE AGRICULTURAL LAND REFORM CODE AND TO INSTITUTE LAND REFORMS IN THE PHILIPPINES, INCLUDING THE ABOLITION OF TENANCY AND THE CHANNELING OF CAPITAL INTO INDUSTRY, PROVIDE FOR THE NECESSARY IMPLEMENTING AGENCIES, APPROPRIATE FUNDS THEREFOR AND FOR OTHER PURPOSES."

"Section 8. *Extinguishment of Agricultural Leasehold Relation*. — The agricultural leasehold relation established under this Code shall be extinguished by:

(1) **Abandonment of the landholding without the knowledge of the agricultural lessor[.]** (emphasis ours; italics supplied)

[37] *Estolas v. Mabalot*, *supra* note 34, at 471.

[38] See *DAR Administrative Order No. 02-94* — RULES GOVERNING THE CORRECTION AND CANCELLATION OF REGISTERED/ UNREGISTERED EMANCIPATION PATENTS (EPS), AND CERTIFICATES OF LAND OWNERSHIP AWARD (CLOAS) DUE TO UNLAWFUL ACTS AND OMISSIONS OR BREACH OF OBLIGATIONS OF AGRARIAN REFORM BENEFICIARIES (ARBS) AND FOR OTHER CAUSES.

[39] *Maylem v. Ellano*, *supra* note 24, at 451.

is critical in abandonment is intent which must be shown to be deliberate and clear."[40] The intent must be established by the factual failure to work on the landholding absent any valid reason[41] as well as a clear intent, which is shown as a separate element.

In the present case, Lorenzo, in allowing and acquiescing to the execution of the lease contract through his signature, with presumed full awareness of its implications,[42] effectively surrendered his rights over the disputed lot. His signing of the lease contract constitutes the external act of abandonment. Notably, neither Lorenzo nor German impugned the existence or the execution of the lease contract or the validity of Lorenzo's signature on it during the proceedings before the PARAD and the DARAB. Additionally, German did not present any evidence to support his position that Lovy forcibly entered the disputed property, thus depriving them of its possession and actual cultivation.

We observe that, in contrast with the respondents' unwavering position that Lovy had been in actual possession and cultivation of the disputed lot since 1988, German's assertion of continuous possession and cultivation is significantly weakened by the inconsistencies in his pleadings. German claimed that Lorenzo had been continuously tilling the disputed lot until 1989 when Lovy forcibly entered and took over its possession. At the same time, he maintained that he immediately took possession and actual cultivation of the disputed lot upon Lorenzo's death and had been in its possession since then. Interestingly, Lorenzo

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[40] *Verde v. Macapagal*, G.R. No. 151342, March 4, 2008, 547 SCRA 542, 553.

[41] *Ibid.*

[42] Section 3, Rule 131, Rules of Court.

SEC. 3. *Disputable presumptions*. — The **following presumptions are satisfactory if contradicted**, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(c) **That a person intends the ordinary consequences of his voluntary act[.]** [emphases ours]

died in 1992. What is clear, however, from German's various averments is that Lorenzo had not been cultivating the disputed lot since 1988. Even if we were to believe German's claim of continued possession and actual cultivation of the disputed lot even after Lovy forcibly entered in 1989, this claim only supports the finding of abandonment. Lorenzo would not have stood idly and allowed Lovy to cultivate the disputed lot if he did not have the intention to abandon its possession in favor of the latter.

We reiterate that abandonment is a ground for the cancellation of a CLT and the forfeiture of the farmer-beneficiary's right to the landholding. Nevertheless, for a cancellation or forfeiture to take place, the proper procedures must be observed and a final judgment rendered declaring a cancellation or forfeiture.

WHEREFORE, in view of these considerations, we hereby **REMAND** this case to the Department of Agrarian Reform for the conduct of investigation and of the necessary proceedings to determine the qualified beneficiary of the disputed lot. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 176944. March 6, 2013]

RET. LT. GEN. JACINTO C. LIGOT, ERLINDA Y. LIGOT, PAULO Y. LIGOT, RIZA Y. LIGOT, and MIGUEL Y. LIGOT, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* IS THE PROPER REMEDY TO ASSAIL FREEZE ORDERS ISSUED BY THE COURT OF APPEALS; APPLICATION OF THE RULES; RELAXED.—** Section 57 of the Rule in Civil Forfeiture Cases explicitly provides the remedy available in cases involving freeze orders issued by the CA[.] x x x From this provision, it is apparent that the petitioners should have filed a petition for review on *certiorari*, and not a petition for *certiorari*, to assail the CA resolution which extended the effectivity period of the freeze order over their properties. x x x [T]he Ligots should have filed a petition for review on *certiorari*, and not what is effectively a second motion for reconsideration (nor an original action of *certiorari* after this second motion was denied), within fifteen days from receipt of the CA 's January 4, 2006 resolution. To recall, this resolution denied the petitioners' motion to lift the extended freeze order which is effectively a motion for reconsideration of the CA ruling extending the freeze order indefinitely. However, considering the issue of due process squarely brought before us in the face of an apparent conflict between Section 10 of RA No. 9160, as amended, and Section 53(b) of the Rule in Civil Forfeiture Cases, this Court finds it imperative to relax the application of the rules of procedure and resolve this case on the merits in the interest of justice.

2. **ID.; RULE IN CIVIL FORFEITURE CASES IN RELATION TO ANTI-MONEY LAUNDERING ACT OF 2001 (R.A. 9160); EFFECTIVITY OF THE FREEZE ORDER; THE SIX-MONTH EXTENSION PERIOD UNDER THE RULE APPLIES IN CASE AT BAR.—** [T]he Rule in Civil Forfeiture Cases came into effect on December 15, 2005. Section 59 provides that it shall "apply to all pending civil forfeiture cases or petitions for freeze order" at the time of its effectivity. A review of the record reveals that after the CA issued its September 20, 2005 resolution extending the freeze order, the Ligots filed a **motion to lift the extended freeze order on September 28, 2005**. **Significantly, the CA only acted upon this motion on January 4, 2006**, when it issued a resolution denying it. While denominated as a Motion to Lift Extended Freeze Order, this motion was actually a motion for

reconsideration, as it sought the reversal of the assailed CA resolution. Since the Ligots' motion for reconsideration was **still pending resolution** at the time the Rule in Civil Forfeiture Cases **came into effect on December 15, 2005**, the Rule unquestionably applies to the present case.

3. **ID.; ID.; TWO REQUISITES FOR ISSUANCE OF A FREEZE ORDER; PROBABLE CAUSE, DEFINED.—** Based on Section 10 [of RA No. 9160, as amended by RA No. 9194] there are only two requisites for the issuance of a freeze order: (1) the application *ex parte* by the AMLC and (2) the determination of probable cause by the CA. The probable cause required for the issuance of a freeze order differs from the probable cause required for the institution of a criminal action, and the latter was not an issue before the CA nor is it an issue before us in this case. As defined in the law, the probable cause required for the issuance of a freeze order refers to "such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or a money laundering offense is about to be, is being or has been committed and that **the account or any monetary instrument or property subject thereof sought to be frozen is in any way related to** said unlawful activity and/or money laundering offense."

4. **ID.; ID.; ID.; PROBABLE CAUSE EXISTS FOR ISSUANCE OF FREEZE ORDER IN CASE AT BAR.—** [I]n resolving the issue of whether probable cause exists, the CA's statutorily-guided determination's focus is not on the probable commission of an unlawful activity (or money laundering) that the Office of the Ombudsman has already determined to exist, but on whether the bank accounts, assets, or other monetary instruments sought to be frozen are ***in any way related*** to any of the illegal activities enumerated under RA No. 9160, as amended. Otherwise stated, probable cause refers to the sufficiency of the relation between an unlawful activity and the property or monetary instrument which is the focal point of Section 10 of RA No. 9160, as amended. x x x Section 10 of RA No. 9160 (allowing the extension of the freeze order) and Section 28 (allowing a separate petition for the issuance of a freeze order to proceed independently) of the Rule in Civil Forfeiture Cases are only consistent with the very purpose of the freeze order, which specifically is to give the government the necessary

time to prepare its case and to file the appropriate charges without having to worry about the possible dissipation of the assets that are in any way related to the suspected illegal activity. Thus, contrary to the Ligots' claim, a freeze order is not dependent on a separate criminal charge, much less does it depend on a conviction. x x x It should be noted that the existence of an unlawful activity that would justify the issuance and the extension of the freeze order has likewise been established in this case. From the *ex parte* application and the Ombudsman's complaint, we glean that Lt. Gen. Ligot himself admitted that his income came from his salary as an officer of the AFP. Yet, the Ombudsman's investigation revealed that the bank accounts, investments and properties in the name of Lt. Gen. Ligot and his family amount to more than Fifty-Four Million Pesos (₱54,000,000.00). Since these assets are grossly disproportionate to Lt. Gen. Ligot's income, as well as the lack of any evidence that the Ligots have other sources of income, the CA properly found that probable cause exists that these funds have been illegally acquired. On the other hand, the AMLC's verified allegations in its *ex parte* application, based on the complaint filed by the Ombudsman against Ligot and his family for violations of the Anti-Graft and Corrupt Practices Act, clearly sustain the CA's finding that probable cause exists that the monetary instruments subject of the freeze order are related to, or are the product of, an unlawful activity.

5. **ID.; ID.; NATURE AND PRIMARY OBJECTIVE OF A FREEZE ORDER.—** A freeze order is an ***extraordinary and interim relief*** issued by the CA to prevent the dissipation, removal, or disposal of properties that are suspected to be the proceeds of, or related to, unlawful activities as defined in Section 3(i) of RA No. 9160, as amended. The primary objective of a freeze order is to **temporarily preserve** monetary instruments or property that are in any way related to an unlawful activity or money laundering, by preventing the owner from utilizing them during the duration of the freeze order. The relief is **pre-emptive** in character, meant to prevent the owner from disposing his property and thwarting the State's effort in building its case and eventually filing civil forfeiture proceedings and/or prosecuting the owner.

6. **ID.; ID.; A FREEZE ORDER CANNOT BE ISSUED FOR AN INDEFINITE PERIOD; CONTINUED EXTENSION**

OF A FREEZE ORDER BEYOND THE SIX-MONTH PERIOD WITHOUT JUSTIFICATION AMOUNTS TO VIOLATION OF RIGHT TO DUE PROCESS OF LAW.— Our examination of the **Anti-Money Laundering Act of 2001**, as amended, from the point of view of the freeze order that it authorizes, shows that *the law is silent on the maximum period of time that the freeze order can be extended by the CA*. x x x [T]he evils caused by the law's silence on the freeze order's period of effectivity compelled this Court to issue the Rule in Civil Forfeiture Cases. Specifically, the Court fixed the maximum allowable extension on the freeze order's effectivity at six months. In doing so, the Court sought to balance the State's interest in going after suspected money launderers with an individual's constitutionally-protected right not to be deprived of his property without due process of law, as well as to be presumed innocent until proven guilty. To our mind, the six-month extension period is *ordinarily* sufficient for the government to act against the suspected money launderer and to file the appropriate forfeiture case against him, and is a reasonable period as well that recognizes the property owner's right to due process. ***In this case, the period of inaction of six years, under the circumstances, already far exceeded what is reasonable.*** We are not unmindful that the State itself is entitled to due process. As a due process concern, we do not say that ***the six-month period is an inflexible rule*** that would result in the automatic lifting of the freeze order upon its expiration in all instances. x x x [A]s a rule, the effectivity of a freeze order may be extended by the CA for a period not exceeding six months. Before or upon the lapse of this period, ideally, the Republic should have already filed a case for civil forfeiture against the property owner with the proper courts and accordingly secure an asset preservation order or it should have filed the necessary information. *Otherwise*, the property owner should already be able to fully enjoy his property without any legal process affecting it. However, should it become completely necessary for the Republic to further extend the duration of the freeze order, it should file the necessary motion before the expiration of the six-month period and explain the reason or reasons for its failure to file an appropriate case and justify the period of extension sought. The freeze order should remain effective prior to the resolution by the CA, which is hereby directed to resolve this kind of motion

for extension with reasonable dispatch. In the present case, we note that the Republic has not offered any explanation why it took six years (from the time it secured a freeze order) before a civil forfeiture case was filed in court, despite the clear tenor of the Rule in Civil Forfeiture Cases allowing the extension of a freeze order for only a period of six months. All the Republic could proffer is its temporal argument on the inapplicability of the Rule in Civil Forfeiture Cases; in effect, it glossed over the squarely-raised issue of due process. Under these circumstances, we cannot but conclude that the continued extension of the freeze order beyond the six-month period violated the Ligots' right to due process; thus, the CA decision should be reversed.

APPEARANCES OF COUNSEL

Zulueta Puno and Associates for petitioners.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J*.:

In this petition for *certiorari*,[1] retired Lieutenant General (*Lt. Gen.*) Jacinto C. Ligot, Erlinda Y. Ligot (*Mrs. Ligot*), Paulo Y. Ligot, Riza Y. Ligot, and Miguel Y. Ligot (*petitioners*) claim that the Court of Appeals (*CA*) acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued its January 12, 2007 resolution[2] in CA G.R. SP No. 90238. This assailed resolution affirmed *in toto* the CA's earlier January 4, 2006 resolution[3] extending the freeze order issued against the Ligots' properties for an indefinite period of time.

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[1] Under Rule 65 of the Rules of Court, *rollo*, pp. 3-22.

[2] Penned by Associate Justice Aurora Santiago-Lagman, with the concurrence of Associate Justices Conrado M. Vasquez, Jr., and Rebecca de Guia-Salvador: *id.* at 28-30.

[3] *Id.* at 32-41.

BACKGROUND FACTS

On June 27, 2005, the Republic of the Philippines (*Republic*), represented by the Anti-Money Laundering Council (*AMLC*), filed an Urgent *Ex-Parte* Application for the issuance of a freeze order with the CA against certain monetary instruments and properties of the petitioners, pursuant to Section 10[4] of Republic Act (*RA*) No. 9160, as amended (otherwise known as the Anti-Money Laundering Act of 2001). This application was based on the February 1, 2005 letter of the Office of the Ombudsman to the AMLC, recommending that the latter conduct an investigation on Lt. Gen. Ligot and his family for possible violation of RA No. 9160.[5]

In support of this recommendation, the Ombudsman attached the complaint[6] it filed against the Ligots for perjury under Article 183 of the Revised Penal Code, and for violations of Section 8[7] of RA No. 6713[8] and RA No. 3019 (Anti-Graft and Corrupt Practices Act).

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[4] Section 10. Freezing of Monetary Instrument or Property. — The Court of Appeals, upon application *ex parte* by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3 (i) hereof, may issue a freeze order which shall be effective immediately. The freeze order shall be for a period of twenty (20) days unless extended by the court. [italics supplied]

[5] *Rollo*, p. 70.

[6] *Id.* at 71-86.

[7] Section 8. *Statements and Disclosure*. — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households. [italics supplied]

[8] Code of Conduct and Ethical Standards for Public Officials and Employees.

The Ombudsman's Complaint

a. Lt. Gen. Ligot and immediate family

The Ombudsman's complaint alleges that Lt. Gen. Ligot served in the Armed Forces of the Philippines (*AFP*) for 33 years and 2 months, from April 1, 1966 as a cadet until his retirement on August 17, 2004.[9] He and Mrs. Ligot have four children, namely: Paulo Y. Ligot, Riza Y. Ligot, George Y. Ligot and Miguel Y. Ligot, who have all reached the age of majority at the time of the filing of the complaint.[10]

Lt. Gen. Ligot declared in his Statement of Assets, Liabilities, and Net Worth (*SALN*) that as of December 31, 2003, he had assets in the total amount of Three Million Eight Hundred Forty-Eight Thousand and Three Pesos (₱3,848,003.00).[11] In contrast,

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[9] Based on the Ombudsman's complaint, Lt. Gen. Ligot held various positions/designations as per records of the last five years of his stay with the AFP, to wit:

- Commander of the Central Command, AFP from April 13, 2002 — date of retirement;
- Officer-in-Charge of the Southern Luzon Command, AFP from December 5-20, 2001 and October 2-16, 2001;
- Commanding General of the 2nd Infantry Division, PA from March 28, 2001 to April 13, 2002;
- Deputy Chief of Staff for Comptrollership, J6, of OJ6, GHQ, AFP from November 6, 1999 to March 28, 2001;
- Brigade Commander of the 403rd Infantry Brigade, 41D, PA from June 10, 1966 to October 1, 1999.

(*Rollo*, pp. 71-72).

[10] *Id.* at 72.

[11] Lt. Gen. Ligot's assets as of December 31, 2003 consist of the following:

Assets	Year of Acquisition	Amount in Pesos
Cash-on-hand		₱550,000.00
Investments/Bus and Stocks		700,000.00
Appliances		251,003.00
Jewelries and Books		430,000.00

his declared assets in his 1982 SALN amounted to only One Hundred Five Thousand Pesos (₱105,000.00).[12]

Aside from these declared assets, the Ombudsman's investigation revealed that Lt. Gen. Ligot and his family had other properties and bank accounts, not declared in his SALN, amounting to at least Fifty Four Million One Thousand Two Hundred Seventeen Pesos (₱54,001,217.00). These undeclared assets consisted of the following:

Undeclared Assets	**Amount**
Jacinto Ligot's undeclared assets	₱41,185,583.53[13]

House and lot (TARLAC)	1980	10,000.00
House and lot (MUNTINLUPA)	1983	337,000.00
Lot (MARIKINA)	1986	110,000.00
Agri lands (NUEVA ECIJA)	1995	60,000.00
Agri lands (SAN JOSE BATS.)	1999	200,000.00
Motor vehicle	1994	600,000.00
	2000	600,000.00
TOTAL		₱3,848,003.00

(*Id*. at 75).

[12] *Id.*

[13] Based on the Ombudsman's estimation, the Ligot spouses have the following undeclared assets:

Assets	Year of Acquisition	Acquisition Cost	Registered Owner
Raw land in Masalat, Sampaloc, Tanay, Rizal (72,738 sqm.)	2002 (June 28, 2002)	₱ 2,000,000.00	Jacinto Ligot
Proceeds of sale of 19A, Essensa East Forbes Condominium, Lawton Tower, Taguig	2003 (August 19, 2003)	₱ 25,000,000.00	Erlinda Ligot
Poultry building	2002	₱ 6,715,783.02	Jacinto Ligot
AFPSLAI (highest accumulated balance of the four accounts of the spouses)	2002	₱ 7,469,800.51	Spouses Jacinto and Erlinda Ligot
TOTAL		₱ 41,185,583.53	

(Ombudsman's complaint, *id*. at 80.)

Jacinto Ligot's children's assets	1,744,035.60[14]
Tuition fees and travel expenses	₱ 2,308,047.87[15]

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[14] The following properties are registered in the names of the Ligot children:

Year of Acquisition	Registered owner/Age at time of acquisition	Description	Acquisition Cost
2001	Paulo (22)	Agricultural land in Bgy. Imbayao, Malaybalay City	₱ 195,000.00
2001	Paulo (22)	Toyota Hi-lux	₱1,078,000.00
2002	Riza (22)	Isuzu Mini-dump	₱ 305,000.00
2003	Riza (23)	Bgy. Kalatugonan, Patpat, Malaybalay City, Bukidnon (4 hectares)	Market value ₱ 72,000.00
2003	Miguel (18)	Bgy. Kalasungay, Malaybalay City (5,2242 has.)	Market Value ₱ 94,035.60
Total			₱1,744,035.60

(Ombudsman's complaint, *id.* at 81.)

[15] Based on the Ombudsman's complaint, the Ligot family had, from 1986 to 2004, substantial funds used to cover the tuition fees of the children and their travel expenses. While Lt. Gen. Ligot declared in his SALN family expenses, the amounts declared were considered to only cover necessary and basic expenses, being considered too small to cover the expensive tuition fees of the children and their frequent travels abroad.

Year	Nature of Expenses	Amount	Estimated Total Travel and Tuition Fee Expenses	Declared Family Expenses (SALN)
1986	Travel Tuition fee	No data ₱8,480.70	₱8,480.70	₱ 60,000.00
1987	Travel Tuition fee	No data ₱9,815.40	₱9,815.40	₱ 60,000.00
1988	Travel Tuition fee	No data ₱12,477.76	₱12,477.76	₱ 103,000.00
1989	Travel Tuition fee	No data ₱13,732.00	₱13,732.00	₱ 96,000.00

Edgardo Yambao's assets relative to the real properties	₱ 8,763,550.00[16]
Total	**₱54,001,217.00**

1990	Travel Tuition fee	No data ₱ 16,153.10	₱ 16,153.10	₱ 78,462.00
1991	No SALN	No SALN	No SALN	No SALN
1992	Travel Tuition fee	No data ₱ 41,085.46	₱ 41,085.46	₱ 102,000.00
1993	Travel Tuition fee	₱ 56,700.00 Data unavailable	₱ 56,700.00	₱ 140,000.00
1994	Travel Tuition fee	₱ 36,400.00 ₱ 59,408.00	₱ 95,808.00	₱ 150,000.00
1995	Travel Tuition fee	₱ 25,000.00 ₱ 64,318.00	₱ 89,318.00	₱ 170,000.00
1996	Travel Tuition fee	₱ 62,400.00 ₱ 84,743.30	₱ 147,143.30	₱ 143,873.00
1997	Travel Tuition fee	₱ 39,150.00 ₱ 114,086.65	₱ 156,236.65	₱ 136,535.50
1998	Travel Tuition fee	₱ 34,000.00 ₱ 132,987.00	₱ 166,987.00	₱ 140,000.00
1999	Travel Tuition fee	₱ 115,050.00 ₱ 111,639.00	₱ 226,689.00	₱ 160,500.00
2000	Travel Tuition fee	₱ 371,800.00 ₱ 100,259.50	₱ 472,059.50	₱ 216,520.00
2001	Travel Tuition fee	₱ 50,000.00 ₱ 50,214.00	₱100,214.00	₱ 239,908.00
2002	Travel Tuition fee	₱ 86,700.00 ₱ 54,547.00	₱141,247.00	₱ 309,000.00
2003	Travel Tuition fee	₱ 185,500.00 ₱ 38,954.00	₱ 224,454.00	₱ 335,258.00
2004	Travel Tuition fee	₱ 304,750.00 ₱ 27,697.00	₱ 332,447.00	No SALN
Total Expenses from 1986 to 2004			₱ 2,308,047.87	₱ 2,641,056.50
Total Expenses (Declared Family Expenses plus estimated travel and tuition fee expenses)			₱4,949,104.37	

(*Id.* at 82.)

[16] According to the Ombudsman's complaint, Yambao acted as the Ligot spouses' dummy. Mrs. Ligot transferred her condominium unit in Essensa

Bearing in mind that Lt. Gen. Ligot's main source of income was his salary as an officer of the AFP,[17] and given his wife and children's lack of any other substantial sources of income,[18] **the Ombudsman declared the assets registered in Lt. Gen. Ligot's name, as well as those in his wife's and children's names, to be illegally obtained and unexplained wealth, pursuant to the provisions of RA No. 1379** (An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor).

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in favor of her brother, allegedly for the amount of ₱25,000,000.00. This amount, however, was never declared in Lt. Gen. Ligot's SALN, nor was any increase in his cash asset registered. Moreover, Yambao has not filed any Individual Tax Returns since 1999, thereby discounting his probable financial capacity to acquire the Essensa property and any of his other assets. The Ombudsman also took into account the fact that Yambao used three addresses used by the Ligots as his address. From these circumstances, the Ombudsman concluded that the assets registered in Yambao's name are actually assets belonging to the Ligots. These assets include:

Year of Acquisition	Description	Acquisition Cost
1993	Residential lot/Susana Heights Subdivision Village VI, Muntinlupa City (904 sqm.)	₱ 1,050,000.00
1994	Mabelline Foods, Inc.	₱ 156,250.00 Amount paid as incorporator
1996	1996 Honda Accord 4 Drive Sedan (brand new)	₱ 878,000.00
1999	Condominium Unit/Burgundy Plaza, Katipunan Avenue, Loyola Heights, Diliman Quezon City (54.05 sqm.)	₱ 1,405,300.00
2001	2001 Toyota Hilander	₱ 2,800,000.00
2002	Subaru Forester	₱ 1,174,000.00
2003	Subaru Forester	₱ 1,300,000.00
Total		₱ 8,763,550.00

(*Id*. at 83-84.)

[17] *Id.* at 76.

[18] *Id.* at 72.

b. Edgardo Tecson Yambao

The Ombudsman's investigation also looked into Mrs. Ligot's younger brother, Edgardo Tecson Yambao. The records of the Social Security System (*SSS*) revealed that Yambao had been employed in the private sector from 1977 to 1994. Based on his contributions to the SSS, Yambao did not have a substantial salary during his employment. While Yambao had an investment with Mabelline Foods, Inc., the Ombudsman noted that this company only had a net income of ₱5,062.96 in 2002 and ₱693.67 in 2003.[19] Moreover, the certification from the Bureau of Internal Revenue stated that Yambao had no record of any annual Individual Income Tax Return filed for the calendar year 1999 up to the date of the investigation.

Despite Yambao's lack of substantial income, the records show that he has real properties and vehicles registered in his name, amounting to Eight Million Seven Hundred Sixty Three Thousand Five Hundred Fifty Pesos (₱8,763,550.00), which he acquired from 1993 onwards. The Office of the Ombudsman further observed that in the documents it examined, Yambao declared three of the Ligots' addresses as his own.

From these circumstances, the Ombudsman concluded that Yambao acted as a dummy and/or nominee of the Ligot spouses, and all the properties registered in Yambao's name actually belong to the Ligot family.

Urgent Ex-Parte Freeze Order Application

As a result of the Ombudsman's complaint, the Compliance and Investigation staff (*CIS*) of the AMLC conducted a financial investigation, which revealed the existence of the Ligots' various bank accounts with several financial institutions.[20] On April 5, 2005, the Ombudsman for the Military and Other Law

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[19] Based on the corporation's income statements with the SEC.

[20] The CIS discovered that the Ligots had the following bank accounts in their names:

Enforcement Officers issued a **resolution holding that probable cause exists that Lt. Gen. Ligot violated Section 8, in relation**

Lank Bank of the Philippines

Account Name	Type of Account	Account Number
Col. Jacinto C. Ligot	Peso SA-ATM	0962-0055-35
Jacinto C. Ligot	Peso Demand Deposit	0057-0575-72

Equitable PCI Bank (EPCIB)

Account Name	Type of Account	Account Number
Jacinto C. Ligot	Peso Demand Deposit	0057-575-02
Erlinda Y. Ligot	US Dollar Account	4466000391
Erlinda Y. Ligot	US Dollar Account	4466000405
Erlinda Y. Ligot	US Dollar Account	04008E00043CTF-K
Erlinda Y. Ligot	US Dollar Account	03009B00069CTF-K
Erlinda Y. Ligot	Peso Account	3763-00267-4
Erlinda Y. Ligot	Peso Account	3763-00267-3
Erlinda Y. Ligot	Peso Account	3763-00282-8

Equitable Savings Bank

Account Name	Type of Account	Account Number
Emelda T. Yambao	Savings Deposit - Private (Special), 90-day ESB Speedsaver Peso	3763-00318-2
Emelda T. Yambao	Savings Deposit - Private (Special), 90-day ESB Speedsaver Peso	3763-00356-5
Emelda T. Yambao	Savings Deposit — Private (Special), 90-day ESB Speedsaver Peso	3763-00357-3
Emelda T. Yambao	Savings Deposit — Private (Special), 90-day ESB Speedsaver Peso	3763-00287-9

Citibank

Account Name	Type of Account	Account Number
Jacinto C. Ligot	US Dollar Account	8143020917
Jacinto C. Ligot	Peso Account	8132063827

Armed Forces and Police Savings and Loan Association, Inc. (AFPSLAI)

Account Name	Type of Account	Account Number
Jacinto C. Ligot		013093075
Jacinto C. Ligot		8132063827
Erlinda Y. Ligot		013624151
Erlinda Y. Ligot	CCA	630-001-0524885-7
Erlinda Y. Ligot	SA	630-002-0009922-2
Erlinda Y. Ligot	CCA	630-001-0524885-7
Riza Y. Ligot		014606319
Paulo Yambao Ligot		01460327

Rizal Commercial Banking Corporation

Account Name	Type of Account	Account Number
Erlinda Y. Ligot	Peso Account	1215319969
Erlinda Y. Ligot	USD Common Trust Fund contribution/placement/investment	2150000014*
Erlinda Y. Ligot	USD Common Trust Fund contribution/placement/investment	2150000016*

Philippine Savings Bank

Account Name	Type of Account	Account Number
Erlinda Y. Ligot	Peso Account	01000762

Bank of the Philippine Islands

Account Name	Type of Account	Account Number
Parmil Farms, Inc.	Peso Account	0200120600002061013388
Parmil Farms, Inc.	Current Account	
Elpidio V. Yambao	Peso Account	00583037225

Metropolitan Bank and Trust Co. (Metrobank)

Account Name	Type of Account	Account Number
Edgardo T. Yambao	US Dollar Common Trust/Fund contribution/placement/investment Peso account	00012407

United Overseas Bank Phils.

Account Name	Type of Account	Account Number
Edgardo T. Yambao ITF		021072002773
Frances Isabelle Yambao		
Edgardo T. Yambao		002072001829

Keppel Bank Phils.

Account Name	Type of Account	Account Number
Edgardo T. Yambao		3035000914

Citicorp Financial Services & Insurance Brokerage Phils., Inc.

Account Name	Type of Account	Account Number
Erlinda Ligot	USD Account	002369932
Erlinda Ligot/Riza Ligot	USD Account	007906196
Paulo Ligot/Riza Ligot	USD Account	007906165
Emelda Yambao	USD Account	007064904
Edgardo T. Yambao	USD Account	000117966
Edgardo T. Yambao	USD Account	006911804

Philippine Axa Life Insurance Corporation

Insured	Policy Owner	Kind of Insurance	Policy Number
Miguel Y. Ligot	Erlinda Y. Ligot	Sure Dollar in the amount of USD25,000.00 with maturity of ten (10) years	501-1093597

to Section 11, of RA No. 6713, as well as Article 183[21] **of the Revised Penal Code.**

On May 25, 2005, the AMLC issued Resolution No. 52, Series of 2005, directing the Executive Director of the AMLC Secretariat to file an application for a freeze order against the properties of Lt. Gen. Ligot and the members of his family with the CA.[22] Subsequently, on June 27, 2005, the Republic filed an Urgent *Ex-Parte* Application with the appellate court for the issuance of a Freeze Order against the properties of the Ligots and Yambao.

The appellate court granted the application in its July 5, 2005 resolution, ruling that probable cause existed that an unlawful activity and/or money laundering offense had been committed by Lt. Gen. Ligot and his family, including Yambao, and that the properties sought to be frozen are related to the unlawful activity or money laundering offense. Accordingly, the CA issued a freeze order against the Ligots' and Yambao's various bank accounts, web accounts and vehicles, valid for a period of 20 days from the date of issuance.

On July 26, 2005, the Republic filed an Urgent Motion for Extension of Effectivity of Freeze Order, arguing that if the bank accounts, web accounts and vehicles were not continuously

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This Policy was cancelled upon the request of Erlinda Y. Ligot on December 8, 2004. On January 7, 2005, a certain Janah G. Evangelista received the check in the amount of ₱1,004,016.87 (USD17,876.52 @ ₱56.164) in behalf of Erlinda Ligot upon her authority. (*Rollo*, p. 59.)

[21] Article 183. *False testimony in other cases and perjury in solemn affirmation*. — The penalty of arresto mayor in its maximum period to prision correccional in its minimum period shall be imposed upon any person, who knowingly makes untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein. [italics supplied]

[22] *Rollo,* pp. 88-95.

frozen, they could be placed beyond the reach of law enforcement authorities and the government's efforts to recover the proceeds of the Ligots' unlawful activities would be frustrated. In support of its motion, it informed the CA that the Ombudsman was presently investigating the following cases involving the Ligots:

Case Number	Complainant(s)	Nature
OMB-P-C-05-0523	Wilfredo Garrido	Plunder
OMB-P-C-05-0003	AGIO Gina Villamor, *et al.*	Perjury
OMB-P-C-05-0184	Field Investigation Office	Violation of RA No. 3019, Section 3 (b); Perjury under Article 183, Revised Penal Code in relation to Section 11 of RA No. 6713; Forfeiture Proceedings in Relation to RA No. 1379
OMB-P-C-05-0352	David Odilao	Malicious Mischief; Violation of Section 20, RA No. 7856

Finding merit in the Republic's arguments, **the CA granted the motion in its September 20, 2005 resolution, extending the freeze order <u>until after all the appropriate proceedings and/or investigations have been terminated.</u>**

On September 28, 2005, the Ligots filed a motion to lift the extended freeze order, principally arguing that there was no evidence to support the extension of the freeze order. They further

argued that the extension not only deprived them of their property without due process; it also punished them before their guilt could be proven. The appellate court subsequently denied this motion in its January 4, 2006 resolution.

Meanwhile, on November 15, 2005, the "Rule of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as Amended"[23] (*Rule in Civil Forfeiture Cases*) took effect. Under this rule, **a freeze order could be extended for a maximum period of six months.**

On January 31, 2006, the Ligots filed a motion for reconsideration of the CA's January 4, 2006 resolution, insisting that the freeze order should be lifted considering: (a) no predicate crime has been proven to support the freeze order's issuance; (b) the freeze order expired six months after it was issued on July 5, 2005; and (c) the freeze order is provisional in character and not intended to supplant a case for money laundering. When the CA denied this motion in its resolution dated January 12, 2007, the Ligots filed the present petition.

THE PETITIONERS' ARGUMENTS

Lt. Gen. Ligot argues that the appellate court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it extended the freeze order issued against him and his family even though no predicate crime had been duly proven or established to support the allegation of money laundering. He also maintains that the freeze order issued against them ceased to be effective in view of the 6-month extension limit of freeze orders provided under the Rule in Civil Forfeiture Cases. The CA, in extending the freeze order, not only unduly deprived him and his family of their property, in violation of due process, but also penalized them before they had been convicted of the crimes they stand accused of.

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[23] A.M. No. 05-11-04-SC.

THE REPUBLIC'S ARGUMENTS

In opposition, the Republic claims that the CA can issue a freeze order upon a determination that probable cause exists, showing that the monetary instruments or properties subject of the freeze order are related to the unlawful activity enumerated in RA No. 9160. Contrary to the petitioners' claims, it is not necessary that a formal criminal charge must have been previously filed against them before the freeze order can be issued.

The Republic further claims that the CA's September 20, 2005 resolution, granting the Republic's motion to extend the effectivity of the freeze order, had already become final and executory, and could no longer be challenged. The Republic notes that the Ligots erred when they filed what is effectively a second motion for reconsideration in response to the CA's January 4, 2006 resolution, instead of filing a petition for review on *certiorari via* Rule 45 with this Court. Under these circumstances, the assailed January 4, 2006 resolution granting the freeze order had already attained finality when the Ligots filed the present petition before this Court.

THE COURT'S RULING

We find merit in the petition.

I. Procedural aspect

a. Certiorari not proper remedy to assail freeze order; exception

Section 57 of the Rule in Civil Forfeiture Cases explicitly provides the remedy available in cases involving freeze orders issued by the CA:

Section 57. *Appeal*. — Any party aggrieved by the decision or ruling of the court may appeal to the Supreme Court by petition for review on *certiorari* under Rule 45 of the Rules of Court. The appeal shall not stay the enforcement of the subject decision or final order unless the Supreme Court directs otherwise. [italics supplied]

From this provision, it is apparent that the petitioners should have filed a petition for review on *certiorari*, and not a petition for *certiorari*, to assail the CA resolution which extended the effectivity period of the freeze order over their properties.

Even assuming that a petition for *certiorari* is available to the petitioners, a review of their petition shows that the issues they raise (*i.e.*, existence of probable cause to support the freeze order; the applicability of the 6-month limit to the extension of freeze orders embodied in the Rule of Procedure in Cases of Civil Forfeiture) pertain to errors of judgment allegedly committed by the CA, which fall outside the Court's limited jurisdiction when resolving *certiorari* petitions. As held in *People v. Court of Appeals*:[24]

> In a petition for *certiorari*, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions or issues beyond its competence such as errors of judgment. Errors of judgment of the trial court are to be resolved by the appellate court in the appeal by and of error or *via* a petition for review on *certiorari* in this Court under Rule 45 of the Rules of Court. *Certiorari* will issue only to correct errors of jurisdiction. It is not a remedy to correct errors of judgment. An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reversible only by an appeal. Error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. *Certiorari* will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.[25] (citations omitted; italics supplied)

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[24] G.R. No. 144332, June 10, 2004, 431 SCRA 610.

[25] *Id.* at 617.

Clearly, the Ligots should have filed a petition for review on *certiorari*, and not what is effectively a second motion for reconsideration (nor an original action of *certiorari* after this second motion was denied), within fifteen days from receipt of the CA's January 4, 2006 resolution. To recall, this resolution denied the petitioners' motion to lift the extended freeze order which is effectively a motion for reconsideration of the CA ruling extending the freeze order indefinitely.[26]

However, considering the issue of due process squarely brought before us in the face of an apparent conflict between Section 10 of RA No. 9160, as amended, and Section 53(b) of the Rule in Civil Forfeiture Cases, this Court finds it imperative to relax the application of the rules of procedure and resolve this case on the merits in the interest of justice.[27]

b. Applicability of 6-Month extension period under the Rule in Civil Forfeiture Cases

Without challenging the validity of the fixed 6-month extension period, the Republic nonetheless asserts that the Rule in Civil Forfeiture Cases does not apply to the present case because the CA had already resolved the issues regarding the extension of the freeze order before the Rule in Civil Forfeiture Cases came into effect.

This reasoning fails to convince us.

Notably, the Rule in Civil Forfeiture Cases came into effect on December 15, 2005. Section 59 provides that it shall "apply to all pending civil forfeiture cases or petitions for freeze order" at the time of its effectivity.

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[26] Section 2, Rule 45 of the Rules of Court.

[27] See *De Guzman v. Sandiganbayan*, 326 Phil. 182, 188-189 (1996); *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005, 469 SCRA 633, 643; and *Cuevas v. Bais Steel Corporation*, 439 Phil. 793, 805-806 (2002).

A review of the record reveals that after the CA issued its September 20, 2005 resolution extending the freeze order, the Ligots filed a **motion to lift the extended freeze order on September 28, 2005. Significantly, the CA only acted upon this motion on January 4, 2006,** when it issued a resolution denying it.

While denominated as a Motion to Lift Extended Freeze Order, this motion was actually a motion for reconsideration, as it sought the reversal of the assailed CA resolution. Since the Ligots' motion for reconsideration was **still pending resolution** at the time the Rule in Civil Forfeiture Cases **came into effect on December 15, 2005,** the Rule unquestionably applies to the present case.

c. Subsequent events

During the pendency of this case, the Republic manifested that on September 26, 2011, it filed a Petition for Civil Forfeiture with the Regional Trial Court (*RTC*) of Manila. On September 28, 2011, the RTC, Branch 22, Manila, issued a Provisional Asset Preservation Order and on October 5, 2011, after due hearing, it issued an Asset Preservation Order.

On the other hand, the petitioners manifested that as of October 29, 2012, the only case filed in connection with the frozen bank accounts is Civil Case No. 0197, for forfeiture of unlawfully acquired properties under RA No. 1379 (entitled "*Republic of the Philippines v. Lt. Gen. Jacinto Ligot, et al.*"), pending before the Sandiganbayan.

These subsequent developments and their dates are significant in our consideration of the present case, particularly the procedural aspect. Under Section 56 of the Rule in Civil Forfeiture Cases which provides that after the post-issuance hearing on whether to modify, lift or extend the freeze order, the CA shall remand the case and transmit the records to the RTC for consolidation with the pending civil forfeiture proceeding. This provision gives the impression that the filing of the appropriate cases in courts in 2011 and 2012 rendered this case moot and academic.

A case is considered moot and academic when it "ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness."[28] However, the moot and academic principle is not an iron-clad rule and is subject to four settled exceptions,[29] two of which are present in this case, namely: when the constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar, and the public, and when the case is capable of repetition, yet evading review.

The apparent conflict presented by the limiting provision of the Rule in Civil Forfeiture Cases, on one hand, and the very broad judicial discretion under RA No. 9160, as amended, on the other hand, and the uncertainty it casts on an individual's guaranteed right to due process indubitably call for the Court's exercise of its discretion to decide the case, otherwise moot and academic, under those two exceptions, for the future guidance of those affected and involved in the implementation of RA No. 9160, as amended.

Additionally, we would be giving premium to the government's failure to file an appropriate case until only after **six years** (despite the clear provision of the Rule in Civil Forfeiture Cases) were we to dismiss the petition because of the filing of the forfeiture case during the pendency of the case before the Court. The sheer length of time and the constitutional violation involved, as will be discussed below, strongly dissuade us from dismissing the petition on the basis of the "moot and academic" principle. The Court should not allow the seeds of future violations to sprout by hiding under this principle even when directly confronted with the glaring issue of the respondent's violation of the

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[28] *Deutsche Bank AG v. Court of Appeals*, G.R. No. 193065, February 27, 2012, 667 SCRA 82, 91.

[29] *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006).

petitioners' due process right[30] — an issue that the respondent itself chooses to ignore.

We shall discuss the substantive relevance of the subsequent developments and their dates at length below.

II. Substantive aspect

a. Probable cause exists to support the issuance of a freeze order

The legal basis for the issuance of a freeze order is Section 10 of RA No. 9160, as amended by RA No. 9194, which states:

> Section 10. *Freezing of Monetary Instrument or Property*. — The Court of Appeals, upon application *ex parte* by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, may issue a freeze order which shall be effective immediately. The freeze order shall be for a period of twenty (20) days unless extended by the court. [italics supplied]

The Ligots claim that the CA erred in extending the effectivity period of the freeze order against them, given that they have not yet been convicted of committing any of the offenses enumerated under RA No. 9160 that would support the AMLC's accusation of money-laundering activity.

We do not see any merit in this claim. The Ligots' argument is founded on a flawed understanding of probable cause in the context of a civil forfeiture proceeding[31] or freeze order application.[32]

Based on Section 10 quoted above, there are only two requisites for the issuance of a freeze order: (1) the application *ex parte* by the AMLC and (2) the determination of probable cause by

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[30] See *SANLAKAS v. Executive Secretary Reyes*, 466 Phil. 482, 505-506 (2004).

[31] Section 11 of A.M. No. 05-11-04-SC.

[32] Section 51, paragraph 2 of A.M. No. 05-11-04-SC.

the CA.[33] The probable cause required for the issuance of a freeze order differs from the probable cause required for the institution of a criminal action, and the latter was not an issue before the CA nor is it an issue before us in this case.

As defined in the law, the probable cause required for the issuance of a freeze order refers to "such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or a money laundering offense is about to be, is being or has been committed and that **the account or any monetary instrument or property subject thereof sought to be frozen is in any way related to** said unlawful activity and/or money laundering offense."[34]

In other words, in resolving the issue of whether probable cause exists, the CA's statutorily-guided determination's focus is not on the probable commission of an unlawful activity (or money laundering) that the Office of the Ombudsman has already determined to exist, but on whether the bank accounts, assets, or other monetary instruments sought to be frozen are ***in any way related*** to any of the illegal activities enumerated under RA No. 9160, as amended.[35] Otherwise stated, probable cause refers to the sufficiency of the relation between an unlawful

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[33] *Major General Carlos Garcia v. Court of Appeals*, G.R. No. 165800, November 27, 2007.

[34] Rule 10.2 of the Revised Implementing Rules and Regulations, RA No. 9160, as amended by RA No. 9194.

[35] Revised Implementing Rules and Regulations, RA No. 9160, as amended by RA No. 9194.

Rule 10.1. When the AMLC may apply for the freezing of any monetary instrument or property. —

(a) After an investigation conducted by the AMLC and upon determination that probable cause exists that a monetary instrument or property is in any way related to any unlawful activity as defined under Section 3 (i), the AMLC may file an *ex-parte* application before the Court of Appeals for the issuance of a freeze order on any monetary instrument or property subject thereof prior to the institution or in the course of, the criminal proceedings involving the unlawful activity to which said monetary instrument or property is any way related.

activity and the property or monetary instrument which is the focal point of Section 10 of RA No. 9160, as amended. To differentiate this from any criminal case that may thereafter be instituted against the same respondent, the Rule in Civil Forfeiture Cases expressly provides —

> SEC. 28. *Precedence of proceedings*. — Any criminal case relating to an unlawful activity shall be given precedence over the prosecution of any offense or violation under Republic Act No. 9160, as amended, **without prejudice to the filing of a separate petition for** civil forfeiture or **the issuance** of an asset preservation order or a **freeze order**. **Such civil action shall proceed independently of the criminal prosecution.** [italics supplied; emphases ours]

Section 10 of RA No. 9160 (allowing the extension of the freeze order) and Section 28 (allowing a separate petition for the issuance of a freeze order to proceed independently) of the Rule in Civil Forfeiture Cases are only consistent with the very purpose of the freeze order, which specifically is to give the government the necessary time to prepare its case and to file the appropriate charges without having to worry about the possible dissipation of the assets that are in any way related to the suspected illegal activity. Thus, contrary to the Ligots' claim, a freeze order is not dependent on a separate criminal charge, much less does it depend on a conviction.

That a freeze order can be issued upon the AMLC's *ex parte* application further emphasizes the law's consideration of how critical time is in these proceedings. As we previously noted in *Republic v. Eugenio, Jr.*,[36] "[t]o make such freeze order interceded by a judicial proceeding with notice to the account holder would allow for or lead to the dissipation of such funds even before the order could be issued."

It should be noted that the existence of an unlawful activity that would justify the issuance and the extension of the freeze order has likewise been established in this case.

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[36] G.R. No. 174629, February 14, 2008, 545 SCRA 384.

From the *ex parte* application and the Ombudsman's complaint, we glean that Lt. Gen. Ligot himself admitted that his income came from his salary as an officer of the AFP. Yet, the Ombudsman's investigation revealed that the bank accounts, investments and properties in the name of Lt. Gen. Ligot and his family amount to more than Fifty-Four Million Pesos (₱54,000,000.00). Since these assets are grossly disproportionate to Lt. Gen. Ligot's income, as well as the lack of any evidence that the Ligots have other sources of income, the CA properly found that probable cause exists that these funds have been illegally acquired. On the other hand, the AMLC's verified allegations in its *ex parte* application, based on the complaint filed by the Ombudsman against Ligot and his family for violations of the Anti-Graft and Corrupt Practices Act, clearly sustain the CA's finding that probable cause exists that the monetary instruments subject of the freeze order are related to, or are the product of, an unlawful activity.

b. A freeze order, however, cannot be issued for an indefinite period

Assuming that the freeze order is substantively in legal order, the Ligots now assert that its effectiveness ceased after January 25, 2006 (or six months after July 25, 2005 when the original freeze order first expired), pursuant to Section 53(b) of the Rule in Civil Forfeiture Cases (A.M. No. 05-11-04-SC). This section states:

Section 53. *Freeze order*. —

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(b) *Extension*. — On motion of the petitioner filed before the expiration of twenty days from issuance of a freeze order, **the court may for good cause extend its effectivity for a period not exceeding six months.** [italics supplied; emphasis ours]

We find merit in this claim.

A freeze order is an ***extraordinary and interim relief***[37] issued by the CA to prevent the dissipation, removal, or disposal of properties that are suspected to be the proceeds of, or related to, unlawful activities as defined in Section 3(i) of RA No. 9160, as amended.[38] The primary objective of a freeze order is to **temporarily preserve** monetary instruments or property that are in any way related to an unlawful activity or money laundering, by preventing the owner from utilizing them during the duration

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[37] *Ibid.*

[38] Section 3(i) provides:

(i) "Unlawful activity" refers to any act or omission or series or combination thereof involving or having relation to the following:

(1) Kidnapping for ransom under Article 267 of Act No. 3815, otherwise known as the Revised Penal Code, as amended;

(2) Sections 3, 4, 5, 7, 8 and 9 of Article Two of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972;

(3) Section 3, paragraphs B, C, E, G, H and I of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act;

(4) Plunder under Republic Act No. 7080, as amended;

(5) Robbery and extortion under Articles 294, 295, 296, 299, 300, 301 and 302 of the Revised Penal Code, as amended;

(6) Jueteng and Masiao punished as illegal gambling under Presidential Decree No. 1602;

(7) Piracy on the high seas under the Revised Penal Code, as amended, and Presidential Decree No. 532;

(8) Qualified theft under Article 310 of the Revised Penal Code, as amended;

(9) Swindling under Article 315 of the Revised Penal Code, as amended;

(10) Smuggling under Republic Act Nos. 455 and 1937;

(11) Violations under Republic Act No. 8792, otherwise known as the Electronic Commerce Act of 2000;

(12) Hijacking and other violations under Republic Act No. 6235; destructive arson and murder, as defined under the Revised Penal Code, as amended, including those perpetrated by terrorists against non-combatant persons and similar targets;

(13) Fraudulent practices and other violations under Republic Act No. 8799, otherwise known as the Securities Regulation Code of 2000;

(14) Felonies or offenses of a similar nature that are punishable under the penal laws of other countries.

of the freeze order.[39] The relief is **pre-emptive** in character, meant to prevent the owner from disposing his property and thwarting the State's effort in building its case and eventually filing civil forfeiture proceedings and/or prosecuting the owner.

Our examination of the **Anti-Money Laundering Act of 2001**, as amended, from the point of view of the freeze order that it authorizes, shows that *the law is silent on the maximum period of time that the freeze order can be extended by the CA*. The final sentence of Section 10 of the Anti-Money Laundering Act of 2001 provides, "[t]he freeze order shall be for a period of twenty (20) days unless extended by the court." In contrast, Section 55 of the Rule in Civil Forfeiture Cases qualifies *the grant of extension "for a period not exceeding six months" "for good cause" shown*.

We observe on this point that nothing in the law grants the owner of the "frozen" property any substantive right to demand that the freeze order be lifted, except by implication, *i.e.*, if he can show that no probable cause exists or if the 20-day period has already lapsed without any extension being requested from and granted by the CA. Notably, the Senate deliberations on RA No. 9160 even suggest the intent on the part of our legislators to make the freeze order effective until the termination of the case, when necessary.[40]

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[39] *Republic v. Eugenio, Jr., supra* note 33.

[40] See Transcripts of Session Proceedings, 12th Congress, September 27, 2001, pp. 18-19.

Senator Osmeña (S). Why would it be necessary to remove Provisional Remedies Pending Criminal Proceedings? We have a 20-day freeze. One may go to court for an *ex parte* motion to investigate the account, inquire into the account. What happens after that if we remove this provision, Mr. President?

Senator Cayetano. Mr. President, **the moment the court orders the freezing of the account that will remain until the case is terminated.** That is the reason. And when an order to freeze exists, the defendant cannot move any property already frozen. The availment of provisional remedy is to ensure that the property being sought will not be removed. But since it is already frozen, there is no way by which the property can be removed or concealed. That is the reason why I proposed the deletion of this. (Emphasis ours.)

The silence of the law, however, does not in any way affect the Court's own power *under the Constitution* to "promulgate rules concerning the protection and enforcement of constitutional rights x x x and procedure in all courts."[41] Pursuant to this power, the Court issued A.M. No. 05-11-04 SC, limiting the effectivity of an extended freeze order to six months — to otherwise leave the grant of the extension to the sole discretion of the CA, which may extend a freeze order indefinitely or to an unreasonable amount of time — carries serious implications on an individual's substantive right to due process.[42] This right demands that no person be denied his right to property or be subjected to any governmental action that amounts to a denial.[43] The right to due process, under these terms, requires a limitation or at least an inquiry on whether sufficient justification for the governmental action.[44]

In this case, the law has left to the CA the authority to resolve the issue of extending the freeze order it issued. Without doubt, the CA followed the law to the letter, but it did so by avoiding the *fundamental law's* command under its Section 1, Article III. This command, the Court — under its constitutional rule-making power — sought to implement through Section 53(b)

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[41] CONSTITUTION, Article VIII, Section 5(5).

[42] This implication was made express by Section 53 of A.M. No. 05-11-04-SC. The failure of the petitioners to move for the modification or the lifting of the freeze order within the twenty-day period, as provided in Section 53 (a), cannot prejudice them. To begin with, A.M. No. 05-11-04-SC itself only took effect on November 15, 2005 while the freeze order was issued a few months earlier, or on July 5, 2005; neither can we reasonably expect the petitioners to comply with the provisions of R.A. No. 10167 (granting the property owner the remedy of filing a motion to lift the freeze order within the original 20-day period) since this law only took effect sometime in 2012. In short, even from this simple temporal point of view, coupled with their lone procedural error in resorting to *certiorari*, and the due process consideration involved, the Court is justified in proceeding with the petition's merits.

[43] *Hon. Corona v. United Harbor Pilots Asso. of the Phil.*, 347 Phil. 333, 340, 342 (1997).

[44] *City of Manila v. Hon. Laguio, Jr.*, 495 Phil. 289, 311 (2005).

of the Rule in Civil Forfeiture Cases which the CA erroneously assumed does not apply.

The Ligots' case perfectly illustrates the inequity that would result from giving the CA the power to extend freeze orders without limitations. As narrated above, the CA, *via* its September 20, 2005 resolution, extended the freeze order over the Ligots' various bank accounts and personal properties "*until after all the appropriate proceedings and/or investigations being conducted are terminated*."[45] By its very terms, the CA resolution effectively bars the Ligots from using any of the property covered by the freeze order **until after** an eventual **civil forfeiture proceeding is concluded** in their favor **and** **after** they shall have been adjudged not guilty of the crimes they are suspected of committing. These periods of extension are way beyond the intent and purposes of a freeze order which is intended solely as an **interim relief**; the civil and criminal trial courts can very well handle the disposition of properties related to a forfeiture case or to a crime charged and need not rely on the interim relief that the appellate court issued as a guarantee against loss of property while the government is preparing its full case. The term of the CA's extension, too, borders on inflicting a punishment to the Ligots, in violation of their constitutionally protected right to be presumed innocent, because the unreasonable denial of their property comes before final conviction.

In more concrete terms, the freeze order over the Ligots' properties has been in effect since 2005, while the civil forfeiture case — per the Republic's manifestation — was filed only in 2011 and the forfeiture case under RA No. 1379 — per the petitioners' manifestation — was filed only in 2012. This means that **the Ligots have not been able to access the properties subject of the freeze order for six years or so simply on the basis of the existence of probable cause *to issue a freeze order*, which was intended mainly as an interim preemptive remedy.**

As correctly noted by the petitioners, a freeze order is meant to have a temporary effect; it was never intended to supplant

[45] *Rollo*, p. 154.

or replace the actual forfeiture cases where the provisional remedy — which means, the remedy is an adjunct of or an incident to the main action — of asking for the issuance of an asset preservation order from the court where the petition is filed is precisely available. For emphasis, a freeze order is both a ***preservatory*** and ***preemptive*** remedy.

To stress, the evils caused by the law's silence on the freeze order's period of effectivity[46] compelled this Court to issue the Rule in Civil Forfeiture Cases. Specifically, the Court fixed the maximum allowable extension on the freeze order's effectivity at six months. In doing so, the Court sought to balance the State's interest in going after suspected money launderers with an individual's constitutionally-protected right not to be deprived of his property without due process of law, as well as to be presumed innocent until proven guilty.

To our mind, the six-month extension period is *ordinarily* sufficient for the government to act against the suspected money launderer and to file the appropriate forfeiture case against him, and is a reasonable period as well that recognizes the property owner's right to due process. ***In this case, the period of inaction of six years, under the circumstances, already far exceeded what is reasonable.***

We are not unmindful that the State itself is entitled to due process. As a due process concern, we do not say that ***the six-month period is an inflexible rule*** that would result in the automatic lifting of the freeze order upon its expiration in all instances. An inflexible rule may lend itself to abuse — to the prejudice of the State's legitimate interests — where the property owner would simply file numerous suits, questioning the freeze order during the six-month extension period, to prevent the timely filing of a money laundering or civil forfeiture case within this

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[46] Vitug, Pardo & Herrera, *A Summary of Notes and Views on the Rule of Procedure in Cases of Civil Forfeiture, Asset Preservation and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense Under Republic Act No. 9160, as Amended*, 2006, p. 90.

period. With the limited resources that our government prosecutors and investigators have at their disposal, the end-result of an inflexible rule is not difficult to see.

We observe, too, that the factual complexities and intricacies of the case and other matters that may be beyond the government's prosecutory agencies' control may contribute to their inability to file the corresponding civil forfeiture case before the lapse of six months. Given these considerations, it is only proper to strike a balance between the individual's right to due process and the government's interest in curbing criminality, particularly money laundering and the predicate crimes underlying it.

Thus, as a rule, the effectivity of a freeze order may be extended by the CA for a period not exceeding six months. Before or upon the lapse of this period, ideally, the Republic should have already filed a case for civil forfeiture against the property owner with the proper courts and accordingly secure an asset preservation order or it should have filed the necessary information.[47] *Otherwise*, the property owner should already be able to fully enjoy his property without any legal process affecting it. However, should it become completely necessary for the Republic to further extend the duration of the freeze order, it should file the necessary motion before the expiration of the six-month period and explain the reason or reasons for its failure to file an appropriate case and justify the period of extension sought. The freeze order should remain effective prior to the resolution by the CA, which is hereby directed to resolve this kind of motion for extension with reasonable dispatch.

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[47] Note that for instance, if the unlawful activity involved is plunder, Section 2 of RA No. 7080 requires that upon conviction, the court shall declare any and all ill gotten wealth and their interests and other incomes and assets including the properties and shares of stock derived from the deposit or investment thereof forfeited in favor of the state; likewise if the unlawful activity involved is violation of RA 3019, the law orders the confiscation or forfeiture in favor of the government of any prohibited interest and unexplained wealth manifestly out of proportion to the convicted accused' salary and other lawful income. In these cases, the state may avail of the provisional remedy under Rule 127 of the Revised Rules of Criminal Procedure to secure the preservation of these unexplained wealth and income should no petition for civil forfeiture or freeze order be filed.

In the present case, we note that the Republic has not offered any explanation why it took six years (from the time it secured a freeze order) before a civil forfeiture case was filed in court, despite the clear tenor of the Rule in Civil Forfeiture Cases allowing the extension of a freeze order for only a period of six months. All the Republic could proffer is its temporal argument on the inapplicability of the Rule in Civil Forfeiture Cases; in effect, it glossed over the squarely-raised issue of due process. Under these circumstances, we cannot but conclude that the continued extension of the freeze order beyond the six-month period violated the Ligots' right to due process; thus, the CA decision should be reversed.

We clarify that our conclusion applies only to the CA ruling and does not affect the proceedings and whatever order or resolution the RTC may have issued in the presently pending civil cases for forfeiture. We make this clarification to ensure that we can now fully conclude and terminate this CA aspect of the case.

As our last point, we commend the fervor of the CA in assisting the State's efforts to prosecute corrupt public officials. We remind the appellate court though that the government's anti-corruption drive cannot be done at the expense of cherished fundamental rights enshrined in our Constitution. So long as we continue to be guided by the Constitution and the rule of law, the Court cannot allow the justification of governmental action on the basis of the noblest objectives alone. As so oft-repeated, the end does not justify the means. Of primordial importance is that the means employed must be in keeping with the Constitution. Mere expediency will certainly not excuse constitutional shortcuts.[48]

WHEREFORE, premises considered, we **GRANT** the petition and **LIFT** the freeze order issued by the Court of Appeals in CA G.R. SP No. 90238. This lifting is without prejudice to, and shall not affect, the preservation orders that the lower courts

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[48] 256 Phil. 777, 809 (1989).

have ordered on the same properties in the cases pending before them. Pursuant to Section 56 of A.M. No. 05-11-04-SC, the Court of Appeals is hereby ordered to remand the case and to transmit the records to the Regional Trial Court of Manila, Branch 22, where the civil forfeiture proceeding is pending, for consolidation therewith as may be appropriate.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 181096. March 6, 2013]

RENO R. GONZALES,[1] **LOURDES R. GONZALES, and REY R. GONZALES,** *petitioners, vs.* **CAMARINES SUR II ELECTRIC COOPERATIVE, INC., as represented by ANTONIO BORJA, JANE T. BARRAMEDA, and REGINA (NENA) D. ALVAREZ,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; DAMAGES; ACTUAL DAMAGES; CLAIM FOR ACTUAL DAMAGES MUST BE SUPPORTED BY COMPETENT PROOF.— Despite the enumeration of expenditures, the claim of petitioners for actual damages cannot be granted. In *People v. Buenavidez*, this Court stressed that only expenses supported by receipts, and not merely a list thereof, shall be allowed as bases for the award of actual damages. As admitted by petitioners themselves, none of these expenses, which were incurred over a span of

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[1] Died on 16 January 2005.

seven years, was backed up by documentary proof such as a receipt or an invoice. Considering, therefore, that adequate compensation is awarded only if the pecuniary loss suffered is proven by competent proof and by the best evidence obtainable showing the actual amount of loss, the CA correctly denied petitioners' claims for actual damages.

2. **ID.; ID.; ID.; TEMPERATE DAMAGES; CLAIM FOR TEMPERATE DAMAGES GIVEN DUE COURSE ALBEIT RAISED ONLY FOR THE FIRST TIME ON APPEAL.—** [E]ven if this claim was raised only for the first time on appeal and, hence, generally not cognizable by this Court, we have nevertheless given due course to newly raised questions that are closely related to or dependent on an assigned error. As an illustrative case, we have resolved the issue of temperate damages in *Viron Transportation Co., Inc. v. Delos Santos*, albeit raised only in the petition for review on *certiorari* filed before this Court.

3. **ID.; ID.; ID.; ID.; WHERE THE PARTIES PROVED THAT THEY INCURRED UNDUE COSTS IN PURSUING THEIR RIGHT, AWARD OF TEMPERATE DAMAGES IS PROPER.—** Article 2224 of the Civil Code provides that temperate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty. Notwithstanding the wording of the Civil Code cited above, we have already settled in jurisprudence that even if the pecuniary loss suffered by the claimant is capable of proof, an award of temperate damages is not precluded. The grant of temperate damages is drawn from equity to provide relief to those definitely injured. Therefore, it may be allowed so long as the court is convinced that the aggrieved party suffered some pecuniary loss. Here, the RTC acknowledged that petitioners suffered some form of pecuniary loss when it accepted as fact that they went back and forth to the office of CASURECO at Del Rosario, Naga City, to settle the account of the Samsons. Although the CA did not review this factual finding, we find that the RTC's pronouncement on this matter was nonetheless substantiated by the evidence on record given the attached letters with postages, documents, and testimonies that signified an ongoing transaction between the parties to settle the electric charges. Indeed, they were at least able to prove that they

incurred undue costs in pursuing their rights against CASURECO. Hence, the award of temperate damages to petitioners is in order. Given that these are more than nominal but less than compensatory damages, we deem it reasonable under the circumstances to award them ₱3,000.

4. **ID.; ID.; ID.; EXEMPLARY DAMAGES AND ATTORNEY'S FEES; AWARD THEREOF REINSTATED IN VIEW OF RESPONDENT'S BAD FAITH IN DEALING WITH PETITIONERS.—** In order to obtain exemplary damages under Article 2232 of the Civil Code, the claimant must prove that the assailed actions of the defendant are not just wrongful, but also wanton, fraudulent, reckless, oppressive or malevolent. x x x [T]he RTC discussed the evident bad faith of respondents. With the promissory note issued by the Samsons, respondents recognized that the obligation to pay the electric bills did not belong to petitioners. Additionally, the compromise agreement also purported that petitioners were not liable to pay the old accountabilities of the unit. However, despite the clear import of the compromise agreement and the promissory note, the RTC highlighted that CASURECO betrayed the compromise agreement by refusing to remove the old accountabilities of the unit, unjustifiably and repetitively reflecting them for seven years in several electric bills of petitioners with threats of electric service disconnection, and unduly disconnecting the unit's power supply. The trial court thus concluded that CASURECO could not be deemed to have exercised honesty and good faith in transacting with petitioners. Absent any contrary finding by the CA, and as clearly borne out by the compromise agreement and the electric bills adverted to, we affirm the findings of the trial court. Consequently, we reinstate the award of exemplary damages given to petitioners by the RTC. As regards attorney's fees, the Civil Code provides that the award shall be given to the claimant if exemplary damages are awarded; or if the defendant acted in gross and evident bad faith in refusing to satisfy the former's plainly valid, just and demandable claim. Clearly, with the finding of bad faith in CASURECO's betrayal of the compromise agreement, and given that the award of exemplary damages is proper, this Court finds basis for restoring the grant of attorney's fees. We thus reinstate the award of attorney's fees to petitioners.

5. ID.; ID.; ID.; MORAL DAMAGES, AWARDED IN VIEW OF SEVERE SUFFERINGS INFLICTED ON PETITIONERS.— Both courts *a quo* agree that petitioners are entitled to moral damages, since they adduced proof of moral suffering, mental anguish, fright and the like. However, the CA ruled that the award of moral damages by the RTC was excessive and, hence, reduced the amount thereof from ₱50,000 to ₱25,000.We disagree with the ruling of the CA on this matter. In *Danao v. Court of Appeals*, we laid down the rule that "the fairness of the award of damages by the trial court also calls for an appellate determination such that where the award of moral damages is far too excessive compared to the actual losses sustained by the claimants, the former may be reduced." In view, however, of the severe sufferings inflicted on petitioners by CASURECO, we affirm the RTC's award of ₱50,000 as moral damages. This amount is appropriate considering that respondents irresponsibly failed to update its records from 1992 until 1999, despite the execution of the compromise agreement and the constant reminder by petitioners to make the appropriate rectifications. We further note that CASURECO offered no valid explanation for such flagrant omission. Hence, this Court maintains the original grant in order to exact better service from utility companies.

APPEARANCES OF COUNSEL

Tan Venturanza Valdez for petitioners.
Veronica A. Cuyo-Avila for respondents.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Rule 45 Petition, seeking a review of the 18 December 2007 Court of Appeals (CA) Decision in CA-G.R. CV No. 86075,[2] which deleted the award of actual damages, exemplary damages, and attorney's fees and reduced the moral

[2] *Rollo,* pp. 38-46; CA Decision, penned by Associate Justice Myrna D. Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr. concurring.

damages granted to petitioners in the 25 June 2005 Decision of the Regional Trial Court (RTC) of Naga City, Branch 27 in Civil Case No. 99-4439.[3]

The antecedent facts are as follows:[4]

Petitioner spouses Reno Gonzales (Reno) and Lourdes Gonzales owned an apartment for rent at Naga City, Unit No. 11-A of which was rented out to Mr. and Mrs. Samuel Samson (Samsons). These lessees reneged on their obligation to pay the unit's electric bills for the second semester of 1992. As a result, respondent Camarines Sur II Electric Cooperative, Inc. (CASURECO) disconnected the power supply.

Nevertheless, electric power was restored to the unit when the Samsons executed a Promissory Note in favor of CASURECO promising to pay their overdue electric bills.

The spouses Gonzales then protested the restoration of the power supply to the unit, given the accumulating unpaid electric bills of their lessees for the second semester of 1992.[5] Acting belatedly on the protest, CASURECO terminated the power supply of the unit at the time that the Samsons vacated it.

With a new lessee about to occupy the unit, the spouses Gonzales wrote CASURECO and sought a dialogue with its area manager, Jane Barrameda, to restore the unit's power supply. As a result of their dialogue, the parties reached a compromise agreement, whereby CASURECO would restore power supply to the unit and remove its old accountabilities, provided that petitioners would deposit the equivalent of two monthly electric bills of the Samsons. Accordingly, petitioners complied with their obligation which resulted in the restoration of the power supply to the unit.

On 9 December 1994, the power supply to the unit was again cut off. Thus, Reno wrote to respondents and reminded them of

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[3] *Rollo*, pp. 72-84; RTC Decision penned by Judge Leo L. Intia.

[4] *Id.* at 39-42.

[5] *Id.* at 48-49, letters dated 31 August 1992 and 21 May 1993.

the compromise agreement to remove the old accountabilities of the unit. Thereafter, electric power was restored.

Later on, the spouses' son, petitioner Rey R. Gonzales (Rey), together with his family, occupied the unit without any interruption of electric supply. However, in some electric bills issued by CASURECO, the company required the payment of both the current consumption and the past electric bills. The bills contained a notice of disconnection of electric services if the dues were not paid. All in all, from 1992 to 1999, petitioners constantly reminded respondent of their compromise agreement, which had already committed CASURECO to write off the past unpaid power bills.

Of these bills, the electric bill[6] for 23 August 1999 to 23 September 1999 in the amount of ₱1,148.17 included the past unpaid electric bills in the total amount of ₱11,6745.22 [sic].[7] Rey tendered only ₱1,148.17 as payment for the current consumption, which the teller of CASURECO refused to accept.

Days after the bill's due date, CASURECO allowed petitioners to pay only the current consumption. Reno subsequently went to the office of respondent to pay, but he angrily left the premises because the teller wanted to collect the surcharge of ₱21 for late payment.

As a result, petitioners filed a Complaint against respondents for consignation, *mandamus*, injunction and damages before the RTC in order to permanently remove the old accountability left by the Samsons in the electric bill and to prevent respondents from disconnecting the unit's power supply. They also consigned to the trial court the charges for their current electric consumption amounting to ₱1,148.17.

In its 25 June 2005 Decision,[8] the RTC accepted the consignation of petitioners as effective payment for the unit's

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[6] Records, p. 305.

[7] The electric bill reflects ₱11,617.81 as the total amount due on or before due date.

[8] *Rollo,* pp. 72-84; RTC Decision dated 25 June 2005.

current electric consumption. It also adjudged that they were not liable for the past unpaid electric bills of the Samsons by virtue of a valid and binding compromise agreement[9] between petitioners and CASURECO.

Furthermore, the RTC found that respondents harassed petitioners with constant threats of electric service disconnection. For seven years, they had to keep going to CASURECO's office every time they received a monthly bill, only to explain to the management that the unit's old accountabilities had long been settled. In order to teach CASURECO a lesson and to prevent such wanton, fraudulent, reckless, oppressive and malevolent acts from happening to other hapless consumers, the RTC granted actual, moral, and exemplary damages, as well as attorney's fees and cost of suit in favor of petitioners.[10] The dispositive portion reads:

> WHEREFORE, the Court finds for the Plaintiffs and hereby declares/orders that:[11]
>
> A) The consignation made by plaintiffs is valid; there was a compromise agreement by and between plaintiffs and defendant on the old accountability incurred by the previous lessee — Mr. Samson; The plaintiffs are not liable to pay for the electric power consumption of their previous lessee Mr. Samson, and defendant is ordered to desist from cutting electric service to the Unit by reason of such non-payment by, or liability of, Mr. Samson.
>
> B) Defendant CASURECO to pay Plaintiffs:
>
> 1. Actual damages in the amount of Pesos: Five Thousand (₱5,000.00);
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> 2. Moral damages in the amount of Pesos; Fifty Thousand (₱50,000.00);
>
> 3. Exemplary damages in the amount of Pesos: Fifty Thousand (₱50,000.00);

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[9] *Id.* at 80-82.

[10] *Id.* at 83-84.

[11] *Id.* at 84.

4. Attorney's fees on *quantum meruit* basis in the amount of Pesos: Fifty Thousand (₱50,000.00);

5. The cost of suit in the amount of not less than Pesos: Two Thousand Eight Hundred Sixty and Seventy[-]Five Centavos (₱2,860.75).

SO ORDERED.

Aggrieved, respondents appealed to the CA and raised new issues pertaining to the solidary liability of the spouses Gonzales and the Samsons for the unpaid electric bills. The appellate court no longer discussed the assigned error for having been alleged only for the first time on appeal.

In this respect, petitioners obtained favorable judgment from the CA resulting in the affirmation of the RTC's ruling that, by virtue of a compromise agreement, petitioners were not liable for the old accountabilities of the unit. This Court notes that since this particular issue was not appealed by either petitioners or respondents, this matter is already considered settled and final between the parties.[12]

However, the CA modified the award of damages.[13] It deleted the award of actual damages in the amount of ₱5,000, because petitioners failed to submit receipts or any other proof to substantiate the pecuniary loss they had incurred in restoring the unit's power supply. It also removed the grant of exemplary damages based on the finding that CASURECO's actions did not evince bad faith.

The CA further explained that petitioners, as the winning party, were not automatically entitled to attorney's fees. It reasoned that none of the instances of granting that award as enumerated in Article 2208 of the Civil Code existed in the case. Hence, it deleted the grant of attorney's fees. Moreover, it ruled that the RTC's award of moral damages to petitioners was excessive. It thus reduced the award of moral damages from ₱50,000 to ₱25,000.

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[12] *Philippine National Bank v. Spouses Francisco*, 398 Phil. 654 (2000).

[13] *Rollo*, pp. 42-46.

Dissatisfied with the deletion and reduction of compensation for damages, petitioners seek from this Court the grant of the following: (1) actual damages or, in the alternative, temperate damages; (2) exemplary damages; (3) attorney's fees; and (4) an increase in the award of moral damages. Clearly, the sole contention raised in the instant appeal is whether or not petitioners are entitled to the aforementioned damages.

RULING OF THE COURT

Actual Damages vis à vis Temperate Damages

From the years 1992 to 1999, petitioners maintain that they are entitled to compensatory damages because of their actual expenditures in going to and from CASURECO's office in order to forestall the disconnection of the unit's power supply. These expenses allegedly include transportation and gasoline, postage of letters, photocopying, and printing of documents.

Despite the enumeration of expenditures, the claim of petitioners for actual damages cannot be granted. In *People v. Buenavidez*,[14] this Court stressed that only expenses supported by receipts, and not merely a list thereof, shall be allowed as bases for the award of actual damages. As admitted by petitioners themselves,[15] none of these expenses, which were incurred over a span of seven years, was backed up by documentary proof such as a receipt or an invoice. Considering, therefore, that adequate compensation is awarded only if the pecuniary loss suffered is proven[16] by competent proof and by the best evidence obtainable showing the actual amount of loss,[17] the CA correctly denied petitioners' claims for actual damages.

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[14] 458 Phil. 25, 34 (2003).

[15] *Rollo*, p. 23.

[16] CIVIL CODE, Art. 2199.

[17] *ACI Philippines, Inc. v. Coquia*, G.R. No. 174466, 14 July 2008, 558 SCRA 300, 313.

In the alternative, petitioners contend anew in their Rule 45 Petition that they are entitled to temperate damages. They argue that they definitely suffered pecuniary losses, as they had to keep going back to CASURECO's office to complain about the old accountabilities of the Samsons.

Anent this contention, we rule in favor of petitioners. Prefatorily, even if this claim was raised only for the first time on appeal and, hence, generally not cognizable by this Court,[18] we have nevertheless given due course to newly raised questions that are closely related to or dependent on an assigned error.[19] As an illustrative case, we have resolved the issue of temperate damages in *Viron Transportation Co., Inc. v. Delos Santos*,[20] albeit raised only in the petition for review on *certiorari* filed before this Court.

Article 2224 of the Civil Code provides that temperate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

Notwithstanding the wording of the Civil Code cited above, we have already settled in jurisprudence[21] that even if the pecuniary loss suffered by the claimant is capable of proof, an award of temperate damages is not precluded. The grant of temperate damages is drawn from equity to provide relief to those definitely injured. Therefore, it may be allowed so long as the court is convinced that the aggrieved party suffered some pecuniary loss.[22]

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[18] *Canada v. All Commodities Marketing Corporation*, G.R. No. 146141, 17 October 2008, 569 SCRA 321.

[19] RULES OF COURT, Rule 51, Sec. 8.

[20] 399 Phil. 243 (2000).

[21] *Republic v. Tuvera*, G.R. No. 148246, 16 February 2007, 516 SCRA 113, 151-152.

[22] *Tan v. OMC Carriers, Inc.*, G.R. No. 190521, 12 January 2011, 639 SCRA 471, 482.

Here, the RTC acknowledged that petitioners suffered some form of pecuniary loss when it accepted as fact that they went back and forth to the office of CASURECO at Del Rosario, Naga City, to settle the account of the Samsons. Although the CA did not review this factual finding, we find that the RTC's pronouncement on this matter was nonetheless substantiated by the evidence on record given the attached letters with postages, documents, and testimonies that signified an ongoing transaction between the parties to settle the electric charges. Indeed, they were at least able to prove that they incurred undue costs in pursuing their rights against CASURECO.

Hence, the award of temperate damages to petitioners is in order. Given that these are more than nominal but less than compensatory damages,[23] we deem it reasonable under the circumstances[24] to award them ₱3,000.

Deletion of the Award for Exemplary Damages and Attorney's Fees

Petitioners assert that CASURECO acted in bad faith when it kept on unjustifiably charging them the old accountabilities of the unit despite knowing very well that the spouses were under no obligation to pay based on the compromise agreement. To make matters worse, CASURECO did not only disconnect the unit's power supply but also continuously threatened them with disconnection. For these acts pursued in bad faith, petitioners claim that they are entitled to exemplary damages and, consequently, attorney's fees.

In order to obtain exemplary damages under Article 2232 of the Civil Code, the claimant must prove that the assailed actions of the defendant are not just wrongful, but also wanton, fraudulent, reckless, oppressive or malevolent.

In this case, the CA concluded that there was no evidence that CASURECO acted in bad faith. Sadly, this conclusion was not preceded by any explanation from the appellate court.

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[23] CIVIL CODE, Art. 2224.

[24] CIVIL CODE, Art. 2225.

In contrast, the RTC discussed the evident bad faith of respondents. With the promissory note issued by the Samsons, respondents recognized that the obligation to pay the electric bills did not belong to petitioners. Additionally, the compromise agreement also purported that petitioners were not liable to pay the old accountabilities of the unit. However, despite the clear import of the compromise agreement and the promissory note, the RTC highlighted that CASURECO betrayed the compromise agreement by refusing to remove the old accountabilities of the unit, unjustifiably and repetitively reflecting them for seven years in several electric bills of petitioners with threats of electric service disconnection, and unduly disconnecting the unit's power supply. The trial court thus concluded that CASURECO could not be deemed to have exercised honesty and good faith in transacting with petitioners.

Absent any contrary finding by the CA, and as clearly borne out by the compromise agreement[25] and the electric bills[26] adverted to, we affirm the findings of the trial court. Consequently, we reinstate the award of exemplary damages given to petitioners by the RTC.

As regards attorney's fees, the Civil Code provides that the award shall be given to the claimant if exemplary damages are awarded;[27] or if the defendant acted in gross and evident bad faith in refusing to satisfy the former's plainly valid, just and demandable claim.[28]

Clearly, with the finding of bad faith in CASURECO's betrayal of the compromise agreement, and given that the award of exemplary damages is proper, this Court finds basis for restoring the grant of attorney's fees. We thus reinstate the award of attorney's fees to petitioners.

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[25] *Rollo*, pp. 80-82, RTC Decision dated 25 June 2005.

[26] Records, pp. 9-10.

[27] CIVIL CODE, Art. 2208 (1).

[28] CIVIL CODE, Art. 2208 (5).

The Award of Moral Damages

Petitioners assert that for seven long years, they were harassed, stressed, troubled, bothered and inconvenienced by the threats of disconnection over the old accountabilities of the unit, which, in the first place, were not their responsibility. Furthermore, they aver that although they constantly tried to remedy the problem through explanations and requests for correction of the electric bills, they still suffered from actual disconnection of electric supply. Finally, they emphasize that at the time the incidents in this case were transpiring, the spouses were supposed to be enjoying their retirement, while Rey was just starting to rear his family. For petitioners, these aforementioned circumstances justify the increase of moral damages to ₱50,000.

Both courts *a quo* agree[29] that petitioners are entitled to moral damages, since they adduced proof of moral suffering, mental anguish, fright and the like.[30] However, the CA ruled that the award of moral damages by the RTC was excessive and, hence, reduced the amount thereof from ₱50,000 to ₱25,000.

We disagree with the ruling of the CA on this matter. In *Danao v. Court of Appeals,*[31] we laid down the rule that "the fairness of the award of damages by the trial court also calls for an appellate determination such that where the award of moral damages is far too excessive compared to the actual losses sustained by the claimants, the former may be reduced."

In view, however, of the severe sufferings inflicted on petitioners by CASURECO, we affirm the RTC's award of ₱50,000 as moral damages. This amount is appropriate considering that respondents irresponsibly failed to update its records from 1992 until 1999, despite the execution of the compromise agreement and the constant reminder by petitioners to make the appropriate rectifications. We further note that

[29] *Rollo*, p. 44, CA Decision dated 18 December 2007; *rollo*, pp. 82-84, RTC Decision dated 25 June 2005.

[30] CIVIL CODE, Art. 2217.

[31] 238 Phil. 447, 461 (1987).

CASURECO offered no valid explanation for such flagrant omission. Hence, this Court maintains the original grant in order to exact better service from utility companies.

IN VIEW THEREOF, the 18 December 2007 Decision of the Court of Appeals in CA-G.R. CV No. 86075 is **AFFIRMED with the MODIFICATION** that temperate damages in the amount of ₱3,000 is granted to petitioners; and that the awards for exemplary damages, attorney's fees and moral damages, as determined by the 25 June 2005 Decision of the Regional Trial Court in Civil Case No. 99-4439, are hereby reinstated.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 181598. March 6, 2013]

OFFICE OF THE OMBUDSMAN, *petitioner*, *vs*. **ARNEL A. BERNARDO, ATTORNEY V, BUREAU OF INTERNAL REVENUE (BIR),** *respondent*.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; A FINDING OF GUILT IN AN ADMINISTRATIVE CASE WOULD HAVE TO BE SUSTAINED FOR AS LONG AS IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE THAT THE RESPONDENT HAS COMMITTED THE ACTS STATED IN THE COMPLAINT.—** Administrative proceedings are governed by the "substantial evidence rule." Otherwise stated, a finding of guilt in an administrative case would have to be

sustained for as long as it is supported by substantial evidence that the respondent has committed acts stated in the complaint. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.

2. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; 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 THE COURT; EXCEPTIONS; PRESENT.—** 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, unless the case falls under any of the following recognized 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. The issue of whether or not there is substantial evidence to hold respondent liable for the charge of Dishonesty is one of fact, which is not generally subject to review by this Court. Nonetheless, a review of the facts of the instant case is warranted considering that the findings of fact of the Ombudsman and the Court of Appeals were not in harmony with each other.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CHARGE OF DISHONESTY; ABSENT A CLEAR SHOWING OF INTENT TO CONCEAL RELEVANT INFORMATION IN THE EMPLOYEE'S STATEMENTS OF ASSETS, LIABILITIES AND NET WORTH (SALN), ADMINISTRATIVE LIABILITY CANNOT ATTACH; A STATEMENT IN THE EMPLOYEE'S SALN THAT HIS WIFE IS A "BUSINESSWOMAN" IS A MANIFESTATION TO DIVULGE AND NOT TO CONCEAL HIS AND HIS WIFE'S BUSINESS INTERESTS.—** As regards to the Ombudsman's contention that respondent should be administratively held liable for Dishonesty for also failing to truthfully declare in his SALNs the business interests and financial connections that are attributable to himself, his spouse, and unmarried children below 18 years of age living in his household, we hold that, absent a clear showing of intent to conceal such relevant information in his SALN, administrative liability cannot attach. An examination of his SALNs during the period 1993 to 2001 would reveal that, although respondent indicated the words "Not Applicable" to the SALN question "*Do you have any business interest and other financial connections including those of your spouse and unmarried children below 18 years living in your household?*," he likewise declared under the enumeration entitled "*B. Personal and Other Properties*" personal properties consisting of "Merchandise Inventory," "Building Improvement," "Store Equipment," and "Depreciation" which clearly indicate his engagement in lawful businesses since the said items have nothing to do with compensation income. Furthermore, respondent clearly indicated on the face of his 1999 and 2000 SALNs that his spouse is a "businesswoman" which manifested his intent to divulge and not to conceal the business interests of his wife. In fact, this Court had previously ruled in another case that the indication of the wife as a "businesswoman" leads to the inference that said person has business interests: Neither can petitioner's failure to answer the question, "Do you have any business interest and other financial connections including those of your spouse and unmarried children living in your house hold?" be tantamount to gross misconduct or dishonesty. On the front page of petitioner's 2002 SALN, it is already clearly stated that his wife is a businesswoman, and it can be logically deduced that she had business interests.

Such a statement of his wife's occupation would be inconsistent with the intention to conceal his and his wife's business interests. That petitioner and/or his wife had business interests is thus readily apparent on the face of the SALN; it is just that the missing particulars may be subject of an inquiry or investigation.

4. **ID.; ID.; ID.; NATURE AND EFFECTS OF ADMINISTRATIVE CHARGE OF DISHONESTY, ELABORATED.—** In *Office of the Ombudsman v. Valencia*, we elaborated on the nature and effects of an administrative charge of Dishonesty as follows: Dishonesty is incurred when an individual intentionally makes a false statement of any material fact, practicing or attempting to practice any deception or fraud in order to secure his examination, registration, appointment, or promotion. It is understood to imply the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; the disposition to defraud, deceive or betray. It is a malevolent act that puts serious doubt upon one's ability to perform his duties with the integrity and uprightness demanded of a public officer or employee. Like the offense of Unexplained Wealth, Section 52(A), Rule IV of the Revised Uniform Rules on Administrative Cases in Civil Service treats Dishonesty as a grave offense, the penalty of which is dismissal from the service at the first infraction.

5. **ID.; ID.; ID.; NEGLIGENCE, EXPLAINED; AN EMPLOYEE IS GUILTY ONLY OF SIMPLE NEGLIGENCE, NOT DISHONESTY, WHERE HIS OMISSIONS IN HIS SALN DID NOT BETRAY ANY SENSE OF BAD FAITH OR THE INTENT TO MISLEAD OR DECEIVE, OR TO CONCEAL RELEVANT INFORMATION; SIX MONTHS SUSPENSION FROM OFFICE IMPOSED FOR SIMPLE NEGLIGENCE.—** [W]e had, on occasion, defined Negligence as the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time, and of the place. In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable. Given the fact that respondent was able to successfully overcome the *onus* of demonstrating that he does not possess any

unexplained wealth and that the omissions in his SALNs did not betray any sense of bad faith or the intent to mislead or deceive on his part considering that his SALNs actually disclose the extent of his and his wife's assets and business interests, we are inclined to adjudge that respondent is merely culpable of Simple Negligence instead of the more serious charge of Dishonesty. This Court had previously passed upon a similar infraction committed by another public official in *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)* and ruled that suspension without pay, not removal from office, is the appropriate penalty therefor: It also rules that while petitioner may be guilty of negligence in accomplishing his SALN, he did not commit gross misconduct or dishonesty, for there is no substantial evidence of his intent to deceive the authorities and conceal his other sources of income or any of the real properties in his and his wife's names. Hence, the imposition of the penalty of removal or dismissal from public service and all other accessory penalties on petitioner is indeed too harsh. Nevertheless, petitioner failed to pay attention to the details and proper form of his SALN, resulting in the imprecision of the property descriptions and inaccuracy of certain information, for which suspension from office for a period of six months, without pay, would have been appropriate penalty. Prescinding from our analysis of the facts and circumstances attending this case, we are inclined to impose the same penalty on herein respondent.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Ricardo M. Ribo for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure of the Decision[1] dated

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[1] *Rollo*, pp. 55-86; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) with Associate Justices Aurora Santiago Lagman and Apolinario D. Bruselas, Jr., concurring.

January 23, 2007, as well as the Resolution[2] dated January 7, 2008 of the Court of Appeals in CA-G.R. SP No. 86062, entitled "*ARNEL A. BERNARDO, Attorney V, Bureau of Internal Revenue (BIR) vs. HON. OMBUDSMAN SIMEON V. MARCELO, FACT-FINDING AND INTELLIGENCE BUREAU (FFIB) — Office of the Ombudsman, and HON. GUILLERMO L. PARAYNO, JR., in his capacity as Commissioner of the Bureau of Internal Revenue*," which reversed and set aside the Decision[3] dated July 6, 2004 issued by petitioner Office of the Ombudsman (the Ombudsman) in OMB-C-A-03-0531-K (LSC), entitled "*Fact-Finding and Intelligence Bureau (FFIB), Represented by Atty. Ma. Elena A. Roxas v. Arnel A. Bernardo, Attorney V, Bureau of Internal Revenue (BIR)*."

These are the facts of this case, as summed by the Court of Appeals:

[Respondent] Arnel A. Bernardo was hired by the Bureau of Internal Revenue (BIR) on September 3, 1979 and therein rendered continuous and uninterrupted service until his promotion to his present position as Attorney V with Salary Grade of 25 and assigned as Technical Assistant at the Office of the Deputy Commissioner of Internal Revenue — Criminal Prosecution Group. Primarily, the [respondent] derived his income from his employment with the BIR.

On various dates in 1979 up to 2001 [respondent] acquired various properties and had business interests in BP Realty Corporation which was registered in 1988, and in Rina's Boutique and Gift Shop-Gel's Gift Center where his wife is the owner/proprietress. He and his family also made several foreign travels during the period 1995 to 2002. However, petitioner's SALN for the years 1993 up to 2001 did not disclose any business interest and/or financial connection, but showed a steady increase of his net worth.

Based on the foregoing, [respondent] was administratively and civilly charged with acquiring unexplained wealth by the FFIB (*hereafter, the "OMBUDSMAN*"). Accordingly, on November 12, 2003 the OMBUDSMAN filed the appropriate administrative action

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[2] *Id.* at 50-52.

[3] *Id.* at 155-183.

against the [respondent] for Violation of Section 8 of Republic Act No. 3019, in relation to Republic Act No. 1379. This case was docketed as OMB-C-A-03-0531-K (LSC) entitled "Fact-Finding and Intelligence Bureau (FFIB), Represented by Atty. Ma. Elena A. Roxas versus Arnel A. Bernardo, Attorney V, Bureau of Internal Revenue (BIR)."

In its Complaint, the OMBUDSMAN alleged that the [respondent] is an incorporator and director of BP Realty Corporation as shown by its Article[s] of Incorporation dated October 15, 1998 and that his wife, Ma. Lourdes I. Bernardo is the owner/proprietress of Rina's Boutiques and Gift Shop-Gel[']s Gift Center as may be shown by Business Permits for CY 1999-2003. On various dates in 1979 up to 2001 the [respondent] purchased parcels of residential and agricultural land, the purchase prices and costs of which were manifestly out of proportion or not commensurate to his and his wife's lawful incomes, allowances, savings or declared assets. He and his family also made several foreign travels during the period 1995 to 2002. The [respondent's] cash on hand and net worth also consistently increased. However, [respondent's] SALN for the years 1993 up to 2001 did not disclose any business interest and/or financial connection.

The evidence for the Ombudsman consists of the CERTIFICATION (dated July 7, 2003) of the annual salary compensation and allowances received by the [respondent] from 1998 to 2002; Articles of Incorporation and By-Laws of BP Realty Corporation which shows that the [respondent] is one of the incorporators of the said corporation; Business Permits of Rina's Boutiques and Gift Shop; Certificate of Corporate Filing/Information dated June 24, 2003 issued by the Securities and Exchange Commission (SEC) which shows that BP Realty Corporation is registered with the (SEC) on November 4, 1988 and is on active status and that said corporation failed to file the General Information Sheet for 1990-2003 as well as its Financial Statement from 1989 to 2002; SALNs for the years 1993 to 2001; Transfer Certificate of Title (TCT) Nos. 166204, 244954, 191636, CLOA-T-9835, CLOA-T-9834, T-118783; Declaration of Real Property No. D-105-03089, D-105-05849; Deed of Absolute Sale dated October 23, 1997 over a parcel of land covered by TCT No. RT-57064 (T-113488) of the Registry of Deeds of Bulacan; Deed of Absolute Sale dated May 27, 1985 over a parcel of land covered by TCT No. 151157 of the Registry of Deeds Manila; Deed of Absolute Sale dated August 10, 1999 over a parcel of land covered by TCT

No. 190651 of the Registry of Deeds of Manila; Certification dated June 3, 2003 issued by the Bureau of Immigration which shows the travel records from January 1995 to May 31, 2003 of the [respondent], his wife, Ma. Lourdes I. Bernardo, and his children Lorina I. Bernardo and Adrian I. Bernardo, Angeline I. Bernado, and Aldrin I. Bernardo; and Certification dated June 3, 2003 which shows the travel records of the [respondent's] wife, Ma. Lourdes I. Bernardo from January 1995 to May 31, 2003.

The Ombudsman thus sought that the [respondent] be adjudged guilty of acquiring unexplained wealth and be dismissed from the service, as well as the forfeiture of his properties.

In his Counter-Affidavit dated January 30, 2004 the [respondent] (*respondent below*) averred that: he is engaged in various legitimate businesses; he had divested his interest and/or shares from BP Realty Corporation as may be shown by a Deed of Assignment dated November 28, 1988, and that its certificate of registration had been revoked as may be shown by the Certificate of Corporate Filing/ Information issued by the Securities and Exchange Commission on September 29, 2003 for being inactive pursuant to Presidential Decree No. 902-A; he religiously paid corresponding internal revenue taxes from income of the business disclosed in his SALN, as may be shown by his Income Tax Returns covering the period 1998, 1999, 2000, and 2001; on his earnings derived not purely from compensation income, but also from legitimate business as well as business interest or financial connection to Rina's Boutique and Gift Shop/Gel[']s Gift Center managed by his wife as shown by business permits for Rina's Boutique and Gift Shop, he stated that he disclosed in his SALNs filed during the period 1993 to 2001 under "B. Personal and Other Properties" the following: "Merchandise Inventory," "Building Improvement," "Store Equipment" and "Depreciation" accounts; on the [respondent's] non-declaration of an agricultural land purchased in Bulacan in 1995, the [respondent] points out that the agricultural land declared in his SALNs for 1995 to 2001 appeared to refer to only one (1) parcel although in truth and in fact, the acquisition covered two (2) parcels of land awarded to him under the Comprehensive Agrarian Reform Program of the government, covered by TCT No. CLOA-T9834 (*consisting of 8,969 sq.m.*) and TCT No. 9835 (*consisting of 20,004 sq.m.*) both registered on November 27, 1995 with the Registry of Deeds of Bulacan. The reason for this is because he honestly believed that it was sufficient to declare the two (2) lots as one, with the total cost indicated in his SALN, since the two parcels were acquired at the same time in

1995; [respondent] had availed of Tax Amnesty under the following laws: Executive Order No. 41 dated August 22, 1986 (*for the years 1981 to 1985*), PD No. 213 dated June 16, 1973 (*for the years 1969 to 1972*), PD No. 631 dated January 6, 1975, and PD No. 1840 dated December 31, 1980.[4] (Citations omitted.)

From its appreciation of the aforementioned evidence, the Ombudsman rendered a Decision dated April 21, 2004 which expressed its conclusion that respondent had acquired unexplained wealth during his tenure as a government employee. The dispositive portion of said ruling is reproduced here:

WHEREFORE, PREMISES CONSIDERED:

1. Respondent ARNEL A. BERNARDO is hereby found GUILTY of Dishonesty, in accordance with the provision of Section 8 of Republic Act No. 3019, in relation to Republic Act No. 1379, for which the penalty of DISMISSAL FROM THE SERVICE, with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service, is hereby recommended pursuant to Sections 53 and 58, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service[.]

2. That the Honorable Commissioner of the Bureau of Internal Revenue be furnished a copy of the Resolution, for the implementation of this administrative penalty in accordance with law, with the request to inform this Office of the action taken hereon.

3. Finally, it is respectfully recommended that copies of the case records be referred to the Fact Finding and Intelligence Bureau, this Office for the preparation and filing of the appropriate complaint pursuant to Section 2 of Republic Act No. 1379.[5]

In explanation of its guilty verdict, the Ombudsman essentially opined that the value of respondent's acquired properties, the costs of his and his family's foreign trips abroad, and the increasing net worth indicated in his Statements of Assets, Liabilities and Net Worth (SALNs) for the years 1993 to 2001 were manifestly disproportionate to his salary and allowances. The Ombudsman also decreed that there was no proof of

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[4] *Id.* at 56-58.

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

respondent's claim of other lawful income nor was there any evidence that the purported donation he received in the amount of ₱8,000,000.00 was lawful. Thus, the Ombudsman concluded that respondent's properties were illegally acquired based on a finding that the evidence presented by the latter allegedly failed to rebut the presumption provided for by law.

Respondent elevated the case to the Court of Appeals which, in turn, rendered the assailed January 23, 2007 Decision, overturning the Ombudsman's finding of administrative guilt on the part of respondent. The dispositive portion of the Court of Appeals' Decision states:

> WHEREFORE, reversible error having been committed by the Ombudsman, the instant petition is hereby ***GRANTED*** and its Decision dated April 21, 2004 as well as the Order dated July 22, 2004 are both ***REVERSED and SET ASIDE***.[6]

The Ombudsman moved for reconsideration but the same was denied by the Court of Appeals in the assailed January 7, 2008 Resolution.

Thus, the Ombudsman filed the present petition with the following issues submitted for consideration:

I.

CONTRARY TO THE RULING OF THE COURT OF APPEALS, THE FINDING OF GUILT AGAINST THE RESPONDENT WAS SUPPORTED BY MORE THAN SUBSTANTIAL EVIDENCE THAT SUFFICIENTLY ESTABLISHED THE FACT THAT HE HAS COMMITTED DISHONESTY AND SHOULD BE HELD LIABLE: (A) FOR FAILURE TO DISCLOSE HIS BUSINESS INTERESTS, (B) FOR HAVING ACCUMULATED PROPERTIES WORTH MORE THAN HIS LAWFUL MEANS TO ACQUIRE, (C) FOR HIS FAILURE TO DISCLOSE SUCH PROPERTIES IN HIS STATEMENT OF ASSETS, LIABILITIES AND NET WORTH (SALN), AND (D) FOR FAILING TO DISCLOSE IN HIS SALNs HIS AND HIS SPOUSE'S FINANCIAL AND BUSINESS TRANSACTIONS.

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[6] *Id.* at 86.

II.

AS CONSISTENTLY HELD BY THE SUPREME COURT, THE FINDINGS OF THE OFFICE OF THE OMBUDSMAN DESERVE GREAT WEIGHT, AND MUST BE ACCORDED FULL RESPECT AND CREDIT.[7]

The Ombudsman argues that there are factual and legal bases to uphold its findings, particularly as to the administrative liability for Dishonesty of respondent. It further asserts that the findings of fact of an administrative agency akin to itself must be respected, as long as such findings are supported by substantial evidence, even if such evidence might not be overwhelming or preponderant.

The petition is without merit.

Administrative proceedings are governed by the "substantial evidence rule." Otherwise stated, a finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed acts stated in the complaint. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[8]

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.[9] 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, unless the case falls under any of the following recognized 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

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[7] *Id.* at 294.

[8] *Office of the Ombudsman v. Valencia*, G.R. No. 183890, April 13, 2011, 648 SCRA 753, 768-769.

[9] *Office of the Ombudsman v. Racho*, G.R. No. 185685, January 31, 2011, 641 SCRA 148, 155.

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.[10]

The issue of whether or not there is substantial evidence to hold respondent liable for the charge of Dishonesty is one of fact, which is not generally subject to review by this Court. Nonetheless, a review of the facts of the instant case is warranted considering that the findings of fact of the Ombudsman and the Court of Appeals were not in harmony with each other.

The Ombudsman applied against the respondent the *prima facie* presumption laid down in Section 2 of Republic Act No. 1379, which states that:

> Section 2. *Filing of petition*. — Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be ***presumed prima facie to have been unlawfully acquired***. x x x (Emphasis supplied.)

Nevertheless, the presumption in the aforementioned provision is merely *prima facie* or disputable. As held in one case, "[a] disputable presumption has been defined as a species of evidence that may be accepted and acted on where there is no other evidence

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[10] *Heirs of Jose Lim v. Lim*, G.R. No. 172690, March 3, 2010, 614 SCRA 141, 147.

to uphold the contention for which it stands, or one which may be overcome by other evidence."[11]

Unsurprisingly, Section 5 of the same statute requires any court, before which the petition for forfeiture is filed, to set public hearings during which the public officer or employee may be given ample opportunity to explain to the satisfaction of the court how he had acquired the property in question, to wit:

> Section 5. *Hearing*. — The court shall set a date for a hearing, which may be open to the public, and during which the respondent shall be given ample opportunity to explain, to the satisfaction of the court, how he has acquired the property in question.

Respondent appears to have been given sufficient opportunity by the Ombudsman to rebut the *prima facie* presumption applied against him which is that his properties were illegally acquired, however, as the instant case illustrated, the Ombudsman and the Court of Appeals came to differing conclusions with regard to respondent's evidence.

A careful perusal of the records of this case has convinced this Court that although respondent had acquired properties, cash on hand and in bank, and had gone on foreign travels with his family, the aggregate cost of which appear to be not in proportion to the combined salaries of the respondent and of his wife, it had been sufficiently shown that such assets and expenses were financed through respondent's, and his wife's, other lawful business income and assets, and for which they have paid the corresponding taxes thereon.

Anent the Ombudsman's charge that respondent's 1985 purchase of real property could not be supported by his salaries for the period 1980 to 1985, the Court of Appeals noted in respondent's favor his availment of tax amnesty for the taxable years 1981 to 1985 under Executive Order No. 41 dated August 22, 1986. To our mind, this circumstance sufficiently showed

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[11] *People v. De Guzman*, G.R. No. 106025, February 9, 1994, 229 SCRA 795, 798-799.

that respondent had income other than his salaries for the relevant period prior to his purchase of the aforementioned property. Indeed, it is significant to point out that only respondent's SALNs for the periods 1993 to 2001 were presented in evidence by the Ombudsman. Interestingly, Assistant Ombudsman Pelagio S. Apostol, who was among the signatories to the Ombudsman's Decision dismissing respondent from the service, wrote and appended a comment to the said Decision recommending, among others, that the FFIB "secure additional Statements of Assets, Liabilities and Networth starting from the first day of government service to establish the true opening net worth of the respondent."[12] To be sure, this is a tacit admission that the evidence on record failed to present an accurate picture of all the lawful sources of income of respondent prior to his 1993 SALN.

As for the other charges of unexplained acquisitions/expenses made by the Ombudsman against respondent, we quote with approval the detailed discussion made by the Court of Appeals, speaking through then Court of Appeals Associate Justice Bienvenido L. Reyes (who is now a member of this Court), in the assailed January 23, 2007 Decision:

For the year 1989, We find that the [respondent] had satisfactorily explained how he was able to acquire a residential land in Quezon City covered by Tax Declaration Nos. D-105-02089 and D-105-05849 for ₱235,420.00 despite the fact that his declared income for the year 1989 only amounts to ₱43,140.00. As pointed out by the [respondent], the lot covered by Tax Declaration No. D-105-03089, and the property improvement thereon covered by Tax Declaration No. D-105-05849, was awarded to the [respondent] by the GSIS for ₱235,420.00 pursuant to a housing program for BIR employees, subject to a monthly salary deduction of ₱2,001.00 since June 1990. This was also secured by the [respondent's] GSIS Insurance Policy and a Real Estate Mortgage on the same property as shown by loan documents.

Anent the Ombudsman's claim that the [respondent] had failed to justify the increase in his "cash on hand and in bank," and to substantiate his claim that the reason for the increase thereon was

[12] *Rollo*, p. 183.

due to a cash donation of ₱8,000,000.00 made in favor of the [respondent] in the year 2001. The Ombudsman points out that the [respondent's] SALN for the year 2000 showed a total networth of ₱12,734,083.60 while his "cash on hand and in bank" is ₱3,921,061.80. Then for the year 2001, the [respondent's] SALN showed a total networth of P21,085,296.95 while his "cash on hand and in bank" is ₱10,431,897.45. We are convinced that the [respondent] had substantiated his claim that the reason for the increase in his "cash on hand and in bank" was due to a cash donation of ₱8,000,000.00 made in his favor in the year 2001. The [respondent] had voluntarily made such disclosure in his SALN as required by the law. The Deed of Donation October 8, 2001 is, indeed, a credible proof that such donation was lawful, there being no showing of its illegality. As correctly noted by the [respondent], there was no legal requirement to attach the Deed of Donation or to disclose the identity of the donor, nor to append to the SALN evidence of payment of the imposable tax due as Sec. 99 (b) of RA No. 8424 or the Tax Reform Act of 1997, imposes the tax liability arising from the gratuitous act upon the donor, not upon the donee.

For the year 1999, the Ombudsman noted that the [respondent] acquired a residential land in Manila for ₱1,000,000.00, and this is covered by TCT No. 244854 issued by the Register of Deeds of Manila, despite the fact that his "cash on hand and in bank" had decreased in the amount of ₱565,823.10, such amount together with his income for the year 1999 in the sum of only ₱230,628.00 are not sufficient to justify the purchase of the residential land. Even with the reported net income from Rina's Boutique and Gift Shop/ Gel's Gift Center for 1999 amounting to only ₱63,857.65, the purchase still could not be justified. For his part, the [respondent] insists that this property was acquired by him and his wife from the latter's parents. According to the [respondent], his SALN for 1999 shows that his "cash on hand and in bank" was ₱3,653,079.85, which is adequate to justify this purchase. To support his contention, the [respondent] submitted documentary evidence consisting of the following:

a. Annual Income Tax Return for 1999

b. Financial Documents:

- b.1 Audited Report
- b.2 Balance Sheet
- b.3 Income Statement

b.4 Rental Income Statements
b.5 Employer's Certificate of Compensation Payment/ Tax Withheld
b.6 Monthly Agents Commission/Withholding Tax Report
b.7 Certificate of Creditable Tax Withheld at Source issued by the Philippine Charity Sweepstakes Office
b.8 Official Receipt issued by the Trader's Royal Bank as proof of payment of income Tax Liability in the amount of ₱159,974.65

We are convinced that the [respondent] had justified his purchase of the residential land in 1999 for ₱1,000,000.00. In his SALN for 1999, the [respondent] had declared a networth of ₱12,447,700.75 and cash on hand and in bank in the amount of ₱3,653,079.85. His aggregate tax payment of ₱159,974.65 would indeed negate the Ombudsman's claim that his additional income derived from his wife's business amounted to only ₱63,857.65, and this is bolstered by the fact that in the [respondent's] annual income tax return for 1999 he reported a taxable business income of ₱425,904.50 while his wife reported a taxable business income of ₱63,857.65. We also note that the [respondent] had also derived income from lottery business as may be shown by Annexes "5-I" to "5-R" of his Counter-Affidavit. Although such exhibits are in the name of his (respondent) brother Alberto A. Bernardo, the latter had already assigned to him the operation of two (2) lotto outlets/terminals located in Sta. Mesa, Manila and in Quezon City on June 9, 1998 as shown by the Deed of Assignment. These exhibits also negate the Ombudsman's claim that "(A)s regards the respondent's claim of other income (rental, lottery, other income) no proof of the same was presented."

For the year 1990, the Ombudsman alleged that the [respondent] acquired a residential land in Manila for ₱230,000.00, covered by TCT No. 244854 issued by the Register of Deeds of Manila, despite the fact that his declared income for the year 1990 only amounts to ₱57,432.00. In defense, the [respondent] said that this acquisition was truthfully disclosed in his SALN, and that he had the capacity to make this purchase as he was engaged in lawful business, deriving lawful income. The Ombudsman in its Decision stated that in 1995, the [respondent] acquired a residential land located in Quezon City for ₱4,150,000.00 and an agricultural land in Bulacan worth ₱500,000.00. The [respondent] indicated in his SALN for the year

1995 as one of his liabilities, "notes payable" in the amount of ₱4,000,000.00 which the Ombudsman presumed to have been used by the [respondent] in buying the said properties. The Ombudsman noted, however, that the [respondent's] loan payable had decreased by ₱2,000,000.00 in 1996, but his "cash on hand and in bank" had increased from ₱3,861,077.05 to ₱4,701,709.95. The Ombudsman emphasizes that while the [respondent] had paid out cash in the amount of ₱2,000,000.00, his cash on hand and in bank did not decrease, but even increased by ₱1,600,072.90 which means that he had earned a total amount of ₱3,600,072.90 for the year 1996 alone. [Respondent's] building improvements likewise increased from ₱143,420.00 to ₱902,860.00. However, his annual income for 1996 amounted only to ₱177,428.00. The [respondent] however draws attention to his SALN for the year 1995 which shows that he was financially capable of purchasing property valued at ₱4,150,000.00 as he had a cash disposable balance of ₱12,323,731.75 and net worth of ₱6,471,782.95. The Ombudsman also makes much of the fact of the [respondent's] and his family's trips abroad in the years 1995, 1996, and 1997, pointing out that the [respondent's] lawful income for the years 1995 (*₱157,000.00*), 1996 (*₱177,408.00*), and 1997 (*₱224,988.00*) cannot support such travels. But this is denied by the [respondent], saying that his Cash on Hand and In Bank (Cash Flow Analysis) for the years 1995 to 2001, his Income Tax Returns for the years 1995-1996-1997, and his networth including disposable income was more than sufficient to justify his property acquisitions and foreign travels for the covered period.

In an attempt to present a clear outline of his financial capacity, the [respondent] presented a comparative Cash Flow Analysis which he had embodied in his counter-affidavit. The evidence for herein [respondent] as attached to his Counter-Affidavit consists of the Deed of Assignment dated November 28, 1988 to show that the [respondent] had absolutely transferred and conveyed his rights and interests over BP Realty Corporation to Noble Bambina B. Perez; Certificate of Corporate Filing/Information dated June 24, 2003 issued by the SEC which shows that BP Realty Corporation's Certificate of Registration was revoked on September 29, 2003; a copy of the Sales Invoice of Rina's Boutique and Gift Shop-Gel's Gift Center; Annual Income Tax Return of the [respondent] for the years 1998 to 2001 with Reports of Independent Certified Public Accountants to Accompany Philippine Income Tax Return; Amended SALN for the year 1995; and Revenue Special Order dated May 5, 2003. His

income tax returns clearly show that he had been paying taxes not only for compensation income, but for business incomes, as well. In fact, a big chunk thereof was derived from rental incomes of the [respondent].

Notably, the Ombudsman appeared to have heavily relied solely on the [respondent's] SALNs for the years 1993 to 2001. We do not understand why no evidence was presented to show the [respondent's] beginning net worth from the first day of his employment with the government as declared in the SALN's filed by him. His beginning net worth must be considered for purposes of determining whether his disposable income was more than sufficient to justify his property acquisitions and foreign travels for the covered period, and whether he possesses the financial capability to acquire or purchase properties as reported in his SALNs. Such net worth of the [respondent] as declared in the statement filed by him from the first day of his employment with the government shall be considered as his true new worth as of such date, for purposes of determining his capacity for future property acquisitions during his tenure as a public officer. Any unexplained increase in his net worth thereafter may then fall within the ambit of the presumption provided by Republic Act No. 1379.[13] (Citations omitted.)

As regards to the Ombudsman's contention that respondent should be administratively held liable for Dishonesty for also failing to truthfully declare in his SALNs the business interests and financial connections that are attributable to himself, his spouse, and unmarried children below 18 years of age living in his household, we hold that, absent a clear showing of intent to conceal such relevant information in his SALN, administrative liability cannot attach.

An examination of his SALNs during the period 1993 to 2001 would reveal that, although respondent indicated the words "Not Applicable" to the SALN question "*Do you have any business interest and other financial connections including those of your spouse and unmarried children below 18 years living in your household?*," he likewise declared under the enumeration entitled "*B. Personal and Other Properties*" personal properties consisting

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[13] *Id.* at 72-76.

of "Merchandise Inventory," "Building Improvement," "Store Equipment," and "Depreciation" which clearly indicate his engagement in lawful businesses since the said items have nothing to do with compensation income.

Furthermore, respondent clearly indicated on the face of his 1999 and 2000 SALNs that his spouse is a "businesswoman" which manifested his intent to divulge and not to conceal the business interests of his wife. In fact, this Court had previously ruled in another case that the indication of the wife as a "businesswoman" leads to the inference that said person has business interests:

> Neither can petitioner's failure to answer the question, "Do you have any business interest and other financial connections including those of your spouse and unmarried children living in your house hold?" be tantamount to gross misconduct or dishonesty. On the front page of petitioner's 2002 SALN, it is already clearly stated that his wife is a businesswoman, and it can be logically deduced that she had business interests. *Such a statement of his wife's occupation would be inconsistent with the intention to conceal his and his wife's business interests. That petitioner and/or his wife had business interests is thus readily apparent on the face of the SALN; it is just that the missing particulars may be subject of an inquiry or investigation.*[14] (Emphasis supplied.)

In *Office of the Ombudsman v. Valencia*,[15] we elaborated on the nature and effects of an administrative charge of Dishonesty as follows:

> Dishonesty is incurred when an individual intentionally makes a false statement of any material fact, practicing or attempting to practice any deception or fraud in order to secure his examination, registration, appointment, or promotion. It is understood to imply the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness

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[14] *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*, G.R. No. 169982, November 23, 2007, 538 SCRA 534, 586-587.

[15] *Supra* note 8 at 767.

and straightforwardness; the disposition to defraud, deceive or betray. It is a malevolent act that puts serious doubt upon one's ability to perform his duties with the integrity and uprightness demanded of a public officer or employee. Like the offense of Unexplained Wealth, Section 52(A)(1), Rule IV of the Revised Uniform Rules on Administrative Cases in Civil Service treats Dishonesty as a grave offense, the penalty of which is dismissal from the service at the first infraction. (Citations omitted.)

On the other hand, we had, on occasion, defined Negligence as the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time, and of the place. In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable.[16]

Given the fact that respondent was able to successfully overcome the *onus* of demonstrating that he does not possess any unexplained wealth and that the omissions in his SALNs did not betray any sense of bad faith or the intent to mislead or deceive on his part considering that his SALNs actually disclose the extent of his and his wife's assets and business interests, we are inclined to adjudge that respondent is merely culpable of Simple Negligence instead of the more serious charge of Dishonesty.

This Court had previously passed upon a similar infraction committed by another public official in *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*[17] and ruled that suspension without pay, not removal from office, is the appropriate penalty therefor:

It also rules that while petitioner may be guilty of negligence in accomplishing his SALN, he did not commit gross misconduct or dishonesty, for there is no substantial evidence of his intent to deceive

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[16] *Presidential Anti-Graft Commission (PAGC) and the Office of the President v. Pleyto*, G.R. No. 176058, March 23, 2011, 646 SCRA 294, 303.

[17] *Supra* note 14 at 594-595.

the authorities and conceal his other sources of income or any of the real properties in his and his wife's names. Hence, the imposition of the penalty of removal or dismissal from public service and all other accessory penalties on petitioner is indeed too harsh. Nevertheless, petitioner failed to pay attention to the details and proper form of his SALN, resulting in the imprecision of the property descriptions and inaccuracy of certain information, for which suspension from office for a period of six months, without pay, would have been appropriate penalty. (Citation omitted.)

Prescinding from our analysis of the facts and circumstances attending this case, we are inclined to impose the same penalty on herein respondent.

WHEREFORE, premises considered, the instant petition is hereby **DENIED.** The assailed Decision dated January 23, 2007 of the Court of Appeals is hereby **AFFIRMED** with the **MODIFICATION** that respondent Arnel A. Bernardo is found **GUILTY** of simple negligence in accomplishing his Statements of Assets, Liabilities and Net Worth (SALN), and as a penalty therefor, it is **ORDERED** that he be **SUSPENDED** from office for a period of six (6) months without pay.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Mendoza,*[*] *JJ.,* concur.

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[*] Per raffle dated February 25, 2013.

FIRST DIVISION

[G.R. No. 182378. March 6, 2013]

MERCY *VDA. DE* ROXAS, represented by ARLENE C. ROXAS-CRUZ, in her capacity as substitute appellant-petitioner, *petitioner, vs.* **OUR LADY'S FOUNDATION, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OWNERSHIP; RIGHT OF ACCESSION; ENCROACHMENTS ON PROPERTY; THE OWNER OF THE LAND ENCROACHED UPON HAS THE OPTION TO REQUIRE THE BUILDER TO PAY THE PRICE OF THE LAND; PRICE OF THE LAND ENCROACHED MUST BE FIXED AT THE CURRENT FAIR PRICE.— Under Article 448 pertaining to encroachments in good faith, as well as Article 450 referring to encroachments in bad faith, the owner of the land encroached upon – petitioner herein – has the option to require respondent builder to pay the price of the land. Although these provisions of the Civil Code do not explicitly state the reckoning period for valuing the property, *Ballatan v. Court of Appeals* already specifies that in the event that the seller elects to sell the lot, "the price must be fixed at the prevailing market value at the time of payment." x x x [T]he oft-cited case *Depra v. Dumlao* likewise ordered the courts of origin to compute the current fair price of the land in cases of encroachment on real properties. From these cases, it follows that the CA incorrectly pegged the reimbursable amount at the old market value of the subject property – ₱40 per square meter – as reflected in the Deed of Absolute Sale between the parties. On the other hand, the RTC properly considered in its 2 December 2004 Order the value of the lot at ₱1,800 per square meter, the current fair price as determined in the Amended Sheriff's Bill. Thus, we reverse the ruling of the CA and reinstate the 2 December 2004 Order of the RTC directing OLFI to reimburse petitioner at ₱1,800 per square meter.

2. **COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; DOCTRINE OF SEPARATE JURIDICAL PERSONALITY; A CORPORATION IS A JURIDICAL ENTITY WITH A LEGAL PERSONALITY SEPARATE AND DISTINCT FROM THOSE ACTING FOR AND ON ITS BEHALF AND, IN GENERAL, OF THE PEOPLE COMPRISING IT; HENCE, THE OBLIGATIONS INCURRED BY THE CORPORATION, ACTING THROUGH ITS OFFICERS, ARE ITS SOLE LIABILITIES.** — [W]ith regard to the issue pertaining to the Notices of Garnishment issued against the bank accounts of Arcilla-Maullon, we affirm the ruling of the CA. The appellate court appreciated that in the main case for the recovery of ownership before the court of origin, only OLFI was named as respondent corporation, and that its general manager was never impleaded in the proceedings *a quo*. Given this finding, this Court holds that since OLFI's general manager was not a party to the case, the CA correctly ruled that Arcilla- Maullon cannot be held personally liable for the obligation of the corporation. In *Santos v. NLRC*, this Court upholds the doctrine of separate juridical personality of corporate entities. The case emphasizes that a corporation is a juridical entity with a legal personality separate and distinct from those acting for and on its behalf and, in general, of the people comprising it. Hence, the obligations incurred by the corporation, acting through its officers such as in this case, are its sole liabilities.

3. **ID.; ID.; ID.; ID.; TO HOLD THE OFFICER OF THE CORPORATION PERSONALLY LIABLE ALONE FOR THE DEBTS OF THE CORPORATION AND THUS PIERCE THE VEIL OF CORPORATE FICTION, THE BAD FAITH OF THE OFFICER MUST FIRST BE ESTABLISHED CLEARLY AND CONVINCINGLY; CASE AT BAR.—** To hold the general manager of OLFI liable, petitioner claims that it is a mere business conduit of Arcilla-Maullon, hence, the corporation does not maintain a bank account separate and distinct from the bank accounts of its members. In support of this claim, petitioner submits that because OLFI did not rebut the attack on its legal personality, as alleged in petitioner's Opposition and Comments on the Motion to Quash Notice/Writ of Garnishment dated 15 March 2005, respondent effectively admitted by its silence

that it was a mere dummy corporation. This argument does not persuade us, for any piercing of the corporate veil has to be done with caution. Save for its rhetoric, petitioner fails to adduce any evidence that would prove OLFI 's status as a dummy corporation. In this regard, we recently explained in *Sarona v. NLRC* as follows: A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application. In any event, in order for us to hold Arcilla-Maullon personally liable alone for the debts of the corporation and thus pierce the veil of corporate fiction, we have required that the bad faith of the officer must first be established clearly and convincingly. Petitioner, however, has failed to include any submission pertaining to any wrongdoing of the general manager. Necessarily, it would be unjust to hold the latter personally liable. Therefore, we refuse to allow the execution of a corporate judgment debt against the general manager of the corporation, since in no legal sense is he the owner of the corporate property. Consequently, this Court sustains the CA in nullifying the Notices of Garnishment against his bank accounts.

APPEARANCES OF COUNSEL

Joven G. Laura for petitioner.
Juan Sanchez Dealca for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Rule 45 Petition, seeking a review of the Court of Appeals (CA) 25 September 2007 Decision[1] and

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[1] *Rollo,* pp. 19-26. Both the Decision and Resolution of the CA were penned by Associate Justice Marina L. Buzon, with Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo concurring.

11 March 2008 Resolution[2] in CA-G.R. SP No. 88622, which nullified the (1) Notices of Garnishment directed against the bank accounts of petitioner's general manager; and (2) the 2 December 2004 Order[3] in Civil Case No. 5403 of the Regional Trial Court (RTC) of Sorsogon City, Branch 52. The Order required respondent to reimburse petitioner ₱1,800 per square meter of the 92-square-meter property it had encroached upon.

The antecedent facts are as follows:

On 1 September 1988, Salve Dealca Latosa filed before the RTC a Complaint for the recovery of ownership of a portion of her residential land located at Our Lady's Village, Bibincahan, Sorsogon, Sorsogon, docketed as Civil Case No. 5403. According to her, Atty. Henry Amado Roxas (Roxas), represented by petitioner herein, encroached on a quarter of her property by arbitrarily extending his concrete fence beyond the correct limits.

In his Answer, Roxas imputed the blame to respondent Our Lady's Village Foundation, Inc., now Our Lady's Foundation, Inc. (OLFI). He then filed a Third-Party Complaint against respondent and claimed that he only occupied the adjoining portion in order to get the equivalent area of what he had lost when OLFI trimmed his property for the subdivision road. The RTC admitted the Third-Party Complaint and proceeded to trial on the merits.

After considering the evidence of all the parties, the trial court held that Latosa had established her claim of encroachment by a preponderance of evidence. It found that Roxas occupied a total of 112 square meters of Latosa's lots, and that, in turn, OLFI trimmed his property by 92 square meters. The dispositive portion of the Decision[4] reads:

WHEREFORE, the Court hereby renders judgment as follows:

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

[3] CA *rollo*, pp. 44-45.

[4] *Rollo,* pp. 27-31, RTC Decision penned by Judge Honesto A. Villamor.

On the Complaint:

1. Ordering the defendant to return and surrender the portion of 116 sq. meters which lawfully belongs to the plaintiff being a portion of Lot 19;

2. Ordering defendant to demolish whatever structure constructed [sic] thereon and to remove the same at his own expense;

3. Ordering defendant to reimburse plaintiff the amount of ₱1,500.00 for the expenses in the relocation survey;

4. Ordering the dismissal of the counter claim.

On the 3rd Party Complaint:

1. Ordering the 3rd Party Defendant to reimburse 3rd Party Plaintiff the value of 92 sq. meters which is a portion of Lot 23 of the def-3rd Party Plaintiff plus legal interest to be reckoned from the time it was paid to the 3rd Party Defendant;

2. 3rd Party Defendant is ordered to pay the 3rd Party Plaintiff the sum of ₱10,000.00 as attorney's fees and ₱5,000 as litigation expenses;

3. 3rd Party Defendant shall pay the cost of suit.

SO ORDERED.[5]

Subsequently, Roxas appealed to the CA, which later denied the appeal. Since the Decision had become final, the RTC issued a Writ of Execution[6] to implement the ruling ordering OLFI to reimburse Roxas for the value of the 92-square-meter property plus legal interest to be reckoned from the time the amount was paid to the third-party defendant. The trial court then approved the Sheriff's Bill,[7] which valued the subject property at ₱2,500 per square meter or a total of ₱230,000. Adding the legal interest of 12% per annum for 10 years, respondent's judgment obligations totaled ₱506,000.

Opposing the valuation of the subject property, OLFI filed a Motion to Quash the Sheriff's Bill and a Motion for Inhibition

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[5] *Id.* at 30-31.

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

[7] CA *rollo*, p. 32.

of the RTC judge. It insisted that it should reimburse Roxas only at the rate of ₱40 per square meter, the same rate that Roxas paid when the latter first purchased the property. Nevertheless, before resolving the Motions filed by OLFI, the trial court approved an Amended Sheriff's Bill,[8] which reduced the valuation to ₱1,800 per square meter.

Eventually, the RTC denied both the Motion for Inhibition and the Motion to Quash the Sheriff's Bill. It cited fairness to justify the computation of respondent's judgment obligation found in the Amended Sheriff's Bill. In its 2 December 2004 Order, the trial court explained:

> Although it might be true that the property was originally purchased at ₱40.00 per square meter, the value of the Philippine Peso has greatly devaluated since then ₱40.00 may be able to purchase a square meter of land twenty (20) or more years ago but it could only buy two (2) kilos of rice today. It would be most unfair to the defendants-third party plaintiff if the third party defendant would only be made to reimburse the purchase price at ₱40.00 per square meter. Anyway, this Court is in the best position to determine what amount should be reimbursed since it is the one who rendered the decision which was affirmed *in toto* by the Appellate Court and this Court is of the opinion and so holds that that amount should be ₱1,800.00 per square meter.[9]

To collect the aforementioned amount, Notices of Garnishment[10] were then issued by the sheriff to the managers of the Development Bank of the Philippines and the United Coconut Planters Bank for them to garnish the account of Bishop Robert Arcilla-Maullon (Arcilla-Maullon), OLFI's general manager.

Refusing to pay ₱1,800 per square meter to Roxas, OLFI filed a Rule 65 Petition before the CA.[11] Respondent asserted

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[8] *Id.* at 43.

[9] *Rollo,* pp. 46-47.

[10] CA *rollo*, pp. 46-47.

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

that since the dispositive portion of the Decision ordered it to reimburse Roxas, it should only be made to return the purchase price that he had originally paid, which was ₱40 per square meter for the 92-square-meter property.

Petitioner argues otherwise. Roxas first clarified that the dispositive portion of the Decision is silent as to the value of the subject property — whether the value is to be reckoned from the date of purchase or from the date of payment after the finality of judgment.[12] Following this clarification, petitioner pointed out that the valuation of the subject property was for the trial court to undertake, and that the reimbursement contemplated referred to the repayment of all the expenses, damages, and losses. Roxas ultimately argued that the payment for the property encroached upon must not be absurd and must take into consideration the devaluation of the Philippine peso.

The arguments of Roxas did not persuade the CA. It construed reimbursement as an obligation to pay back what was previously paid and thus required OLFI to merely reimburse him at the rate of ₱40 per square meter, which was the consideration respondent had received when Roxas purchased the subdivision lots. Therefore, for changing the tenor of the RTC Decision by requiring the reimbursement of ₱1,800 per square meter, both the Amended Sheriff's Bill and the 2 December 2004 Order of the RTC were considered null and void.

Further, the CA nullified the Notices of Garnishment issued against the bank accounts of Arcilla-Maullon. It noted that since the general manager of OLFI was not impleaded in the proceedings, he could not be held personally liable for the obligation of the corporation.

Before this Court, petitioner maintains that OLFI should be made to pay ₱1,800, and not ₱40 per square meter as upheld in the 2 December 2004 Order of the RTC.[13] For the immediate enforcement of the Order, petitioner further argues that because

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[12] *Id.* at 114; Comment dated 24 October 2005.

[13] *Rollo,* pp. 13-16; Petition for Review dated 8 May 2008.

OLFI is a dummy corporation, the bank accounts of its general manager can be garnished to collect the judgment obligation of respondent.[14]

Hence, the pertinent issue in this case requires the determination of the correct amount to be reimbursed by OLFI to Roxas. As a corollary matter, this Court also resolves the propriety of issuing the Notices of Garnishment against the bank accounts of Arcilla-Maullon as OLFI's general manager.

RULING OF THE COURT

Based on the dispositive portion of the RTC Decision, OLFI was ordered to reimburse Roxas for the value of the 92-square-meter property plus legal interest to be reckoned from the time it was paid to the third-party defendant.

In interpreting this directive, both the trial and the appellate courts differed in interpreting the amount of reimbursement payable by respondent to petitioner. The RTC pegged the reimbursable amount at ₱1,800 per square meter to reflect the current value of the property, while the CA maintained the original amount of the lot at ₱40 per square meter.

To settle the contention, this Court resorts to the provisions of the Civil Code governing encroachment on property. Under Article 448 pertaining to encroachments in good faith, as well as Article 450 referring to encroachments in bad faith, the owner of the land encroached upon — petitioner herein — has the option to require respondent builder to pay the price of the land.

Although these provisions of the Civil Code do not explicitly state the reckoning period for valuing the property, *Ballatan v. Court of Appeals*[15] already specifies that in the event that the seller elects to sell the lot, "the price must be fixed at the prevailing market value at the time of payment." More recently, *Tuatis v. Spouses Escol*[16] illustrates that the present or current fair value

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[14] *Id.* at 15; Petition for Review dated 13 May 2008.

[15] 363 Phil. 408, 423 (1999).

[16] G.R. No. 175399, 27 October 2009, 604 SCRA 471.

of the land is to be reckoned at the time that the landowner elected the choice, and not at the time that the property was purchased. We quote below the relevant portion of that Decision:[17]

Under the *second option*, Visminda may choose not to appropriate the building and, instead, oblige Tuatis to pay the present or current fair value of the land. **The ₱10,000.00 price of the subject property, as stated in the Deed of Sale on Installment executed in November 1989, shall no longer apply, since Visminda will be obliging Tuatis to pay for the price of the land in the exercise of Visminda's rights under Article 448 of the Civil Code, and not under the said Deed.** Tuatis' obligation will then be statutory, and not contractual, arising only when Visminda has chosen her option under Article 448 of the Civil Code.

Still under the second option, if the present or current value of the land, the subject property herein, turns out to be considerably more than that of the building built thereon, Tuatis cannot be obliged to pay for the subject property, but she must pay Visminda reasonable rent for the same. Visminda and Tuatis must agree on the terms of the lease; otherwise, the court will fix the terms. (Emphasis supplied)

In *Sarmiento v. Agana*,[18] we reckoned the valuation of the property at the time that the real owner of the land asked the builder to vacate the property encroached upon. Moreover, the oft-cited case *Depra v. Dumlao*[19] likewise ordered the courts of origin to compute the current fair price of the land in cases of encroachment on real properties.

From these cases, it follows that the CA incorrectly pegged the reimbursable amount at the old market value of the subject property — ₱40 per square meter — as reflected in the Deed of Absolute Sale[20] between the parties. On the other hand, the RTC properly considered in its 2 December 2004 Order the value of the lot at ₱1,800 per square meter, the current fair price as determined in the Amended Sheriff's Bill. Thus, we

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[17] *Id.* at 493.

[18] 214 Phil. 101 (1984).

[19] 221 Phil. 168 (1985).

[20] CA *rollo*, p. 96.

reverse the ruling of the CA and reinstate the 2 December 2004 Order of the RTC directing OLFI to reimburse petitioner at ₱1,800 per square meter.

Nevertheless, with regard to the issue pertaining to the Notices of Garnishment issued against the bank accounts of Arcilla-Maullon, we affirm the ruling of the CA.

The appellate court appreciated that in the main case for the recovery of ownership before the court of origin, only OLFI was named as respondent corporation, and that its general manager was never impleaded in the proceedings *a quo*.

Given this finding, this Court holds that since OLFI's general manager was not a party to the case, the CA correctly ruled that Arcilla-Maullon cannot be held personally liable for the obligation of the corporation. In *Santos v. NLRC*,[21] this Court upholds the doctrine of separate juridical personality of corporate entities. The case emphasizes that a corporation is a juridical entity with a legal personality separate and distinct from those acting for and on its behalf and, in general, of the people comprising it.[22] Hence, the obligations incurred by the corporation, acting through its officers such as in this case, are its sole liabilities.[23]

To hold the general manager of OLFI liable, petitioner claims that it is a mere business conduit of Arcilla-Maullon, hence, the corporation does not maintain a bank account separate and distinct from the bank accounts of its members. In support of this claim, petitioner submits that because OLFI did not rebut the attack on its legal personality, as alleged in petitioner's Opposition and Comments on the Motion to Quash Notice/Writ of Garnishment dated 15 March 2005,[24] respondent effectively admitted by its silence that it was a mere dummy corporation.

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[21] 325 Phil. 145 (1996).

[22] *Id.*

[23] *Id.*

[24] CA *rollo*, pp. 168-169.

This argument does not persuade us, for any piercing of the corporate veil has to be done with caution.[25] Save for its rhetoric, petitioner fails to adduce any evidence that would prove OLFI's status as a dummy corporation. In this regard, we recently explained in *Sarona v. NLRC*[26] as follows:

A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application. (Citation omitted)

In any event, in order for us to hold Arcilla-Maullon personally liable alone for the debts of the corporation and thus pierce the veil of corporate fiction, we have required that the bad faith of the officer must first be established clearly and convincingly.[27] Petitioner, however, has failed to include any submission pertaining to any wrongdoing of the general manager. Necessarily, it would be unjust to hold the latter personally liable.

Therefore, we refuse to allow the execution of a corporate judgment debt against the general manager of the corporation, since in no legal sense is he the owner of the corporate property.[28] Consequently, this Court sustains the CA in nullifying the Notices of Garnishment against his bank accounts.

IN VIEW THEREOF, the 25 September 2007 Decision and 11 March 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 88622 are **AFFIRMED with MODIFICATION** in that the value of the 92-square-meter property for which respondent

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[25] *Kukan International Corporation v. Reyes*, G.R. No. 182729, 29 September 2010, 631 SCRA 596 citing *PEA-PTGWO v. NLRC*, 581 SCRA 598 (2009).

[26] G.R. No. 185280, 18 January 2012, 663 SCRA 394, 417.

[27] *Carag v. NLRC*, G.R. No. 147590, 2 April 2007, 520 SCRA 28.

[28] *Good Earth Emporium, Inc. v. Court of Appeals*, G.R. No. 82797, 27 February 1991, 194 SCRA 544.

should reimburse petitioner, as determined by the 2 December 2004 Order of the Regional Trial Court in Civil Case No. 5403, is hereby reinstated at ₱1,800 per square meter.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 182449. March 6, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MARTIN T. NG,** *respondent.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT AND PROPERTY REGISTRATION DECREE; JUDICIAL CONFIRMATION OF TITLE UNDER ORIGINAL REGISTRATION, REQUIREMENTS.—** In a judicial confirmation of title under original registration proceedings, applicants may obtain the registration of title to land upon a showing that they or their predecessors-in-interest have been in (1) open, continuous, exclusive, and notorious possession and occupation of (2) agricultural lands of the public domain, (3) under a bona fide claim of acquisition or ownership, (4) for at least 30 years immediately preceding the filing of the application for confirmation of title, except when prevented by war or force majeure. The burden of proof in land registration cases rests on applicants who must show clear, positive and convincing evidence that their alleged possession and occupation were of the nature and duration required by law.

2. **ID.; ID.; ID.; ID.; POSSESSION, HOW ACQUIRED; NATURE OF THE POSSESSION REQUIRED TO CONFIRM ONE'S TITLE, EXPLAINED.—** In this case, what is questioned is the sufficiency of the evidence submitted to prove that the possession by respondent's predecessors-in-interest was of the nature required by the Public Land Act and the Property Registration Decree. Specifically, respondent must prove that his predecessors-in-interest openly, continuously, exclusively, and notoriously possessed the realties. Possession is acquired in any of the following ways: (1) by the material occupation of the thing; (2) by the exercise of a right; (3) by the fact that the property is subject to the action of our will; and (4) by the proper acts and legal formalities established for acquiring the right. In *Director of Lands v. IAC*, we explained the nature of the possession required to confirm one's title as follows: Possession is **open** when it is patent, visible, apparent, notorious and not clandestine. It is **continuous** when uninterrupted, unbroken and not intermittent or occasional; **exclusive** when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and **notorious** when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood.

3. **ID.; ID.; ID.; ID.; ID.; WHILE TAX DECLARATIONS AND REALTY TAX PAYMENT ON PROPERTY ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP, THEY ARE NEVERTHELESS GOOD INDICIA OF POSSESSION IN THE CONCEPT OF OWNER, FOR NO ONE IN THE RIGHT FRAME OF MIND WOULD BE PAYING TAXES FOR A PROPERTY THAT IS NOT IN ONE'S ACTUAL OR AT LEAST CONSTRUCTIVE POSSESSION.—** [A]s found by the courts *a quo*, it is clear from the records that respondent presented several pieces of documentary evidence to prove that he openly possessed the properties. He submitted notarized Deeds of Sale, Agreements of Partition and Extra-judicial Settlement of Estate and Sale to show the acquisition of the lands from his predecessors-in-interest. Moreover, he presented Tax Declarations and realty payments showing that he and his predecessors-in-interest had been paying real estate taxes since 1948 until the inception of this case in 1997; hence, for more than 30 years. He also submitted the original

tracing cloth plan in which the advance survey plan shows that the subject lots had previously been under the names of the vendors, the previous transferors, and the original owners of the lots. As we have ruled in *Republic v. Sta. Ana-Burgos*, while tax declarations and realty tax payments on property are not conclusive evidence of ownership, they are nevertheless good indicia of possession in the concept of owner, for no one in the right frame of mind would be paying taxes for a property that is not in one's actual or at least constructive possession.

4. **ID.; ID.; ID.; ID.; ID.; IF THE HOLDERS OF THE LAND PRESENT A DEED OF CONVEYANCE IN THEIR FAVOR FROM ITS FORMER OWNER TO SUPPORT THEIR CLAIM OF OWNERSHIP, THE DECLARATION OF OWNERSHIP AND TAX RECEIPTS RELATIVE TO THE PROPERTY MAY BE USED TO PROVE THEIR GOOD FAITH IN OCCUPYING AND POSSESSING IT.—** The voluntary declaration of a piece of property for taxation purposes is an announcement of one's claim against the State and all other interested parties. In fact, these documents already constitute *prima facie* evidence of possession. Moreover, if the holders of the land present a deed of conveyance in their favor from its former owner to support their claim of ownership, the declaration of ownership and tax receipts relative to the property may be used to prove their good faith in occupying and possessing it. Additionally, when considered with actual possession of the property, tax receipts constitute evidence of great value in support of the claim of title of ownership by prescription.

5. **ID.; ID.; ID.; ID.; ID.; DOCUMENTARY EVIDENCE CONSISTING OF MUNIMENTS OF TITLE, TAX DECLARATIONS, REALTY PAYMENTS AND TESTIMONY OF WITNESSES, SUFFICIENTLY PROVED RESPONDENT AND HIS PREDECESSORS-IN-INTEREST OPEN, CONTINUOUS, EXCLUSIVE, AND NOTORIOUS POSSESSION OF THE SUBJECT REALITIES, AS REQUIRED BY OUR REGISTRATION LAWS.—** As for testimonial evidence, although it is unfortunate that respondent's counsel failed to ask Fat specific questions as to the fact of possession, it is evident that respondent's predecessors-in-interest were the witness' longtime neighbors and close friends who lived near the subject lots. Logically,

it can be inferred that respondent's predecessors-in-interest materially occupied and continuously possessed the adjoining property. x x x The said witness x x x narrated that the lots were transferred either through a contract of sale or through succession, from the original owners to the vendors who later became respondent's predecessors-in-interest. Taken together, these acts of transferring the property evinced the exercise of their ownership rights over the lots. Far from giving a motherhood statement, Fat also asserted with certainty that no other person laid claim to the lots. This fact was corroborated by the DENR Certification that the lots were not covered by any other subsisting public land application. Accordingly, respondent supplied proof of his exclusive possession of the realties. Therefore, given these pieces of documentary evidence – consisting of muniments of title, tax declarations and realty payments which were not disputed by petitioner; and the testimony as regards the actual possession for more than 30 years by respondent's predecessors-in-interest – the OSG inaccurately portrayed respondent as merely making general submissions in proving his claims. Rather, as found by the courts *a quo*, he amply established that he and his predecessors-in-interest owned and possessed the subject lots openly, continuously, exclusively, and notoriously, as required by our registration laws.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Emmanuel I. Seno for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Rule 45 Petition, seeking a review of the 25 March 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 01143, which affirmed the 23 October 2002

[1] *Rollo,* pp. 34-44; CA Decision, penned by Associate Justice Francisco P. Acosta, with Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier concurring.

Amended Decision[2] of the Municipal Trial Court (MTC), Consolacion, Cebu, in LR Case No. N-12, LRA Record No. N-67773. The MTC ordered the registration and confirmation of title over five parcels of land claimed by respondent Martin T. Ng.

The antecedent facts are as follows:[3]

On 7 January 1997, respondent filed an application for the original registration of title over Lot Nos. 9663, 9666, 9668, 9690 and 9691, CAD 545-D (New) situated at Cansaga, Consolacion, Cebu. He claimed ownership of these five parcels of land with a total area of 1,841 square meters. His claim was based on his purchase thereof from the vendors, who had possessed the realties for more than thirty (30) years.

During the reception of evidence by the Clerk of Court, respondent furnished the following pieces of documentary evidence to establish his purchase of the lots: (1) Deed of Absolute Sale between him and Eustaquio Tibon;[4] (2) Extra-judicial Settlement of Estate & Sale between him and Olivia Sicad *vda. de* Ouano;[5] (3) Deed of Definite Sale by Eduardo and Virginia Capao;[6] (4) Deed of Absolute Sale between him and Victoria Capadiso;[7] and (5) Agreement of Partition between him and Victoria Capadiso.[8] In addition, he attached the numerous vintage Tax Declarations[9] dating as far back as 1948.[10] These Tax Declarations were either under the names of the vendors, the previous transferors and the original owners of the lots. The

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[2] *Id.* at 75-88.

[3] *Id.* at 34-35.

[4] Records, p. 106.

[5] *Id.* at 15-16.

[6] *Id.* at 147.

[7] *Id.* at 19.

[8] *Id.* at 166.

[9] *Id.* at 113-128; 131-140; 148-156; 158-165.

[10] *Id.* at 113.

regularity and due execution of these contracts, Tax Declarations and realty payments were never assailed by petitioner.

Respondent also submitted the following documents to prove his ownership: (1) the Department of Environment and Natural Resources (DENR) Certification showing that the subject lots were within the alienable and disposable lands of the public domain;[11] (2) the DENR Certification stating that the lots are not covered by any other subsisting public land application;[12] and (3) the original tracing cloth plan covering the properties.[13] Similarly, these pieces of evidence were never assailed by petitioner.

As for testimonial evidence, respondent narrated that these lots were purchased from the aforementioned vendees and predecessors-in-interest, who had been in possession of the lots for more than thirty (30) years. In support of his claims, he further presented the testimony of the 77-year-old Josefa N. Fat (Fat), who lived near the subject lots.

According to Fat, she met respondent in 1993, when he brought with him workers assigned to plant trees and to fence the property. Since then, she recounted that she saw him on the subject lots for several times.

Further, she stated that she knew the original owners and vendees of the lots, as they were her neighbors and close friends. She also recounted that the properties were either inherited or transferred by the past owners to the vendors, who in turn sold them to Martin T. Ng; and that there is no other person who laid claim over the lots. She ended her testimony by asserting with certainty that the ownership and possession by respondent and his predecessors-in-interest were public, peaceful, open, continuous, and in the concept of an owner.

After the presentation of evidence, the MTC rendered its 23 October 2002 Decision confirming respondent's title to the subject lots and ordering the registration of the title in his name.

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[11] *Id.* at 105.

[12] *Id.* at 30.

[13] *Id.* at 83.

Petitioner, as represented by the Office of the Solicitor General (OSG), appealed to the CA. In a lone assignment of error, it averred that the trial court erred in granting Ng's application, since respondent had failed to comply with the requirements for the original registration of title.

Petitioner contended that respondent had failed to substantiate his alleged possession and occupation. It attacked Fat's testimony as full of motherhood statements, which could not be given weight by the courts. In addition, it asserted that the Tax Declarations attached to the application merely provided an *indicia* of possession, and not a conclusive proof of ownership.

The CA affirmed the factual findings of the MTC. It appreciated the statement of Josefa Fat, who lived near the subject parcels of land, that she knew their previous owners as her neighbors and close acquaintances. According to the appellate court, this testimony was even corroborated by Tax Declarations and realty tax payments, which altogether sufficiently established the possession of the realties by respondent's predecessors-in-interest.[14] Hence, the CA held:[15]

> Considering that the possession of the subject parcels of land by the applicant-appellee tacked to that of his predecessors-in-interest, covered a period of forty-nine (49) years to the time of the filing of the application for registration in 1997, we hold that applicant-appellee has acquired an imperfect title thereto which may be subject to confirmation and brought under the operation of the Torrens system.
>
> **WHEREFORE,** the assailed Amended Decision dated October 23, 2002 of the MTC Consolacion, Cebu, is **AFFIRMED.**

Aggrieved, petitioner reiterates its lone assignment of error before this Court:[16] that the CA gravely erred in affirming the trial court's appreciation of respondent's claim of ownership as one that had been established by virtue of an open, continuous, exclusive and notorious possession of the subject lots.

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[14] *Rollo,* p. 43.

[15] *Id.*

[16] *Id.* at 17.

RULING OF THE COURT

In a judicial confirmation of title under original registration proceedings, applicants may obtain the registration of title to land upon a showing that they or their predecessors-in-interest have been in (1) open, continuous, exclusive, and notorious possession and occupation of (2) agricultural lands of the public domain, (3) under a *bona fide* claim of acquisition or ownership, (4) for at least 30 years immediately preceding the filing of the application for confirmation of title, except when prevented by war or force majeure.[17] The burden of proof in land registration cases rests on applicants who must show clear, positive and convincing evidence that their alleged possession and occupation were of the nature and duration required by law.[18]

In this case, what is questioned is the sufficiency of the evidence submitted to prove that the possession by respondent's predecessors-in-interest was of the nature required by the Public Land Act and the Property Registration Decree. Specifically, respondent must prove that his predecessors-in-interest openly, continuously, exclusively, and notoriously possessed the realties.

Possession is acquired in any of the following ways: (1) by the material occupation of the thing; (2) by the exercise of a right; (3) by the fact that the property is subject to the action of our will; and (4) by the proper acts and legal formalities established for acquiring the right.[19] In *Director of Lands v. IAC*,[20] we explained the nature of the possession required to confirm one's title as follows:

Possession is **open** when it is patent, visible, apparent, notorious and not clandestine. It is **continuous** when uninterrupted, unbroken and not intermittent or occasional; **exclusive** when the adverse

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[17] Presidential Decree No. 1529 (1978), Sec. 14; Commonwealth Act No. 141 (1936), Sec. 48.

[18] *Diaz-Enriquez v. Republic of the Philippines*, 480 Phil. 787 (2004).

[19] CIVIL CODE, Art. 531.

[20] G.R. No. 68946, 209 Phil. 214, 224 (1992).

possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and **notorious** when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood. (Emphasis supplied)

In perusing the evidence submitted by respondent, petitioner claims[21] that the former merely presented (1) a witness' testimony full of motherhood statements, and (2) Tax Declarations and realty payments that do not conclusively prove ownership. Thus, the Republic claims that the evidence of possession is insufficient.

However, as found by the courts *a quo*, it is clear from the records that respondent presented several pieces of documentary evidence to prove that he openly possessed the properties. He submitted notarized Deeds of Sale, Agreements of Partition and Extra-judicial Settlement of Estate and Sale to show the acquisition of the lands from his predecessors-in-interest.[22]

Moreover, he presented Tax Declarations and realty payments showing that he and his predecessors-in-interest had been paying real estate taxes since 1948 until the inception of this case in 1997; hence, for more than 30 years. He also submitted the original tracing cloth plan in which the advance survey plan shows that the subject lots had previously been under the names of the vendors, the previous transferors, and the original owners of the lots.[23]

As we have ruled in *Republic v. Sta. Ana-Burgos*,[24] while tax declarations and realty tax payments on property are not conclusive evidence of ownership, they are nevertheless good indicia of possession in the concept of owner, for no one in the right frame of mind would be paying taxes for a property that is not in one's actual or at least constructive possession.

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[21] *Rollo*, pp. 14-27.

[22] *Director of Lands v. CA*, G.R. No. 50260, 29 July 1992, 211 SCRA 868.

[23] Records, p. 82.

[24] G.R. No. 163254, 1 June 2007, 523 SCRA 309.

The voluntary declaration of a piece of property for taxation purposes is an announcement of one's claim against the State and all other interested parties.[25] In fact, these documents already constitute *prima facie* evidence of possession.[26] Moreover, if the holders of the land present a deed of conveyance in their favor from its former owner to support their claim of ownership, the declaration of ownership and tax receipts relative to the property may be used to prove their good faith in occupying and possessing it.[27] Additionally, when considered with actual possession of the property, tax receipts constitute evidence of great value in support of the claim of title of ownership by prescription.[28]

As for testimonial evidence, although it is unfortunate that respondent's counsel failed to ask Fat specific questions as to the fact of possession, it is evident that respondent's predecessors-in-interest were the witness' longtime neighbors and close friends who lived near the subject lots. Logically, it can be inferred that respondent's predecessors-in-interest materially occupied and continuously possessed the adjoining property. Her testimony reads thus:[29]

Q: Do you know a certain Nemesio Tibon?
A: Yes, sir.

Q: Why do you know him?
A: Because he was my close neighbor.

Q: In relation to Lot 9663 one of the subject lots, who is he?
A: He was the original owner of Lot No. 9663.

Q: Where is Nemesio Tibon now?
A: He is already dead.

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[25] *Id.*

[26] *The Republic of the Philippines v. Santua*, G.R. No. 155703, 8 September 2008, 564 SCRA 331.

[27] *Elumbaring v. Elumbaring*, 12 Phil. 384 (1909).

[28] *Viernes v. Agpaoa*, 41 Phil. 286 (1920).

[29] *Rollo,* pp. 99-102; TSN dated 16 April 2002, pp. 5-33.

Q: After Nemesio Tibon died, who owned and possessed Lot No. 9663?
A: It was his son, Eustaquio Tibon, who owned and possessed Lot No. 9663 after he inherited the same from Nemesio Tibon.

Q: From his son, Eustaquio Tibon, where did the property go?
A: It was owned and possessed by the applicant, Martin T. Ng, after the latter bought it from Eustaquio Tibon.

Q: Do you know a certain Diego Balaba?
A: Yes, sir.

Q: Why do you know him?
A: We were very close neighbors before.

Q: In relation to Lot No. 9666, one of the subject lots, who is he?
A: He was the original owner of Lot No. 9666.

Q: Where is Diego Balaba now?
A: He is already dead.

Q: From Diego Balaba, who owned and possessed Lot No. 9666?
A: It was the spouses Rufino Quano and Oliva Sicad who owned and possessed the same after they bought it from Diego Balaba.

Q: How did you know about this fact?
A: As I have said, Diego Balaba was my close neighbor and I was present when the sale was made.

Q: From the spouses Rufino Quano and Oliva Sicad, who owned and possessed Lot No. 9666?
A: It was the applicant, Martin T. Ng, who owned and possessed Lot No. 9666 after the latter bought it from the spouses Rufino Quano and Oliva Sicad.

Q: Do you know a certain Liberato Alivio?
A: Yes, sir.

Q: Why do you know him?
A: He was my neighbor and a very close friend of mine.

Q: In relation to Lot No. 9668, one of the subject lots, who is he?
A: He was the original owner of Lot No. 9668.

Q: Where is Liberato Alivio now?
A: He is already dead.

Q: After Liberato Alivio died, who owned and possessed Lot No. 9668?
A: It was owned and possessed by his wife, Cipriana Herbieto.

Q: From Cipriana Herbieto, where did Lot No. 9668 go?
A: It was owned and possessed by his son, Ireneo Alivio, who, in turn, sold the same to the spouses Eduardo Capao and Virginia Alivio.

Q: From the spouses Eduardo Capao and Virginia Alivio, who owned and possessed Lot No. 9668?
A: It was owned and possessed by the applicant, Martin T. Ng, after the latter purchased the same from the spouses Eduardo Capao and Virginia Alivio.

Q: Why do you know all these facts?
A: Because I am living near the land and that the previous owners of the said land were my neighbor and close friends.

Q: Do you know a certain Julian Capadiso?
A: Yes, sir.

Q: Why do you know him?
A: He was my neighbor and a very close friend.

Q: Where is Julian Capadiso now?
A: He is already dead.

Q: In relation to Lot No. 9690, one of the subject lots, who is he?
A: He was the original owner of Lot No. 9690.

Q: After Julian Capadiso died, who owned and possessed Lot No. 9690?
A: It was owned and possessed by the spouses Eustiquiano Naingue and Victoria Capadiso after the latter bought it from Julian Capadiso.

Q: From the spouses Eustiquiano Naingue and Victoria Capadiso, where did the property go?
A: It was owned and possessed by the applicant, Martin T. Ng, after the latter bought it from the spouses Eustiquiano Naingue and Victoria Capadiso.

Q: Why do you know all about these facts?
A: As I have said, I am living near the land and the original and previous owners of the said lot are my neighbors and close friends.

Q: Do you know a certain Saturnino Capadiso?
A: Yes, sir.

Q: Why do you know him?
A: He was my neighbor.

Q: Where is Saturnino Capadiso now?
A: He is already dead.

Q: In relation to Lot No. 9691 one of the subject lots, who is he?
A: He was the original owner of Lot No. 9691.

Q: From Saturnino Capadiso, who owned and possessed Lot No. 9691?
A: It was owned and possessed by his daughter, Victoria Capadiso after the latter inherited the same from his father, Saturnino Capadiso.

Q: After Victoria Capadiso, who owned and possessed Lot No. 9691?
A: It was owned and possessed by the applicant, Martin T. Ng after the latter purchased the same from Victoria Capadiso.

Q: What can you say then of the ownership and possession of the applicant over the subject lots?
A: I can say with certainty that the ownership and possession of the applicant and that of his predecessors-in-interest over the subject lots is public, peaceful, open, continuous and in concept of owners.

Atty. Seno:

That is all for the witness your Honor.

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The said witness further narrated that the lots were transferred either through a contract of sale or though succession, from the original owners to the vendors who later became respondent's predecessors-in-interest. Taken together, these acts of transferring

the property evinced the exercise of their ownership rights over the lots.

Far from giving a motherhood statement, Fat also asserted with certainty that no other person laid claim to the lots. This fact was corroborated by the DENR Certification that the lots were not covered by any other subsisting public land application. Accordingly, respondent supplied proof of his exclusive possession of the realties.

Therefore, given these pieces of documentary evidence — consisting of muniments of title, tax declarations and realty payments which were not disputed by petitioner; and the testimony as regards the actual possession for more than 30 years by respondent's predecessors-in-interest — the OSG inaccurately portrayed respondent as merely making general submissions in proving his claims. Rather, as found by the courts *a quo*, he amply established that he and his predecessors-in-interest owned and possessed the subject lots openly, continuously, exclusively, and notoriously, as required by our registration laws.

For these reasons, we see no reason to reverse the congruent factual findings of the MTC and the CA.

IN VIEW THEREOF, the assailed 25 March 2008 Decision of the Court of Appeals in CA-G.R. CV No. 01143 is hereby **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 184658. March 6, 2013]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **JUDGE RAFAEL R. LAGOS, IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, QUEZON CITY, BRANCH 79, JONATHAN DY *y* RUBIC, CASTEL VINCI ESTACIO *y* TOLENTINO, and CARLO CASTRO *y* CANDO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JUDGMENTS; ACQUITTAL OF THE ACCUSED RESULTING FROM THE GRANT OF DEMURRER TO EVIDENCE IS SUBJECT TO THE EXERCISE OF JUDICIAL REVIEW BY WAY OF EXTRAORDINARY WRIT OF *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; ELABORATED.—** It has long been settled that the grant of a demurrer is tantamount to an acquittal. An acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. This rule, however, is not without exception. The rule on double jeopardy is subject to the exercise of judicial review by way of the extraordinary writ of *certiorari* under Rule 65 of the Rules of Court. The Supreme Court is endowed with the power to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. Here, the party asking for the review must show the presence of a whimsical or capricious exercise of judgment equivalent to lack of jurisdiction; a patent and gross abuse of discretion amounting to an evasion of a positive duty or to a virtual refusal to perform a duty imposed by law or to act in contemplation of law; an exercise of power in an arbitrary and despotic manner by reason of passion and hostility; or a blatant abuse of authority to a point so grave and so severe as to deprive the court of its very power to dispense justice. In such an event, the accused cannot be considered to be at risk of double jeopardy.

2. **CRIMINAL LAW; ILLEGAL SALE OF DRUGS; A BUY-BUST TRANSACTION IS AN EFFECTIVE WAY OF**

APPREHENDING DRUG DEALERS IN THE ACT OF COMMITTING OFFENSES.— The trial court's assessment that the witnesses had no personal knowledge of the illegal sale starkly contrasts with the facts borne out by the records. PO2 Frando was present during the negotiation and the actual buy-bust operation. PO2 Frando himself acted as the poseur-buyer and testified in open court. PO2 Cubian frisked the accused and recovered the buy-bust money; he also testified in court. P S/Insp. Manaog testified as to the *corpus delicti* of the crime; and the 30 pills of ecstasy were duly marked, identified, and presented in court. The validity of buy-bust transactions as an effective way of apprehending drug dealers in the act of committing an offense is well-settled.

3. **ID.; ID.; ID.; UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE MEMBERS OF THE BUY-BUST TEAM WERE INSPIRED BY AN IMPROPER MOTIVE OR WERE NOT PROPERLY PERFORMING THEIR DUTY, THEIR TESTIMONIES AS TO THE CONDUCT OF THE BUY-BUST OPERATION DESERVE FAITH AND CREDIT.—** The only elements necessary to consummate the crime of illegal sale of drugs is proof that the illicit transaction took place, coupled with the presentation in court of the *corpus delicti* or the illicit drug as evidence. In buy-bust operations, *the delivery of the contraband to the poseur-buyer and the seller's receipt of the marked money successfully consummate the buy- bust transaction between the entrapping officers and the accused*. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve faith and credit. The Court has held that when police officers have no motive to testify falsely against the accused, courts are inclined to uphold the presumption of regularity accorded to them in the performance of their official duties. In the present case, there is no contention that the members of AIDSOTF who conducted the buy-bust operation were motivated by ill will or malice. Neither was there evidence adduced to show that they neglected to perform their duties properly. Hence, their testimonies as to the conduct of the buy- bust operation deserves full faith and credence.

4. ID.; ID.; ID.; THE FACT THAT IT WAS THE CONFIDENTIAL INFORMANT WHO INITIALLY PROVIDED THE INFORMATION OR "TIP" DOES NOT NEGATE THE SUBSEQUENT CONSUMMATION OF THE ILLEGAL SALE OF DRUGS, WHERE THE ACCUSED WAS ARRESTED, NOT ON THE BASIS OF THAT INFORMATION, BUT OF THE ACTUAL BUY-BUST OPERATION IN WHICH THE VIOLATOR IS CAUGHT IN *FLAGRANTE DELICTO*.— Respondent judge harps on the fact that it was the CI who had personal knowledge of the identity of the seller, the initial offer to purchase the ecstasy pills, and the subsequent acceptance of the offer. It is clear from the testimonies of PO2 Frando and the other arresting officers that they conducted the buy-bust operation based on the information from the CI. However, the arrest was made, not on the basis of that information, but of the actual buy-bust operation, in which respondents were caught *in flagrante delicto* engaged in the illegal sale of dangerous drugs. Due to the investigative work of the AIDSOTF members, the illegal sale was consummated in their presence, and the elements of the sale – the identity of the sellers, the delivery of the drugs, and the payment therefor – were confirmed. That the CI initially provided this information or "tip" does not negate the subsequent consummation of the illegal sale. In the Court's Resolution on *People v. Utoh*, the accused was caught *in flagrante delicto* selling ₱36,000 worth of *shabu* in a buy-bust operation conducted by the Philippine Drug Enforcement Agency (PDEA). The accused argued that mere reliable information from the CI was an insufficient ground for his warrantless arrest. The Court stated: **Utoh was arrested not, as he asserts, on the basis of "reliable information" received by the arresting officers from a confidential informant. His arrest came as a result of a valid buy-bust operation, a form of entrapment in which the violator is caught *in flagrante delicto*. The police officers conducting a buy-bust operation are not only authorized but also duty-bound to apprehend the violators and to search them for anything that may have been part of or used in the commission of the crime.**

5. ID.; ID.; ID.; THE TESTIMONY OF THE CONFIDENTIAL INFORMANT IS NOT INDISPENSABLE FOR THE PROSECUTION OF DRUG CASES, SINCE IT WOULD

BE MERELY CORROBORATIVE OF AND CUMULATIVE WITH THAT OF THE POSEUR-BUYER WHO WAS PRESENTED IN COURT, AND WHO TESTIFIED ON THE FACTS AND CIRCUMSTANCES OF THE SALE AND DELIVERY OF THE PROHIBITED DRUG; RATIONALE.— Requiring the CI to testify is an added imposition that runs contrary to jurisprudential doctrine, since the Court has long established that the presentation of an informant is not a requisite for the prosecution of drug cases. The testimony of the CI is not indispensable, since it would be merely corroborative of and cumulative with that of the poseur-buyer who was presented in court, and who testified on the facts and circumstances of the sale and delivery of the prohibited drug. Informants are usually not presented in court because of the need to hide their identities and preserve their invaluable services to the police. Except when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the officers had motives to falsely testify against the accused, or that it was the informant who acted as the poseur-buyer, the informant's testimony may be dispensed with, as it will merely be corroborative of the apprehending officers' eyewitness accounts.

6. **REMEDIAL LAW; CRIMINAL PROCEDURE; WHERE THE PROSECUTION'S EVIDENCE WAS, *PRIMA FACIE*, SUFFICIENT TO PROVE THE CRIMINAL CHARGES FILED AGAINST THE ACCUSED, THE GRANT OF DEMURRER TO EVIDENCE FOR FAILURE TO PRESENT THE CONFIDENTIAL INFORMANT CONSTITUTED GRAVE ABUSE OF DISCRETION.—** [I]n the present case, the fact of the illegal sale has already been established by testimonies of the members of the buy-bust team. Judge Lagos need not have characterized the Cl's testimony as indispensable to the prosecution's case. We find and so hold that the grant of the demurrer for this reason alone was not supported by prevailing jurisprudence and constituted grave abuse of discretion. The prosecution's evidence was, *prima facie*, sufficient to prove the criminal charges filed against respondents, subject to the defenses they may present in the course of a full-blown trial.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Pamaran Ramos & Partners Law Offices for Jonathan Dy.
RRV Legal Consultancy Firm for Carlo Castro.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a special civil action for *certiorari* under Rule 65 seeking to reverse the following Orders in Criminal Case No. Q-07-146628 issued by public respondent Judge Rafael R. Lagos (Judge Lagos), presiding judge of the Regional Trial Court (RTC) of Quezon City, Branch 79:

1. The Order issued on 23 April 2008, *granting* respondents' Petition for Bail and Motion for Leave to File Demurrer to Evidence;[1]
2. The Order issued on 24 June 2008 *granting* the demurrer to evidence filed by respondents and *acquitting* them of the crime of illegal sale of drugs punishable under Section 5, Article II, Republic Act 9165;[2]
3. The Order issued on 24 July 2008, which: a) *denied* petitioner's Motion for Inhibition, b) *denied* petitioner's Motion for Reconsideration of the 24 July 2008 Order; and c) *granted* respondents' Motion to withdraw their cash bonds.[3]

On 30 March 2007, at 11:00 a.m., a confidential informant (CI) appeared before the Anti-Illegal Drugs Special Operations Task Force (AIDSOTF) of the Philippine National Police (PNP) in Camp Crame, Quezon City. The CI relayed to Police Senior Inspector Fidel Fortaleza, Jr. (P S/Insp. Fortaleza) that an

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[1] *Rollo,* pp. 30-40.

[2] *Id.* at 41-46.

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

individual using the *alias* "Brian" was engaged in the illegal sale of the prohibited drug "ecstasy" in BF Homes, Parañaque City.[4] The CI further reported that "Brian," who was later identified as herein private respondent Castel Vinci Estacio *y* Tolentino (Estacio), promised a commission from any transaction the former would help arrange. P S/Insp. Fortaleza, as team leader of the AIDSOTF, assembled and briefed the team that would conduct the buy-bust operation. Police Officer (PO) 2 Marlo V. Frando (PO2 Frando) was assigned to act as the poseur-buyer and PO2 Ruel P. Cubian (PO2 Cubian) as back-up, while the rest of the team members were to serve as perimeter security. P S/Insp. Fortaleza and PO2 Leonard So prepared and dusted two ₱500 bills for use as buy-bust money. The CI then called respondent Estacio, informing him that a prospective buyer wished to purchase thirty (30) tablets of ecstasy with a total value of ₱50,000.[5] That afternoon, respondent Estacio instructed them to proceed to Tandang Sora Avenue, Quezon City, where the transaction was to take place.[6]

At 11:00 p.m. of the same day, Estacio alighted from a Toyota Vios car at the Jollibee branch located at the corner of Commonwealth Avenue and Tandang Sora. PO2 Frando, accompanied by the CI, approached Estacio. After PO2 Frando was introduced to Estacio as the prospective buyer, the latter demanded to see the payment. However, PO2 Frando asked him to first show the ecstasy pills.[7] Estacio then opened the doors of the vehicle and introduced his two companions, Carlo and Jonathan (later identified as herein respondents Jonathan Dy and Carlo Castro), to PO2 Frando and the CI. Respondent Castro handed PO2 Frando one sealed plastic sachet containing several pink pills. The latter gave the "boodle" money to respondent Dy and immediately removed his baseball cap. The removal of

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[4] *Id.* at 5.

[5] *Id.* at 159, citing the Transcript of Stenographic Notes (TSN) dated 20 June 2007, p. 20.

[6] *Id.*

[7] *Id.* at 159-160, citing the TSN dated 20 June 2007, p. 26.

the cap was the prearranged signal to the rest of the buy-bust team that the transaction was complete.[8]

PO2 Frando introduced himself as a police officer and informed respondents of their constitutional rights.[9] PO2 Cubian frisked respondent Dy and was able to recover the buy-bust money.[10] Respondents were then escorted to the AIDSOTF office in Camp Crame, where they identified themselves as Castel Vinci Estacio *y* Tolentino, Carlo Castro *y* Cando, and Jonathan Dy *y* Rubic. As officer in charge of the inventory of the evidence seized, PO2 Cubian turned over the plastic sachet to PO3 Jose Rey Serrona, who was in charge of the investigation.[11] On 31 March 2007, forensic chemist and Police Senior Inspector Yelah C. Manaog (P S/Insp. Manaog) conducted a laboratory examination of the contents of the sachet, which was completed at 10:50 a.m. that same day.[12] The 30 pink pills were found positive for methylenedioxymethamphetamine (MDMA) hydrochloride, commonly known as ecstasy, a dangerous drug.[13]

An Information dated 3 April 2007 was filed against respondents for the sale of dangerous drugs, in violation of Section 5, Article II of Republic Act No. (R.A.) 9165. The case was raffled to the sala of Judge Fernando Sagum, Jr. of the Quezon City RTC. Upon arraignment, respondents pleaded not guilty to the charges. Trial ensued, and the prosecution presented its evidence, including the testimonies of four witnesses: PO2 Marlo V. Frando, PO2 Ruel P. Cubian, Police Senior Inspector Yelah C. Manaog, and PO3 Jose Rey Serrona. After the prosecution submitted its Formal Offer of Evidence on 17

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[8] *Id.* at 160, citing the TSN dated 20 June 2007, pp. 26-27.

[9] *Id.* at 160, citing the TSN dated 20 June 2007, p. 28.

[10] *Id.* at 160, citing the TSN dated 12 September 2007 (testimony of PO2 Ruel P. Cubian).

[11] *Id.* at 161, citing the TSN dated 12 September 2007, p. 44.

[12] *Id.* at 161, citing the TSN dated 8 August 2007, p. 10 (testimony of P S/Insp. Yelah C. Manaog).

[13] *Id.* at 161, citing the TSN dated 8 August 2007, p. 10.

November 2007, respondents filed a Motion for leave of court to file their demurrer, as well as a Motion to resolve their Petition for Bail. On 2 January 2008, Judge Sagum issued a Resolution denying both the Petition for Bail and the Motion for leave of court to file a demurrer. Respondent Estacio then sought the inhibition of Judge Sagum, a move subsequently adopted by respondents Dy and Castro. On 15 January 2008, Presiding Judge Sagum inhibited himself from the case. On 31 January 2008, the case was re-raffled to public respondent Judge Lagos.

Judge Lagos issued the first assailed Order on 23 April 2008 granting respondents' Petition for Bail and allowing them to file their demurrer. On 24 June 2008, he issued the second assailed Order, **acquitting** all the accused. On Motion for Reconsideration filed by the People, he issued the third assailed Order denying the above motion and granting the Motion to Withdraw Cash Bonds filed by the accused.

Before this Court, the prosecution argues that Judge Lagos committed grave abuse of discretion tantamount to lack or excess of jurisdiction in granting the demurrer despite clear proof of the elements of the illegal sale, the existence of the *corpus delicti*, and the arrest *in flagrante delicto*.[14] Private respondents counter that the Petition is dismissible on the ground of double jeopardy and is violative of the principle of hierarchy of courts.

We grant the petition.

Respondent judge committed grave abuse of discretion in granting the demurrer.

It has long been settled that the grant of a demurrer is tantamount to an acquittal. An acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal.[15] This rule, however, is not without exception. The rule on double jeopardy is subject to the exercise of judicial

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[14] *Id.* at 169 (Memorandum of Petitioner, p. 12).

[15] *People v. Court of Appeals and Galicia*, 545 Phil. 278, 292-293 (2007), citing *People v. Velasco*, 394 Phil. 517, 556 (2000).

review by way of the extraordinary writ of *certiorari* under Rule 65 of the Rules of Court. The Supreme Court is endowed with the power to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.[16] Here, the party asking for the review must show the presence of a whimsical or capricious exercise of judgment equivalent to lack of jurisdiction; a patent and gross abuse of discretion amounting to an evasion of a positive duty or to a virtual refusal to perform a duty imposed by law or to act in contemplation of law; an exercise of power in an arbitrary and despotic manner by reason of passion and hostility; or a blatant abuse of authority to a point so grave and so severe as to deprive the court of its very power to dispense justice.[17] In such an event, the accused cannot be considered to be at risk of double jeopardy.[18]

The trial court declared that the testimonies of PO2 Frando, PO2 Cubian, P S/Insp. Manaog, and AIDSOTF Chief Leonardo R. Suan were insufficient to prove the culmination of the illegal sale, or to show their personal knowledge of the offer to sell and the acceptance thereof. In granting the demurrer filed by the accused, respondent judge surmised that it was the CI who had initiated the negotiation of the sale and should have thus been presented at trial.

Accused were caught in flagrante delicto; AIDSOTF police officers witnessed the actual sale.

The trial court's assessment that the witnesses had no personal knowledge of the illegal sale starkly contrasts with the facts borne out by the records. PO2 Frando was present during the

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[16] *De Vera v. De Ver*a, G.R. No. 172832, 7 April 2009, 584 SCRA 506.

[17] *People v. De Grano*, G.R. No. 167710, 5 June 2009, 588 SCRA 550, 567-568.

[18] *Id.* at 567.

negotiation and the actual buy-bust operation. PO2 Frando himself acted as the poseur-buyer and testified in open court. PO2 Cubian frisked the accused and recovered the buy-bust money; he also testified in court. P S/Insp. Manaog testified as to the *corpus delicti* of the crime; and the 30 pills of ecstasy were duly marked, identified, and presented in court. The validity of buy-bust transactions as an effective way of apprehending drug dealers in the act of committing an offense is well-settled.[19]

The only elements necessary to consummate the crime of illegal sale of drugs is proof that the illicit transaction took place, coupled with the presentation in court of the *corpus delicti* or the illicit drug as evidence.[20] In buy-bust operations, *the delivery of the contraband to the poseur-buyer and the seller's receipt of the marked money successfully consummate the buy-bust transaction between the entrapping officers and the accused*. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve faith and credit.[21] The Court has held that when police officers have no motive to testify falsely against the accused, courts are inclined to uphold the presumption of regularity accorded to them in the performance of their official duties.[22] In the present case, there is no contention that the members of AIDSOTF who conducted the buy-bust operation were motivated by ill will or malice. Neither was there evidence adduced to show that they neglected to perform their duties properly. Hence, their testimonies as to the conduct of the buy-bust operation deserves full faith and credence.

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[19] *People v. Chua*, 416 Phil. 33, 56 (2001); *People v. Dumangay*, G.R. No. 173483, 23 September 2008, 566 SCRA 290, 302.

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

[21] *People v. Dumangay*, *supra* note 19.

[22] *People v. Buenaventura*, G.R. No. 184807, 23 November 2011, 661 SCRA 216, 225-226.

Respondent judge harps on the fact that it was the CI who had personal knowledge of the identity of the seller, the initial offer to purchase the ecstasy pills, and the subsequent acceptance of the offer. It is clear from the testimonies of PO2 Frando and the other arresting officers that they conducted the buy-bust operation based on the information from the CI. However, the arrest was made, not on the basis of that information, but of the actual buy-bust operation, in which respondents were caught *in flagrante delicto* engaged in the illegal sale of dangerous drugs. Due to the investigative work of the AIDSOTF members, the illegal sale was consummated in their presence, and the elements of the sale — the identity of the sellers, the delivery of the drugs, and the payment therefor — were confirmed. That the CI initially provided this information or "tip" does not negate the subsequent consummation of the illegal sale.

In the Court's Resolution on *People v. Utoh*, the accused was caught in flagrante delicto selling ₱36,000 worth of *shabu* in a buy-bust operation conducted by the Philippine Drug Enforcement Agency (PDEA). The accused argued that mere reliable information from the CI was an insufficient ground for his warrantless arrest. The Court stated:

> Utoh was arrested not, as he asserts, on the basis of "reliable information" received by the arresting officers from a confidential informant. His arrest came as a result of a valid buy-bust operation, a form of entrapment in which the violator is caught *in flagrante delicto*. The police officers conducting a buy-bust operation are not only authorized but also duty-bound to apprehend the violators and to search them for anything that may have been part of or used in the commission of the crime.
>
> The testimonies of arresting officers IO1 Apiit and IO1 Mosing were straightforward, positive, and categorical. From the time they were tipped off by the confidential informant at around 9:00 a.m. of November 22, 2008 or up to the time until the informant confirmed Utoh's impending arrival at a very late hour that night, and the

latter's eventual arrest, the intelligence officers credibly accounted for the briefings held, the preparations, and actions taken by them.[23]

It is well-settled that the testimony of the CI in the sale of illegal drugs is not indispensable.

Given the foregoing, respondent Judge Lagos erred in requiring the testimony of the CI. Respondent judge based his ruling on a 2004 case, *People v. Ong,* the facts of which purportedly "mirror" those of the present case. However, there is no basis for this conclusion, as *Ong* involved a conviction based on the lone testimony of one apprehending officer, Senior Police Officer (SPO1) Gonzales. The Court found that SPO1 Gonzales was merely the deliveryman, while the CI was the one who acted as the poseur-buyer. In this case, one of the witnesses, PO2 Frando, was a buy-bust team member who also acted as the poseur-buyer. He participated in the actual sale transaction. His testimony was a firsthand account of what transpired during the buy-bust and thus stemmed from his personal knowledge of the arrest *in flagrante delicto*.

Requiring the CI to testify is an added imposition that runs contrary to jurisprudential doctrine, since the Court has long established that the presentation of an informant is not a requisite for the prosecution of drug cases. The testimony of the CI is not indispensable, since it would be merely corroborative of and cumulative with that of the poseur-buyer who was presented in court, and who testified on the facts and circumstances of the sale and delivery of the prohibited drug.[24]

Informants are usually not presented in court because of the need to hide their identities and preserve their invaluable services to the police. Except when the accused vehemently denies selling

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[23] *People v. Utoh*, G.R. No. 196227, 14 November 2011 (Unsigned Resolution).

[24] *People v. Andres*, G.R. No. 193184, 7 February 2011, 641 SCRA 602, 610-611.

prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the officers had motives to falsely testify against the accused, or that it was the informant who acted as the poseur-buyer, the informant's testimony may be dispensed with, as it will merely be corroborative of the apprehending officers' eyewitness accounts.[25] In *People v. Lopez*, the Court ruled that the "informant's testimony, then, would have been merely corroborative and cumulative because the fact of sale of the prohibited drug was already established by the direct testimony of SPO4 Jamisolamin who actively took part in the transaction. If the prosecution has several eyewitnesses, as in the instant case, it need not present all of them but only as many as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt."[26]

Similarly, in the present case, the fact of the illegal sale has already been established by testimonies of the members of the buy-bust team. Judge Lagos need not have characterized the CI's testimony as indispensable to the prosecution's case. We find and so hold that the grant of the demurrer for this reason alone was not supported by prevailing jurisprudence and constituted grave abuse of discretion. The prosecution's evidence was, *prima facie*, sufficient to prove the criminal charges filed against respondents, subject to the defenses they may present in the course of a full-blown trial.

WHEREFORE, premises considered, the assailed Orders of the Regional Trial Court dated 23 April 2008, 24 June 2008, and 24 July 2008 are **ANNULLED** and **SET ASIDE.** The RTC is **ORDERED** to reinstate Criminal Case No. Q-07-146628 to the court's docket and proceed with trial.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[25] *Id.* at 611.

[26] G.R. No. 172369, 7 March 2007, 517 SCRA 749, 759-760.

SECOND DIVISION

[G.R. No. 188841. March 6, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAIME FERNANDEZ *y* HERTEZ a.k.a. "DEBON",** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT MATERIAL FACTS THAT WERE OVERLOOKED BY THE LOWER COURT, THE SUPREME COURT ACCORDS RESPECT TO THE FINDINGS AND CONCLUSIONS THEREOF WITH RESPECT TO THE CREDIBILITY OF THE WITNESSES AND THE SUFFICIENCY OF THE PROSECUTION'S EVIDENCE.— Indeed, as intimated by the appellant, prosecutions involving illegal drugs largely depend on the credibility of police officers serving as prosecution witnesses. When a case involves violation of the Dangerous Drugs Act, "credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary." In this regard and as this Court held in *People v. Dela Cruz*, "the rule is that the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded respect, if not conclusive effect. This is more true if such findings were affirmed by the appellate court[, because in such a case,] said findings are generally binding upon this Court." In this case, the RTC found the witnesses for the prosecution credible. There is no showing that the members of the search team were actuated by any ill motive or that they planted the seized items. Hence, the RTC gave full faith and credit to the prosecution witnesses' version of the events that transpired on July 21, 2001. Moreover, the evidence of the prosecution sufficiently established that (1) by virtue of a lawful search, PO3 Villano, PO2 Bienvenido C. Amador, Jr. (PO2 Amador) and Inspector Cristino Pa-ac were able to seize from appellant's house suspected *shabu* and marijuana, among others; and, (2) when these specimens were

qualitatively examined, they yielded positive results for the said prohibited drugs. The appellate court sustained these findings and conclusions of the RTC after satisfying itself that there was no clear misapprehension of facts. In view of the CA's affirmance of the said findings of the RTC, and there being no material facts that were overlooked by the lower courts, this Court finds no reason to disturb their findings and conclusions and, hence, accords respect to the same.

2. **ID.; ID.; ID.; INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES ON MINOR DETAILS DO NOT IMPAIR THEIR CREDIBILITY.—** With regard to the alleged inconsistent statements of PO3 Villano and PO2 Amador with respect to appellant's exact location during the search and seizure, the number of rooms inside the house, and the place where the *shabu* and rolled marijuana leaves were found, suffice it to say that these matters are not vital and of such significance as compared to the circumstances and the very act of finding the dangerous drugs in the possession of the appellant which constitute the elements of the crime. Criminal law jurisprudence invariably holds that inconsistencies in the testimonies of witnesses on minor details do not impair their credibility. As the Court ruled in *People v. Bernabe*, "[w]hile witnesses may differ in their recollections of an incident, it does not necessarily follow from their disagreement that all of them should be disbelieved as liars and their testimonies completely discarded as worthless. As long as the mass of testimony jibes on material points, the slightly clashing statements neither dilute the witnesses' credibility or the veracity of their testimony, for indeed, such inconsistencies are but natural and even enhance credibility as these discrepancies indicate that the responses are honest and unrehearsed."

3. **CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED (RA NO. 6425); ILLEGAL POSSESSION OF *SHABU* AND MARIJUANA; CHAIN OF CUSTODY; THE IDENTITY, INTEGRITY AND EVIDENTIARY VALUE OF THE PROHIBITED ITEMS DESPITE THE INTERVENING CHANGES IN THEIR CUSTODY AND POSSESSION, SUFFICIENTLY PROVED; THE INTEGRITY OF THE EVIDENCE IS PRESUMED UNLESS THERE IS A SHOWING OF BAD FAITH, ILL WILL OR PROOF THAT THE EVIDENCE HAS BEEN TAMPERED**

WITH, IN WHICH THE BURDEN OF PROOF FALLS ON THE APPELLANT.— The totality of the prosecution's evidence sufficiently proved the identity of the seized prohibited items despite the intervening changes in their custody and possession. The chain of custody of the seized items from the time they were confiscated and eventually marked until the time they were presented during the trial has likewise been established. x x x. Like the courts below, this Court finds no circumstance whatsoever that would raise any doubt as to the identity, integrity and evidentiary value of the items subject matter of this case. The chain of custody was clearly not broken. "Besides, the integrity of the evidence is presumed preserved unless there is a showing of bad faith, ill will or proof that the evidence has been tampered with" in which the burden of proof falls on the appellant. Appellant failed to discharge this burden.

4. **REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND FRAME-UP; VIEWED WITH DISFAVOR BY THE COURT FOR IT CAN EASILY BE CONCOCTED AND IS A COMMON DEFENSE PLOY IN MOST PROSECUTIONS FOR VIOLATION OF THE DANGEROUS DRUGS ACT.—** Appellant's defenses hinge primarily on denial and frame-up. He claims that while denial, like alibi, is generally considered a weak defense, it is not always false and bereft of merit where the evidence for the prosecution is even weaker. This is true but not in all cases and certainly not in this case. It bears to stress that "the defense of denial or frame-up, like alibi, has been invariably viewed with disfavor [by this Court] for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act." Here, the lower courts properly rejected this defense not only because the prosecution's evidence against appellant is so overwhelming but also because he miserably failed to substantiate such defense with clear and convincing evidence.

5. **CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED (RA NO. 6425); ILLEGAL POSSESSION OF *SHABU* AND MARIJUANA; IMPOSABLE PENALTY.—** The penalty prescribed under Section 8, Article II in relation to Section 20, Article IV of RA 6425, as amended by RA 7659, for unauthorized possession of 750 grams or more of marijuana is *reclusion perpetua* to death and a fine

of ₱500,000.00 to ₱10 million. Since appellant was found guilty of possessing 1,188.7 grams of marijuana in Criminal Case No. P-3178, this Court thus affirms the penalties of *reclusion perpetua* and fine of ₱500,000.00 imposed upon the appellant by the RTC and affirmed by the CA. As regards appellant's unauthorized possession of 2.85 grams of *shabu* in Criminal Case No. P-3163, a quantity which is less than the ceiling of 200 grams provided in Section 20 of Article IV of RA 6425 as amended by RA 7659, the imposable penalty is *prision correccional* as provided in the same law. Applying the Indeterminate Sentence Law, and there being no aggravating or mitigating circumstance that attended the commission of the crime, the maximum period is *prision correccional* in its medium period which has a duration of two (2) years, four (4) months and one (1) day to four (4) years and two (2) months. The minimum period is within the range of the penalty next lower in degree which is *arresto mayor*, the duration of which is one (1) month and one (1) day to six (6) months. Hence, we likewise affirm the penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, imposed upon the appellant for the said crime. We also affirm the CA's deletion of the fine of ₱100,000.00 imposed by the RTC since the second paragraph of Section 20 of RA 6425, as amended, provides only for the penalty of imprisonment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

For this Court's review is the May 29, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03321 which

[1] CA *rollo*, pp. 90-100; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Vicente S.E. Veloso and Estela M. Perlas-Bernabe (now a member of this Court).

affirmed with modification the Joint Decision[2] dated February 18, 2008 of the Regional Trial Court (RTC) Branch 32, Pili, Camarines Sur finding appellant Jaime Fernandez *y* Hertez *a.k.a.* "Debon"[3] (appellant) guilty beyond reasonable doubt of illegal possession of methamphetamine hydrochloride also known as *shabu* and illegal possession of marijuana both defined and penalized under Republic Act (RA) No. 6425, otherwise known as The Dangerous Drugs Act of 1972, as amended.

Factual Antecedents

At about 10:00 p.m. of July 21, 2001, combined elements of the Bula Police and the Camarines Sur Provincial Intelligence Forces implemented a search warrant[4] at the residence of appellant in Sagrada Familia, Bula, Camarines Sur. Police operatives found inside the house of appellant four transparent plastic sachets suspected to contain *shabu*, one tin can containing dried marijuana leaves, 49 pieces of rolled suspected dried marijuana leaves, one roll aluminum foil and cash money amounting to ₱3,840.00. After seizing these items, an inventory was conducted in the presence of *Barangay* Chairman Cesar Dolfo and *Barangay* Kagawad Pedro Ballebar.[5] Pictures of the seized items were also taken by the police photographer[6] while SPO1 Nilo Pornillos[7] (SPO1 Pornillos) marked and brought the seized items to their office.[8] The suspected marijuana leaves were later brought by SPO1 Pornillos and the suspected *shabu* by PO3 Jamie S. Villano (PO3 Villano) to the Camarines Sur Crime Laboratory. The items were both received by P/S Insp. Ma. Cristina Nobleza (PSI Nobleza) who, in turn, transmitted them to the Regional

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[2] Records of Criminal Case No. P-3163, pp. 357-358; penned by Presiding Judge Nilo A. Malanyaon.

[3] Also spelled as Devon in some parts of the records.

[4] Exhibit "A", records of Criminal Case No. P-3163, p. 126.

[5] Exhibit "B", *id.* at 127.

[6] Exhibits "C" and "C-1", *id.* at 128.

[7] TSN, July 12, 2002, p. 19.

[8] *Id.* at 22.

Office. After receiving the same, Forensic Chemist P/Insp. Josephine M. Clemen (PI Clemen) conducted chemical examination of the specimens and per her Chemistry Report Nos. D-120-01[9] and D-128-01,[10] they yielded positive results for the presence of marijuana and methamphetamine hydrochloride or *shabu*, respectively.

On the basis thereof, Informations for illegal possession of methamphetamine hydrochloride (Criminal Case No. P-3163) and for illegal possession of marijuana (Criminal Case No. P-3178) were filed against appellant and his son Erick Fernandez (Erick). To wit:

In Criminal Case No. P-3163

The undersigned 4th Assistant Provincial Prosecutor of Camarines Sur accuses, JAIME FERNANDEZ *Y* HERTEZ *a.k.a.* "Debon" and ERICK FERNANDEZ *Y* ALGURA all of Sagrada Familia, Bula, Camarines Sur for violation of Section 8, of Republic Act No. 6425 as amended by Republic Act No. 7659, committed as follows:

> That on or about the 21st day of July, 2001 at around 10:00 in the evening, in Sagrada Familia, Bula, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating with each other, without authority from law, did then and there willfully, unlawfully and feloniously, have in their possession and control Ten (10) pcs. of transparent plastic sachets containing methampethamine hydrochloride or locally known as "*shabu,*" with the total weight of 2.85 grams, a regulated [drug].
>
> ACTS CONTRARY TO LAW.[11]

In Criminal Case No. P-3178

The undersigned Assistant Provincial Prosecutor of Camarines Sur, accuses JAIME FERNANDEZ *alias* "DEVON" and ERICK FERNANDEZ, residents of Sagrada Familia, Bula, Camarines Sur, of the crime of VIOLATION OF SEC. 8, ART. II, IN RELATION

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[9] Exhibit "K", records of Criminal Case No. P-3163, p. 138.

[10] Exhibit "J", *id*. at 139.

[11] *Id.* at 1.

TO SEC. 20, ART. IV, OF RA 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED BY RA 7659, [c]ommitted as follows:

> That on July 21, 2001, at about 10:00 [o]'clock in the evening, at Brgy. Sagrada, Municipality of Bula, Province of Camarines Sur, Philippines, and within the Jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, without authority from law, did then and there willfully, unlawfully, and criminally possess and control prohibited drugs, as follows: a) several paper cylindrical tubes containing dried Marijuana leaves, having a total net weight of 1,009-5 grams, and b) one rusty tin can labeled "Croley Foods" also containing dried Marijuana leaves, weighing 179.2 grams, for an over all total of 1,188.7 grams of dried Marijuana leaves, to the extreme damage and prejudice of the People of the Philippines.
>
> ACTS CONTRARY TO LAW.[12]

Appellant and Erick pleaded not guilty to both charges when arraigned. They interposed denial and frame-up as their defenses.

Ruling of the Regional Trial Court

By Joint Decision dated February 18, 2008, the RTC acquitted Erick but found appellant guilty of the charges, *viz.*:

> WHEREFORE, judgment is hereby rendered[,]
>
> 1. acquitting Erick Fernandez *y* Algura, in both cases, and directing the BJMP Warden, Del Rosario, Naga City, to release him from his custody, unless he is being held for some lawful cause;
>
> 2. finding Jaime Fernandez *y* Hertez, GUILTY, beyond reasonable doubt, in
>
> 2.1. Crim. Case No. P-3163, as charged, and hereby sentences him to suffer the penalty of 6 months of *arresto mayor*, as minimum, to 4 years and 2 months of *prision correccional*, as maximum, and to pay a fine of ₱100,000.00;

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[12] Records of Criminal Case No. P-3178, p. 1.

2.2. Crim. Case No. P-3178, as charged, and hereby sentences him to suffer the penalty of *reclusion perpetua*, and a fine of ₱500,000.00;

3. directing policemen Villano, Amador and Pa-ac, to return the sum of ₱3,840.00 to Jaime Fernandez.

The accused Jaime Fernandez is credited in full for his preventive detention had he agreed in writing to abide with the rules for convicted prisoners, otherwise, for 4/5 of the same.

SO ORDERED.[13]

Ruling of the Court of Appeals

On appeal, the CA affirmed appellant's conviction. Like the RTC, the appellate court gave full faith and credit on the evidence for the prosecution over that of the defense. Hence,

WHEREFORE, the assailed 18 February 2008 Decision of the Regional Trial Court of Pili, Camarines Sur, Branch 32, in Criminal Cases Nos. P-3163 and P-3178, finding appellant Jaime Fernandez *y* Hertez guilty as charged, is **AFFIRMED** with the **MODIFICATION** that the fine of One Hundred Thousand Pesos (₱100,000.00) imposed in Criminal Case No. P-3163 is **DELETED**.[14]

Assignment of Errors

Undaunted, appellant comes to this Court and insists on his innocence by adopting the same errors he raised before the CA, as follows:

I

THE LOWER COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

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[13] Records of Criminal Case No. P-3163, p. 358.

[14] CA *rollo*, p. 100.

II

THE LOWER COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.[15]

Our Ruling

The present appeal lacks merit.

This Court accords respect to the findings and conclusions of the RTC with regard to the credibility of the witnesses and the sufficiency of evidence of the prosecution.

Indeed, as intimated by the appellant, prosecutions involving illegal drugs largely depend on the credibility of police officers serving as prosecution witnesses.[16] When a case involves violation of the Dangerous Drugs Act, "credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary."[17] In this regard and as this Court held in *People v. Dela Cruz*,[18] "the rule is that the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded respect, if not conclusive effect. This is more true if such findings were affirmed by the appellate court[, because in such a case,] said findings are generally binding upon this Court."

In this case, the RTC found the witnesses for the prosecution credible. There is no showing that the members of the search team were actuated by any ill motive or that they planted the

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[15] *Id.* at 27.

[16] Appellant's Brief, *id.* at 27-43, 37.

[17] *People v. Dumlao*, G.R. No. 181599, August 20, 2008, 562 SCRA 762, 770.

[18] G.R. No. 177572, February 26, 2008, 546 SCRA 703, 719.

seized items. Hence, the RTC gave full faith and credit to the prosecution witnesses' version of the events that transpired on July 21, 2001.[19] Moreover, the evidence of the prosecution sufficiently established that (1) by virtue of a lawful search, PO3 Villano, PO2 Bienvenido C. Amador, Jr. (PO2 Amador) and Inspector Cristino Pa-ac were able to seize from appellant's house suspected *shabu* and marijuana, among others; and, (2) when these specimens were qualitatively examined, they yielded positive results for the said prohibited drugs. The appellate court sustained these findings and conclusions of the RTC after satisfying itself that there was no clear misapprehension of facts. In view of the CA's affirmance of the said findings of the RTC, and there being no material facts that were overlooked by the lower courts, this Court finds no reason to disturb their findings and conclusions and, hence, accords respect to the same.

With regard to the alleged inconsistent statements of PO3 Villano and PO2 Amador with respect to appellant's exact location during the search and seizure, the number of rooms inside the house, and the place where the *shabu* and rolled marijuana leaves were found, suffice it to say that these matters are not vital and of such significance as compared to the circumstances and the very act of finding the dangerous drugs in the possession of the appellant which constitute the elements of the crime. Criminal law jurisprudence invariably holds that inconsistencies in the testimonies of witnesses on minor details do not impair their credibility. As the Court ruled in *People v. Bernabe*,[20] "[w]hile witnesses may differ in their recollections of an incident, it does not necessarily follow from their disagreement that all of them should be disbelieved as liars and their testimonies completely discarded as worthless. As long as the mass of testimony jibes on material points, the slightly clashing statements neither dilute the witnesses' credibility or the veracity of their testimony, for indeed, such inconsistencies are but natural and even enhance

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[19] Not January 21, 2001 as appearing in the RTC Decision.

[20] G.R. No. 185726, October 16, 2009, 604 SCRA 216, 231-232, citing *People v. Togahan*, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 572-573.

credibility as these discrepancies indicate that the responses are honest and unrehearsed."

Identity of the drugs established; chain of custody not broken

Appellant next contends that the prosecution failed to establish the identity of the prohibited drugs which constitute the *corpus delicti* of the offense.

The Court finds otherwise. The totality of the prosecution's evidence sufficiently proved the identity of the seized prohibited items despite the intervening changes in their custody and possession. The chain of custody of the seized items from the time they were confiscated and eventually marked until the time they were presented during the trial has likewise been established. As the appellate court correctly observed:

> x x x. The fact however that the dangerous drugs presented in court were the same items recovered from appellant can be gleaned from the testimonies of PO3 Villena and PO3 Amador, Jr., who narrated the incident from the time the dangerous drugs were recovered from appellant, to the time the same were inventoried in the presence of appellant and the witnesses, brought to the police station, and finally referred to the forensic chemist for qualitative examination. The integrity and identity of the confiscated items, particularly the dangerous drugs, were thus properly safeguarded.[21] (Citations omitted)

Like the courts below, this Court finds no circumstance whatsoever that would raise any doubt as to the identity, integrity and evidentiary value of the items subject matter of this case. The chain of custody was clearly not broken. "Besides, the integrity of the evidence is presumed preserved unless there is a showing of bad faith, ill will or proof that the evidence has been tampered with"[22] in which the burden of proof falls on the appellant.[23] Appellant failed to discharge this burden.

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[21] CA *rollo*, pp. 97-98.

[22] *People v. Macatingag*, G.R. No. 181037, January 19, 2009, 576 SCRA 354, 369.

[23] *Id.*

Appellant's defenses of denial and frame-up were properly rejected by the lower courts.

Appellant's defenses hinge primarily on denial and frame-up. He claims that while denial, like alibi, is generally considered a weak defense, it is not always false and bereft of merit where the evidence for the prosecution is even weaker. This is true but not in all cases and certainly not in this case. It bears to stress that "the defense of denial or frame-up, like alibi, has been invariably viewed with disfavor [by this Court] for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act."[24] Here, the lower courts properly rejected this defense not only because the prosecution's evidence against appellant is so overwhelming but also because he miserably failed to substantiate such defense with clear and convincing evidence.

In the light of the foregoing analysis and the applicable jurisprudence on the matter, this Court sustains the CA's assailed Decision affirming appellant's conviction by the RTC of the crimes charged.

The Penalty

The penalty prescribed under Section 8, Article II in relation to Section 20, Article IV of RA 6425, as amended by RA 7659,[25] for unauthorized possession of 750 grams or more of marijuana is *reclusion perpetua* to death and a fine of ₱500,000.00 to ₱10 million. Since appellant was found guilty of possessing 1,188.7 grams of marijuana in Criminal Case No. P-3178, this Court thus affirms the penalties of *reclusion perpetua* and fine of ₱500,000.00 imposed upon the appellant by the RTC and affirmed by the CA.

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[24] *People v. Ulama*, G.R. No. 186530, December 14, 2011, 662 SCRA 599, 613.

[25] Otherwise known as The Death Penalty Law.

As regards appellant's unauthorized possession of 2.85 grams of *shabu* in Criminal Case No. P-3163, a quantity which is less than the ceiling of 200 grams provided in Section 20 of Article IV of RA 6425 as amended by RA 7659, the imposable penalty is *prision correccional* as provided in the same law.[26] Applying the Indeterminate Sentence Law, and there being no aggravating or mitigating circumstance that attended the commission of the crime, the maximum period is *prision correccional* in its medium period which has a duration of two (2) years, four (4) months and one (1) day to four (4) years and two (2) months. The minimum period is within the range of the penalty next lower in degree which is *arresto mayor*, the duration of which is one (1) month and one (1) day to six (6) months. Hence, we likewise affirm the penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, imposed upon the appellant for the said crime. We also affirm the CA's deletion of the fine of ₱100,000.00 imposed by the RTC since the second paragraph of Section 20 of RA 6425, as amended, provides only for the penalty of imprisonment.

WHEREFORE, the appeal is **DISMISSED.** The assailed Decision dated May 29, 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 03321 is **AFFIRMED** *in toto*.

SO ORDERED.

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

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[26] *People v. Tira*, G.R. No. 139615, May 28, 2004, 430 SCRA 134, 155.

[*] Per raffle dated March 4, 2013.

SECOND DIVISION

[G.R. No. 191531. March 6, 2013]

REPUBLIC OF THE PHILIPPINES represented by PHILIPPINE ECONOMIC ZONE AUTHORITY, *petitioner, vs.* **HEIRS OF CECILIO AND MOISES CUIZON,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; EXECUTIVE ORDER 292, SEC. 34, BOOK IV, TITLE III, CHAPTER 12 OF THE ADMINISTRATIVE CODE OF 1987; SPECIFIC POWERS AND FUNCTIONS OF THE OFFICE OF THE SOLICITOR GENERAL (OSG); THE SOLICITOR GENERAL CANNOT REFUSE TO PERFORM HIS DUTY TO REPRESENT THE GOVERNMENT, ITS AGENCIES, INSTRUMENTALITIES, OFFICIALS AND AGENTS, WITHOUT A JUST AND VALID REASON.—** As correctly ruled by the CA , the OSG, as principal law officer and legal defender of the government, possesses the unequivocal mandate to appear for and in its behalf in legal proceedings. Described as an "independent and autonomous office attached to the Department of Justice" under Sec. 34, Book IV , Title III, Chapter 12, Executive Order 292, the OSG, with the Solicitor General at its helm, is vested with the following powers and functions, among others, to wit: SECTION 35. Powers and Functions.— The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. x x x. 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. x x x 8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear

or represent the Government in cases involving their respective offices, brought before the courts, and exercise supervision and control over such legal Officers with respect to such cases." x x x Unlike a practicing lawyer who can decline employment, it has been ruled that the Solicitor General cannot refuse to perform his duty to represent the government, its agencies, instrumentalities, officials and agents without a just and valid reason.

2. **ID.; ID.; ID.; ID.; ACTIONS FILED IN THE NAME OF THE REPUBLIC OF THE PHILIPPINES OR IN THE NAME OF ITS AGENCIES OR INSTRUMENTALITIES, NOT INITIATED BY THE OSG ARE SUSCEPTIBLE TO SUMMARY DISMISSAL; EXCEPTIONS; STRICTLY CONSTRUED.—** Considering that only the Solicitor General can bring or defend actions on behalf of the Republic of the Philippines, the rule is settled that actions filed in the name of the latter not initiated by the OSG are susceptible to summary dismissal. Extended to include actions filed in the name of agencies or instrumentalities of the government, the rule admits of an exception under Section 35 (8) Chapter 12, Title III, Book IV of the Administrative Code which empowers the OSG to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." In *Civil Service Commission v. Asensi*, the Court clarified, however, that this exception should be strictly construed and is subject to the following conditions precedent: "First, there must be an express authorization by the Office of the Solicitor General, naming therein the legal officers who are being deputized. Second, the cases must involve the respective offices of the deputized legal officers. And finally, despite such deputization, the OSG should retain supervision and control over such legal officers with respect to the cases."

3. **ID.; ID.; ID.; ID.; THE OSG SHOULD NOT REFRAIN FROM PERFORMING HIS DUTY AS THE LAWYER OF THE GOVERNMENT AND IT IS INCUMBENT UPON HIM TO PRESENT TO THE COURT WHAT HE CONSIDERS WOULD LEGALLY UPHOLD THE BEST INTERESTS OF THE GOVERNMENT ALTHOUGH HIS POSITION**

MAY RUN COUNTER TO A CLIENT'S POSITION.— Another exception is also recognized when the OSG takes a position different from that of the agency it is duty bound to represent. As an independent office, after all, the OSG is "not shackled by the cause of its client agency" and has, for its primordial concern, the "best interest of the government" which, in its perception, can run counter to its client agency's position in certain instances. The exception is traced to the following pronouncements handed down by this Court in *Orbos v. Civil Service Commission*, to wit: In the discharge of this task, the Solicitor General must see to it that the best interest of the government is upheld within the limits set by law. When confronted with a situation where one government office takes an adverse position against another government agency, as in this case, the Solicitor General should not refrain from performing his duty as the lawyer of the government. It is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position. *In such an instance the government office adversely affected by the position taken by the Solicitor General, if it still believes in the merit of its case, may appear in its own behalf through its legal personnel or representative.*

4. **ID.; ID.; ID.; ID.; DISAGREEMENT WITH THE CLIENT-AGENCY WITH RESPECT TO THE CHOICE OF REMEDY TO BE PURSUED DOES NOT JUSTIFY OSG'S NON-PARTICIPATION IN THE CASE OR AUTHORIZE THE FORMER TO PURSUE THE SAME ON ITS OWN.—** While the OSG primarily invokes the second of the x x x exceptions in seeking the reversal of the CA's 30 October 2009 Decision, the record shows that it was said office which filed on 1 April 2009 a motion for extension of time within which to file a Rule 43 petition for review on behalf of PEZA. On the last day of the period of extension sought by the OSG, however, it was the lawyers from PEZA 's Legal Affairs Group who, without being deputized to do so, eventually filed the petition for review assailing the 14 October 2008 Decision in O.P. Case No. 07-C-081. Confronted with respondents' challenge of the unexplained change of representation and prayer for dismissal of the petition, PEZA filed a 7 September 2009 reply, claiming that its lawyers had authority to represent

the agency under its organizational chart. Without any elaboration, PEZA also alleged for the first time that the OSG's non-participation in the case was attributable to the "different position taken by the handling OSG lawyers." Given the lack of authorization from the OSG and the absence of a specific provision in PEZA 's Charter authorizing the agency's representation by lawyers from its Legal Affairs Group, we find that the CA cannot be faulted for rejecting PEZA 's bare assertion of the contrary stand supposedly taken by the handling OSG lawyers. Even in cases of disagreement with its client agency, it cannot be over-emphasized that it is still incumbent upon the OSG to present to the Court the position that will legally uphold the best interests of the Government.

5. **ID.; ID.; ID.; ID.; DEPUTATION OF THE LAWYERS OF THE CLIENT-AGENCY NOT ONLY REQUIRES EXPRESS AUTHORIZATION FROM THE OSG BUT ALSO ITS RETENTION OF SUPERVISION AND CONTROL OVER THE LAWYER DEPUTIZED.—** After signifying its intention to file a Rule 43 petition for review with its filing of a motion for extension of time to file the same, however, the OSG did not advise the CA of its alleged difference in opinion with PEZA. It was only after the CA had rendered the herein assailed 30 October 2009 decision and with PEZA's motion for reconsideration therefom already pending that, on 18 January 2010, the OSG filed its manifestation to the effect that it actually agreed with the substance of the petition filed by PEZA 's lawyers. x x x. In arguing that its filing of the aforesaid manifestation on 18 January 2010 effectively cured the PEZA lawyers' lack of authorization, the OSG clearly espouses a procedural shortcut egregiously contrary to the Court's pronouncement in the *Asensi* case. Granted that the case before the CA involved PEZA, deputation of its lawyers not only requires express authorization from the OSG but also its retention of supervision and control over the lawyer deputized. In *Republic v. Hon. Aniano Desierto*, this Court admittedly gave due course to the petition filed by the PCGG despite the initial lack of participation by the OSG, on the ground that the latter's subsequent signature as co-counsel in the Consolidated Reply filed in the case effectively cured the defect of authorization. Without belaboring the fact that the OSG's manifestation in this case was filed after the

CA already dismissed PEZA's petition, said ruling cannot, however, detract us from the principle that exceptions made to the OSG's mandate should be strictly construed.

6. **ID.; ID.; ID.; ID.; OWING TO THE MANDATORY CHARACTER OF THE EXERCISE OF ITS FUNCTION, THE OSG CANNOT ARBITRARILY ABDICATE THE SAME IN THE COURSE OF PROCEEDINGS INVOLVING A CLIENT-AGENCY AND ONLY INSISTS ON THE PERFORMANCE THEREOF IN THE EVENT THAT THE HANDLING OF THE CASE BY THE LAWYERS OF THE CLIENT AGENCY RESULTS IN AN ADVERSE DECISION.—** [T]he fact that OSG now finds itself in the queer position of defending a mode of appeal it priorly claimed to be improper in the premises only serves to emphasize the importance of strict adherence to its statutory mandate and compliance with the requirements for exceptions thereto. By and of itself, even the OSG's very act of filing of the petition at bench is, in fact, a telling commentary on the PEZA lawyers' lack of authority to represent said agency. Owing to the mandatory character of the exercise of its functions, it stands to reason that the OSG cannot arbitrarily abdicate the same in the course of proceedings involving a client-agency and only insist on the performance thereof in the event that the handling of the case by the lawyers of the client agency results in an adverse decision. As with the allowance of the OSG's withdrawal from a case without justifiable reason, for such an action to remain unchallenged could well signal the laying down of the novel and unprecedented doctrine that the representation by the Solicitor General of the Government enunciated by law is, after all, not mandatory but merely directory.

7. **REMEDIAL LAW; APPEALS; DISMISSAL OF THE ACTION WITHOUT PREJUDICE ALLOWS THE REFILING OF THE PETITION; FRESH PERIOD OF FIFTEEN DAYS TO RE-FILE THE PETITION BEFORE THE COURT OF APPEALS, GRANTED; IN THE EXERCISE OF ITS EQUITY JURISDICTION, THE COURT MAY RELAX THE STRINGENT APPLICATION OF THE TECHNICAL RULES, WHERE STRONG CONSIDERATIONS OF SUBSTANTIAL JUSTICE ARE MANIFEST.—** [I]t bears pointing out that the dismissal of

PEZA's petition was specifically characterized by the CA to be without prejudice. Contrasted from a dismissal with prejudice which disallows and bars the filing of a complaint or initiatory pleading, a dismissal without prejudice — while by no means any less final — plainly indicates that the re-filing of the petition is not barred. While it is true that the petition for review under Rule 43 is required to be filed "within fifteen (15) days from notice of the award, judgment, final order or resolution x x x or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*," we find that the OSG, in the interest of substantial justice, may be granted a fresh period of fifteen (l5) days within which to re-file the petition before the CA. In the exercise of its equity jurisdiction, this Court may, after all, relax the stringent application of the technical rules where, as here, strong considerations of substantial justice are manifest. We find this *pro hac vice* pronouncement necessary if only to emphasize the fact that the OSG's performance of its functions is mandatory.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Roldan B. Dalman for respondents.

D E C I S I O N

PEREZ, *J*.:

Assailed in this petition for review filed under Rule 45 of the *Rules of Court* is the Decision[1] dated 30 October 2009 rendered by the Fourth Division of the Court of Appeals (***CA***) in CA-G.R. SP No. 108085, dismissing without prejudice the petition filed by the Philippine Economic Zone Authority (***PEZA***) for the review of the 14 October 2008 Decision of the Office of the President in O.P. Case No. 07-C-081.[2]

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[1] Penned by CA Presiding Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison, *rollo*, pp. 221-229.

[2] CA's 30 October 2009 Decision, CA *rollo*, pp. 221-229.

The Facts

On 19 September 2001, the counsel of Cecilio and Moises Cuizon (***the Cuizons***) wrote PEZA Director General Lilia B. de Lima, offering said agency the priority to buy Lot Nos. 4522 and 4525 of the Opon Cadastre, with an aggregate area of 12,124 square meters.[3] Although presently situated within the Mactan Economic Zone (***MEZ***), the subject lots were previously registered in the names of the Cuizons' predecessors-in-interest, the ***Spouses*** Pedro and Eugenia ***Tunacao***, under Original Certificate of Title (OCT) Nos. RO-2428 and RO-2429 of the Lapu-Lapu City registry.[4] By means of a Deed of Extrajudicial Settlement and Sale executed by the Heirs of the Spouses Tunacao on 11 June 1975,[5] it appears that the subject parcels were transferred in favor of the Cuizons, in whose names the same were subsequently registered under Transfer Certificate of Title (TCT) Nos. 42755 and 50430.[6]

In a letter dated 17 October 2001, PEZA declined the offer on the ground that, in 1958, the same lots were sold by Eugenia Tunacao in favor of the then Civil Aeronautics Administration (***CAA***), the predecessor of the Bureau of Air Transportation (***BAT***) and the Mactan-Cebu International Airport Authority (***MCIAA***). Maintaining that the titles to the property were not transferred to CAA because OCT Nos. RO-2428 and RO-2429 were reported lost or destroyed, PEZA informed the Cuizons that the deeds of sale executed in favor of CAA were nevertheless registered under Act 3344, as amended.[7] In their 8 November 2001 reply, the Cuizons, in turn, called PEZA's attention to the fact, among other matters, that BAT was considered to have abandoned its opposition to the reconstitution of said OCTs. On the strength of the opinion issued by the Land Registration

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[3] Cuizons' 19 September 2001 Letter, *id.* at 76.

[4] OCT Nos. RO-2428 and RO-2429, *id.* at 63-69.

[5] *Id.* at 65.

[6] TCT Nos. 42755 and 50430, *id.* at 73-75.

[7] PEZA's 17 October 2001 Letter, *id.* at 77.

Authority (***LRA***) in Consulta No. 2887 that CAA's registration of the sale in its favor produced no legal effect, the sale of the subject parcels to the Cuizons was registered[8] and served as basis for the issuance of TCT Nos. 42755 and 50430.[9]

In the face of PEZA's insistence on the government's ownership of Lot Nos. 4522 and 4525 as well as its refusal to heed their claim for just compensation for the use of the land, ***respondents*** Heirs of Cecilio and Moises Cuizon brought the matter to the attention of the Secretary of the Department of Trade and Industries (***DTI***)[10] and the Office of the Ombudsman.[11] Stymied by PEZA's 10 April 2006 reply which reiterated its position, respondents eventually wrote a letter dated 20 September 2006, apprising the Office of the President of their claim. Docketed as O.P. Case No. 07-C-081,[12] respondents' letter was treated as an appeal by the Office of the President which, accordingly, directed PEZA to file its Comment.[13] On 14 October 2008, the Office of the President rendered a decision directing PEZA to recognize respondents' rights over the subject parcels and to negotiate for the just compensation claimed by the latter.[14] PEZA's motion for reconsideration of the decision was denied for lack of merit in the 9 March 2009 Resolution issued in the case.[15]

On 1 April 2009, the Office of the Solicitor General (***OSG***), in representation of PEZA, filed with the CA a motion for an extension of fifteen days or until 16 April 2009 within which to file a petition for review under Rule 43.[16] Instead of the OSG,

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[8] *Id.* at 78.

[9] *Id.* at 93.

[10] Respondents' 1 October 2003 Letter, *id.* at 83-84.

[11] Office of the Ombudsman's 5 May 2005 and 13 March 2006 Letters, *id.* at 86-87; 90.

[12] Respondents' 20 September 2006 Letter, *id.* at 93-96.

[13] PEZA's 24 May 2007 Comment, *id.* at 100-111.

[14] Office of the President's 14 October 2008 Decision, *id.* at 36-40.

[15] Office of the President's 9 March 2009 Resolution, *id.* at 41-42.

[16] OSG's 1 April 2009 Motion for Extension of Time, *id.* at 2-4.

however, it was the lawyers from PEZA's Legal Affairs Group who, on 16 April 2009, filed the Rule 43 petition for review which was docketed before the CA as CA-G.R. SP No. 108085.[17] Served with a copy thereof, respondents moved for the denial of the petition on the ground, among others, that PEZA's lawyers failed to state the material dates[18] and to secure authorization from the OSG as the "principal law officer and legal defender of the government."[19] Directed to do so in the CA's 2 July 2009 Resolution,[20] respondents filed their 4 August 2009 Comment reiterating their objections to and praying for the dismissal of the petition.[21] In its 7 September 2009 reply, however, PEZA asserted, that as members of its Legal Affairs Group, its lawyers not only had legal authority to file the petition but were constrained to do so on account of the "different position taken by the handling OSG lawyers."[22]

On 30 October 2009, the CA rendered the herein assailed decision, dismissing PEZA's petition on the ground that its lawyers had no authority to file the same absent showing that they were so authorized under the PEZA Charter, Republic Act No. 7916[23] and that they were duly deputized by the OSG. The CA ruled that, as "the statutory counsel of the government, its agencies and officials who are in the performance of their official functions, the OSG is the only law firm, save those for the Office of the Government Corporate Counsel, who can represent the government to the exclusion of others." Brushing aside PEZA's claim of a stand contrary to that taken by the OSG, the CA likewise enunciated that the OSG is "endowed with broad

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[17] PEZA's 15 April 2009 Petition for Review, *id*. at 6-34.

[18] Respondents' 28 April 2009 Urgent *Ex-Parte* Manifestation, *id*. at 145-147.

[19] Respondents' 30 April 2009 Supplemental Manifestation and *Ex-Parte* Motion, *id*. at 148-149.

[20] CA's 2 July 2009 Resolution, *id*. at 170-171.

[21] Respondents' 4 August 2009 Comment, *id*. at 187-198.

[22] PEZA's 17 September 2009 Reply, *id*. at 203-219.

[23] *The Special Economic Zone Act of 1995*.

perspective that spans the legal interest of virtually the entire government officialdom" and "may transcend the parochial concerns of a particular client agency and instead, promote and protect the public weal."[24] Aggrieved, PEZA filed a motion for reconsideration[25] which was duly opposed by respondents.[26]

On 18 January 2010, the OSG filed a manifestation informing the CA that it differed with PEZA only with respect to the remedy to be taken from the 14 October 2008 decision in O.P. Case No. 07-C-081. While it was in accord with the substance of the petition, the OSG maintained that, as opposed to the Rule 43 petition for review filed by PEZA, it believed that a mere administrative clarification was appropriate since the decision rendered by the Office of the President was "not based on a prior decision/order/resolution of an administrative agency in the exercise of quasi-judicial functions."[27] On 4 March 2010, the CA issued its Resolution denying PEZA's motion for reconsideration for lack of merit,[28] hence, this petition.

The Issue

Dissatisfied, the OSG filed the petition at bench,[29] seeking the reversal of the CA's assailed decision and resolution on the following ground:

THE HONORABLE COURT OF APPEALS ERRED WHEN IT DENIED [PEZA'S] PETITION ON THE GROUND THAT THERE WAS NO EXPRESS AUTHORITY FROM THE OFFICE OF THE SOLICITOR GENERAL ALLOWING THE PEZA DIRECTOR GENERAL OR ANY OF ITS LAWYERS TO SIGN

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[24] CA *rollo*, CA's 30 October 2009 Decision, pp. 221-229.

[25] PEZA's 20 November 2009 Motion was for Reconsideration, *id*. at 233-239.

[26] Respondents' 3 December 2009 Opposition, *id*. at 241-246.

[27] OSG's 18 January 2010 Manifestation, *id*. at 260-265.

[28] CA's 4 March 2010 Resolution, *id*. at 276-279.

[29] *Rollo*, OSG's 23 April 2010 Petition, pp. 7-24.

THE PETITION OR REPRESENT PEZA BEFORE THE COURT OF APPEALS.[30]

The Court's Ruling

We find the petition bereft of merit.

As correctly ruled by the CA, the OSG, as principal law officer and legal defender of the government,[31] possesses the unequivocal mandate to appear for and in its behalf in legal proceedings.[32] Described as an "independent and autonomous office attached to the Department of Justice" under Sec. 34, Book IV, Title III, Chapter 12, Executive Order 292,[33] the OSG, with the Solicitor General at its helm, is vested with the following powers and functions, among others, to wit:

> SECTION 35. Powers and Functions. — The Office of the Solicitor General *shall* represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. 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 constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:
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> (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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[30] *Id.* at 15.

[31] *Civil Service Commission v. Asensi*, G.R. No. 160657, 30 June 2004, 433 SCRA 342, 346-347.

[32] *National Power Corporation v. NLRC*, 339 Phil. 89, 100 (1997).

[33] Administrative Code of 1987.

8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts, and exercise supervision and control over such legal Officers with respect to such cases." (Italics supplied)

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Unlike a practicing lawyer who can decline employment, it has been ruled that the Solicitor General cannot refuse to perform his duty to represent the government, its agencies, instrumentalities, officials and agents without a just and valid reason.[34] Resolving a challenge against the Solicitor General's withdrawal of his appearance from cases involving the Philippine Commission on Good Government (***PCGG***) in *Gonzales v. Chavez,*[35] the Court traced the statutory origins and transformation of the OSG and concluded that the performance of its vested functions and duties is mandatory and compellable by *mandamus*.[36] The Court ratiocinated that, "[s]ound management policies require that the government's approach to legal problems and policies formulated on legal issues be harmonized and coordinated by a specific agency."[37] Finding that the Solicitor General's withdrawal of his appearance was "beyond the scope of his authority in the management of a case," the Court enunciated that the enjoinment of the former's duty is not an interference with his discretion in handling the case but a directive to prevent the failure of justice.[38]

Considering that only the Solicitor General can bring or defend actions on behalf of the Republic of the Philippines, the rule is settled that actions filed in the name of the latter not initiated

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[34] *Gumaru v. Quirino State College*, G.R. No. 164196, 22 June 2007, 525 SCRA 412, 423.

[35] G.R. No. 97351, 4 February 1992, 205 SCRA 816.

[36] *Id.* at 838.

[37] *Id.* at 846.

[38] *Id.* at 847.

by the OSG are susceptible to summary dismissal.[39] Extended to include actions filed in the name of agencies or instrumentalities of the government,[40] the rule admits of an exception under Section 35 (8) Chapter 12, Title III, Book IV of the Administrative Code which empowers the OSG to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases."[41] In *Civil Service Commission v. Asensi*,[42] the Court clarified, however, that this exception should be strictly construed and is subject to the following conditions precedent: "First, there must be an express authorization by the Office of the Solicitor General, naming therein the legal officers who are being deputized. Second, the cases must involve the respective offices of the deputized legal officers. And finally, despite such deputization, the OSG should retain supervision and control over such legal officers with respect to the cases."[43]

Another exception is also recognized when the OSG takes a position different from that of the agency it is duty bound to represent. As an independent office, after all, the OSG is "not shackled by the cause of its client agency" and has, for its primordial concern, the "best interest of the government" which, in its perception, can run counter to its client agency's position in certain instances.[44] The exception is traced to the following pronouncements handed down by this Court in *Orbos v. Civil Service Commission*,[45] to wit:

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[39] *Republic of the Philippines v. Court of Appeals*, G.R. No. 90482, 5 August 1991, 200 SCRA 226, 240, citing *Republic v. Partisala*, G.R. No. 61997, 15 November 1982, 118 SCRA 370, 373.

[40] *Civil Service Commission v. Asensi*, 488 Phil. 358, 373 (2004), citing *CDA v. Dolefil Agrarian Reform Beneficiaries Cooperative*, 432 Phil. 290, 306 (2002).

[41] *National Power Corporation v. NLRC*, 339 Phil. 89, 100-101 (1997).

[42] *Civil Service Commission v. Asensi, supra*, note 40.

[43] *Id.* at 373.

[44] *COMELEC v. Judge Quijano-Padilla*, 438 Phil. 72, 87 (2002).

[45] G.R. No. 92561, 12 September 1990, 189 SCRA 459, 466.

In the discharge of this task, the Solicitor General must see to it that the best interest of the government is upheld within the limits set by law. When confronted with a situation where one government office takes an adverse position against another government agency, as in this case, the Solicitor General should not refrain from performing his duty as the lawyer of the government. It is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position. *In such an instance the government office adversely affected by the position taken by the Solicitor General, if it still believes in the merit of its case, may appear in its own behalf through its legal personnel or representative.*[46] (Italics supplied)

While the OSG primarily invokes the second of the above-discussed exceptions in seeking the reversal of the CA's 30 October 2009 Decision, the record shows that it was said office which filed on 1 April 2009 a motion for extension of time within which to file a Rule 43 petition for review on behalf of PEZA. On the last day of the period of extension sought by the OSG, however, it was the lawyers from PEZA's Legal Affairs Group who, without being deputized to do so, eventually filed the petition for review assailing the 14 October 2008 Decision in O.P. Case No. 07-C-081. Confronted with respondents' challenge of the unexplained change of representation and prayer for dismissal of the petition, PEZA filed a 7 September 2009 reply, claiming that its lawyers had authority to represent the agency under its organizational chart. Without any elaboration, PEZA also alleged for the first time that the OSG's non-participation in the case was attributable to the "different position taken by the handling OSG lawyers."

Given the lack of authorization from the OSG and the absence of a specific provision in PEZA's Charter authorizing the agency's representation by lawyers from its Legal Affairs Group, we find that the CA cannot be faulted for rejecting PEZA's bare assertion of the contrary stand supposedly taken by the handling OSG lawyers. Even in cases of disagreement with its client agency, it cannot be over-emphasized that it is still incumbent upon the

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[46] *Id.*

OSG to present to the Court the position that will legally uphold the best interests of the Government.[47] In the *Orbos* case which the OSG now cites as justification for PEZA's filing of its own petition before the CA, the Court significantly stated that it "appreciates the participation of the Solicitor General in many proceedings and his continued fealty to his assigned task. He should not therefore desist from appearing before this Court even in those cases he finds his opinion inconsistent with the Government or any of its agents he is expected to represent. The Court must be advised of his position just as well."

After signifying its intention to file a Rule 43 petition for review with its filing of a motion for extension of time to file the same, however, the OSG did not advise the CA of its alleged difference in opinion with PEZA. It was only after the CA had rendered the herein assailed 30 October 2009 decision and with PEZA's motion for reconsideration therefrom already pending that, on 18 January 2010, the OSG filed its manifestation to the effect that it actually agreed with the substance of the petition filed by PEZA's lawyers. The OSG belatedly clarified that it was of the belief that a Rule 43 petition for review was not the proper remedy from the 14 October 2008 decision in O.P. Case No. 07-C-081. On the theory that said decision was not "based on a prior decision/order/resolution of an administrative agency in the exercise of quasi-judicial functions," the OSG maintained that a mere administrative clarification was, instead, proper under the circumstances.

Considering that a petition for review under Rule 43 is the prescribed mode for appeal from a decision rendered by the Office of the President, the OSG's stand is, to say the least, incomprehensible. Aside from the fact that respondents' 20 September 2006 letter was clearly treated by said office as an appeal, the record shows that PEZA actively participated in the proceedings conducted in connection therewith by complying with the directive to file its comment and by filing its motion for reconsideration of the 14 October 2008 Decision rendered

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[47] *Rubio, Jr. v. Hon. Sto. Tomas*, 262 Phil. 625, 634 (1990).

in the case. While it may be true that PEZA was not exercising a quasi-judicial function in rejecting the Cuizons' offer to sell the subject lots and claim of just compensation, it cannot be gainsaid that the Office of the President was exercising a quasi-judicial function when it rendered its decision. Having initially filed a motion for extension of time within which to file a Rule 43 petition on behalf of PEZA, the least that the OSG could have done was to immediately inform the CA of its supposed change of position for the same to be properly considered by the Court.

In arguing that its filing of the aforesaid manifestation on 18 January 2010 effectively cured the PEZA lawyers' lack of authorization, the OSG clearly espouses a procedural shortcut egregiously contrary to the Court's pronouncement in the *Asensi* case. Granted that the case before the CA involved PEZA, deputation of its lawyers not only requires express authorization from the OSG but also its *retention of* supervision and control over the lawyer deputized. In *Republic v. Hon. Aniano Desierto,*[48] this Court admittedly gave due course to the petition filed by the PCGG despite the initial lack of participation by the OSG, on the ground that the latter's subsequent signature as co-counsel in the Consolidated Reply filed in the case effectively cured the defect of authorization. Without belaboring the fact that the OSG's manifestation in this case was filed after the CA already dismissed PEZA's petition, said ruling cannot, however, detract us from the principle that exceptions made to the OSG's mandate should be strictly construed.

To Our mind, the fact that OSG now finds itself in the queer position of defending a mode of appeal it priorly claimed to be improper in the premises only serves to emphasize the importance of strict adherence to its statutory mandate and compliance with the requirements for exceptions thereto. By and of itself, even the OSG's very act of filing of the petition at bench is, in fact, a telling commentary on the PEZA lawyers' lack of authority to represent said agency. Owing to the mandatory character of

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[48] 438 Phil. 201 (2002).

the exercise of its functions, it stands to reason that the OSG cannot arbitrarily abdicate the same in the course of proceedings involving a client-agency and only insist on the performance thereof in the event that the handling of the case by the lawyers of the client agency results in an adverse decision. As with the allowance of the OSG's withdrawal from a case without justifiable reason, for such an action to remain unchallenged could well signal the laying down of the novel and unprecedented doctrine that the representation by the Solicitor General of the Government enunciated by law is, after all, not mandatory but merely directory.[49]

At any rate, it bears pointing out that the dismissal of PEZA's petition was specifically characterized by the CA to be without prejudice. Contrasted from a dismissal with prejudice which disallows and bars the filing of a complaint or initiatory pleading,[50] a dismissal without prejudice — while by no means any less final[51] — plainly indicates that the re-filing of the petition is not barred.[52] While it is true that the petition for review under Rule 43 is required to be filed "within fifteen (15) days from notice of the award, judgment, final order or resolution x x x or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*,"[53] we find that the OSG, in the interest of substantial justice, may be granted a fresh period of fifteen (15) days within which to re-file the petition before the CA. In the exercise of its equity jurisdiction, this Court may, after all, relax the stringent application of the technical rules

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[49] *Gonzales v. Chavez*, *supra*, note 35.

[50] *Strongworld Construction Corporation v. Hon. N.C. Perello*, 528 Phil. 1080, 1093 (2006).

[51] *Olympia International, Inc. v. Court of Appeals*, 259 Phil. 841, 849 (1989).

[52] *Air Ads, Incorporated v. Tagum Agricultural Development Corporation (TADECO)*, G.R. No. 160736, 23 March 2011, 646 SCRA 184, 195.

[53] Section 4, Rule 43.

where, as here, strong considerations of substantial justice are manifest.[54] We find this *pro hac vice* pronouncement necessary if only to emphasize the fact that the OSG's performance of its functions is mandatory.

In fine, the Solicitor General is the government officer mandated to "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."[55] Absent showing of authority under the PEZA Charter and or proper deputation from the OSG, we find that the petition for review filed by the lawyers from PEZA's Legal Affairs Group was correctly dismissed, albeit without prejudice, by the CA. The fact that the OSG and PEZA differed with respect to the choice of remedy to be pursued in the premises neither automatically excused the former's non-involvement in the case nor authorize the latter to pursue the same on its own. Even if it differs with its client-agency anent the substance of case or the procedure to be taken with respect thereto, the OSG is nevertheless duty bound to present its position to the Court as an officer thereof and in compliance with its ineluctable mandate.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. The OSG is given a fresh period of fifteen (15) days from notice within which to file its petition before the CA.

SO ORDERED.

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

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[54] *Serrano v. Court of Appeals*, 223 Phil. 391, 396 (1985).

[55] Section 35 (1), Book IV, Title III, Chapter 12, Administrative Code of 1987.

SECOND DIVISION

[G.R. No. 199501. March 6, 2013]

REPUBLIC OF THE PHILIPPINES, represented by the REGIONAL EXECUTIVE DIRECTOR, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, REGION III, *petitioner, vs.* **HEIRS OF ENRIQUE ORIBELLO, JR. and THE REGISTER OF DEEDS OF OLONGAPO CITY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ORDERS; FINAL ORDER AND INTERLOCUTORY ORDER, DISTINGUISHED.—** A final order is defined as "one which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court." Conversely, an interlocutory order "does not dispose of the case completely but leaves something to be decided upon" by the court. Its effects are merely provisional in character and substantial proceedings have to be further conducted by the court in order to finally resolve the issue or controversy.

2. **ID.; ACTIONS; DISMISSAL OF ACTIONS DUE TO FAULT OF PLAINTIFF; TO BE A SUFFICIENT GROUND FOR DISMISSAL, THE DELAY MUST NOT ONLY BE LENGTHY BUT ALSO UNNECESSARY RESULTING IN THE TRIFLING OF COURT PROCESSES.—** Based on the records, petitioner has presented testimonial evidence on various hearing dates and marked numerous documents during the trial of Civil Case No. 225-0-92. Such acts do not manifest lack of interest to prosecute. Admittedly there was delay in this case. However, such delay is not the delay warranting dismissal of the complaint. To be a sufficient ground for dismissal, delay must not only be lengthy but also unnecessary resulting in the trifling of court processes. There is no proof that petitioner intended to delay the proceedings in this case, much less abuse judicial processes.

3. **ID.; ID.; ID.; THE NON-APPEARANCE OF THE PARTY ON THE DATE OF THE HEARING DOES NOT CONSTITUTE A GROUND FOR THE DISMISSAL OF THE COMPLAINT, BUT SHOULD SIMPLY BE CONSTRUED AS A WAIVER OF THE RIGHT TO PRESENT ADDITIONAL EVIDENCE.—** While petitioner failed to appear on the hearing of 12 September 1997, such failure does not constitute a ground for the dismissal of the reversion complaint for failure to prosecute. Petitioner's non-appearance on that date should simply be construed as a waiver of the right to present additional evidence.

4. **ID.; ID.; ID.; TERMINATION OF PRESENTATION OF A PARTY'S EVIDENCE DOES NOT EQUATE TO DISMISSAL OF THE COMPLAINT FOR FAILURE TO PROSECUTE.—** We note that prior to the issuance of the 12 September 1997 Order, the trial court already warned petitioner on the likely adverse effect of its non-appearance on the next hearing date. If petitioner fails to attend the next scheduled hearing, the trial court would consider petitioner's presentation of evidence as terminated. Termination of presentation of a party's evidence does not equate to dismissal of the complaint for failure to prosecute. In fact, the trial court merely "deemed" petitioner to have abandoned the case without stating expressly and unequivocally that the complaint for reversion was dismissed. Had the trial court declared, in no uncertain terms, that the reversion suit was dismissed for failure to prosecute, there is no doubt that petitioner would have questioned such ruling, as it now did with respect to the trial court's 29 June 2005 Order.

5. **ID.; ID.; ID.; ABSENT A PATTERN OR SCHEME TO DELAY THE DISPOSITION OF THE CASE OR OF A WANTON FAILURE TO OBSERVE THE MANDATORY REQUIREMENT OF THE RULES ON THE PART OF THE PLAINTIFF, COURTS SHOULD DECIDE TO DISPENSE WITH RATHER THAN WIELD THEIR AUTHORITY TO DISMISS, FOR DISMISSAL SHOULD NOT BE RESORTED TO WHERE A LESSER SANCTION WOULD ACHIEVE THE SAME RESULT.—** While it is within the trial court's discretion to dismiss *motu proprio* the complaint on the ground of plaintiff 's failure to prosecute, it must be exercised with caution. Resort to such action must be determined

according to the procedural history of each case, the situation at the time of the dismissal, and the diligence (or the lack thereof) of the plaintiff to proceed therein. As the Court held in *Gomez v. Alcantara*, if a lesser sanction would achieve the same result, then dismissal should not be resorted to. Unless a party's conduct is so indifferent, irresponsible, contumacious or slothful as to provide substantial grounds for dismissal, *i.e.*, equivalent to default or non-appearance in the case, **the courts should consider lesser sanctions which would still amount to achieving the desired end.** In the absence of a pattern or scheme to delay the disposition of the case or of a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss.

6. **ID.; TRIALS; CONSOLIDATION; EXPOUNDED.—** Consolidation is a procedural device to aid the court in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties. To promote this end, the rule allows the consolidation and a single trial of several cases in the court's docket, or the consolidation of issues within those cases. The Court explained, thus: In the context of legal procedure, the term "consolidation" is used in three different senses: (1) Where all except one of several actions are stayed until one is tried, in which case the judgment in the one trial is conclusive as to the others. This is not actually consolidation but is referred to as such. (quasi-consolidation) (2) Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint. (actual consolidation) (3) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other. (consolidation for trial)

7. **ID.; ID.; THE CONSOLIDATION OF REVERSION SUIT AND THE COMPLAINT FOR RECOVERY OF POSSESSION IS MERELY FOR JOINT TRIAL OF THE**

CASES, FOR WHILE BOTH INVOLVE COMMON QUESTIONS OF LAW AND FACT, EACH ACTION RETAINS ITS SEPARATE AND DISTINCT CHARACTER, AND REQUIRE THE RENDITION AND ENTRY OF SEPARATE JUDGMENTS; SEVERANCE OF ONE ACTION FROM THE OTHER IS NOT NECESSARY TO APPEAL A JUDGMENT ALREADY RENDERED IN ONE ACTION.— In the present case, the complaint for reversion filed by petitioner (Civil Case No. 225-0-92) was consolidated with the complaint for recovery of possession filed by Oribello (Civil Case No. 223-0-91). While these two cases involve common questions of law and fact, each action retains its separate and distinct character. The reversion suit settles whether the subject land will be reverted to the State, while the recovery of possession case determines which private party has the better right of possession over the subject property. These cases, involving different issues and seeking different remedies, require the rendition and entry of separate judgments. The consolidation is merely for joint trial of the cases. Notably, the complaint for recovery of possession proceeded independently of the reversion case, and was disposed of accordingly by the trial court. Since each action does not lose its distinct character, severance of one action from the other is not necessary to appeal a judgment already rendered in one action. There is no rule or law prohibiting the appeal of a judgment or part of a judgment in one case which is consolidated with other cases. Further, severance is within the sound discretion of the court for convenience or to avoid prejudice. It is not mandatory under the Rules of Court that the court sever one case from the other cases before a party can appeal an adverse ruling on such case.

8. **ID.; APPEALS; ALLEGATION OF FRAUD AND MISREPRESENTATION IN THE ISSUANCE OF THE SALES PATENT IS A QUESTION OF FACT AND THE COURT IS NOT A TRIER OF FACTS; REVERSION CASE REMANDED TO THE TRIAL COURT.—** In its petition, petitioner contended that the subject property remains unclassified public forest, incapable of private appropriation. In its complaint, petitioner alleged that Oribello committed fraud and misrepresentation in acquiring the subject property. This Court is not a trier of facts. Fraud is a question of fact.

Whether there was fraud and misrepresentation in the issuance of the sales patent in favor of Oribello calls for a thorough evaluation of the parties' evidence. Thus, this Court will have to remand the reversion case to the trial court for further proceedings in order to resolve this issue and accordingly dispose of the case based on the parties' evidence on record.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Lourdes I. De Dios for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 29 April 2011 Decision[2] and 16 November 2011 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 90559. The Court of Appeals denied petitioner Republic of the Philippines' (petitioner) appeal of the Order of the Regional Trial Court, Olongapo City, Branch 72,[4] which dismissed petitioner's action for reversion and cancellation of Original Certificate of Title (OCT) No. P-5004 in the name of Enrique Oribello, Jr. (Oribello).

The Facts

The present controversy involves a parcel of land situated in Nagbaculao, Kalaklan, Olongapo City, which was once classified

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

[2] *Rollo,* pp. 46-53. Penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo.

[3] *Id.* at 55-56. Penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo.

[4] *Id.* at 61-62. Penned by Acting Presiding Judge Josefina D. Farrales.

as forest land by the Bureau of Forest Development. The property was originally occupied by a certain Valentin Fernandez (Valentin) in 1968 by virtue of a Residential Permit issued by the same government office.

Upon Valentin's death, his son, Odillon Fernandez (Odillon), continued to occupy the property, together with spouses Ruperto and Matilde Apog. Sometime in 1969, Odillon sold the property to a certain Mrs. Florentina Balcita who, later on, sold the same property to Oribello. Oribello filed a Miscellaneous Sales Application with the Department of Environment and Natural Resources (DENR), which denied the application since the land remained forest land.

On 20 February 1987, the subject property was declared open to disposition under the Public Land Act. Thus, Oribello filed another Miscellaneous Sales Application on 6 April 1987.

On 27 March 1990, the Director of Lands issued an Order for the issuance of a patent in favor of Oribello. On even date, Miscellaneous Sales Patent No. 12756 and OCT No. P-5004 were issued to Oribello.

Matilde Apog (Apog) and Aliseo San Juan (San Juan),[5] claiming to be actual occupants of the property, protested with the DENR the issuance of the sales patent and OCT in favor of Oribello. They sought the annulment of the sales patent, arguing that Oribello and Land Inspector Dominador Laxa (Laxa) committed fraud and misrepresentation in the approval of the Miscellaneous Sales Application of Oribello. They alleged that Laxa submitted a false report to the Director of Lands, by stating that there were no other claimants to the property and that Oribello was the actual occupant thereof, when the contrary was true.

After investigation, the Regional Executive Director of the DENR found substantial evidence that fraud and misrepresentation were committed in the issuance of the sales patent in favor of Oribello, warranting a reversion suit.

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[5] In other parts of the records, he is referred to as "Eliseo San Juan."

On 25 March 1992, the Office of the Solicitor General, representing petitioner, instituted a complaint for reversion and cancellation of title before the Regional Trial Court of Olongapo City, docketed as Civil Case No. 225-0-92. The case was thereafter consolidated with Civil Case No. 233-0-91, a complaint for recovery of possession filed by Oribello against Apog and San Juan.

During the trial, petitioner marked numerous documentary evidence and presented several witnesses on various hearing dates.[6]

In an Order dated 20 December 1996, the trial court warned petitioner on the possible effect of its non-appearance on the next scheduled hearing, thus:

> WHEREFORE, let the continuation of the reception of evidence for the Republic of the Philippines be reset to February 14, 21 and 28, 1997, all at 10:00 o'clock in the morning, as previously scheduled.
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> **The Solicitor General is warned that should his designated lawyer or any of his assistants fail to appear on the dates above-stated, the Court will be constrained to consider the presentation of evidence for the Republic of the Philippines as terminated.**
>
> Atty. Dumpit, therefore, is advised that he bring his witnesses on said dates to testify for the defendants Matilde Apog and Eliseo San Juan should the Solicitor General fail to appear and present evidence.
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> SO ORDERED.[7] (Emphasis supplied)

On the hearing of 4 April 1997, Atty. Oscar Pascua, representing petitioner, presented a witness on the stand.

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[6] 15 July 1994, 14 October 1994, 16 February 1996, 13 September 1996, 6 December 1996, and 4 April 1997.

[7] *Rollo,* pp. 368-369.

For petitioner's failure to appear on the hearing of 12 September 1997, the trial court issued an Order [8] on even date holding as follows:

On July 25, 1997, this Court issued an Order, quoted as follows:

x x x x x x x x x

On several occasions when these cases were set for trial, neither Atty. Barcelo nor Atty. Pascua appeared, constraining the Court to postpone the hearing. The actuations of both lawyers result to delay in the early termination of these cases which have been pending since 1992.

x x x x x x x x x

WHEREFORE, **the Republic of the Philippines is hereby deemed to have abandoned the case for the government.**

Attorney Dumpit for the defendant Matilde Apog, *et al.*, is hereby required to manifest in writing on whether or not he is adopting the evidence already presented by the Republic of the Philippines, and if so, to make his offer of evidence within 30 days from today. Atty. Leyco is given 10 days from receipt of a copy of his offer to file his comment or opposition. Let the reception of evidence, if there be any on any part of Enrique Oribello, be set on October 24, 1997 at 10:00 a.m. as previously scheduled. And in addition thereto on November 21, and December 5, 1997 also both at 10:00 a.m. To give way to the filing of these pleadings, cancel the hearing scheduled for October 3, 1997.

Upon receipt of proof from the Post Office by this Court which will show that Atty. Pascua has received a copy of the Order dated July 25, 1997, the Motion to hold him in contempt will be deemed submitted for resolution. Furnish Atty. Barcelo, the Solicitor General, the Executive Regional Director, DENR, R-III, Angeles City, and Atty. Oscar Pascua, a copy of this Order. Attys. Dumpit and Leyco are both notified in open court of this Order.

SO ORDERED.[9]

The trial of the consolidated cases continued and the reception of evidence of the private parties proceeded.

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[8] Penned by Judge Leopoldo T. Calderon, Jr.

[9] *Rollo,* pp. 57-59.

However, in its Order of 21 February 2005, the trial court dismissed the consolidated cases without prejudice for non-substitution of the deceased plaintiff (Oribello) and his counsel, to wit:

> Considering that the plaintiff's counsel is already dead, and the plaintiff is likewise dead already, there being no substitution of party-plaintiffs or any record showing the heirs or party in interest, these cases are dismissed without prejudice.[10]

Petitioner moved for reconsideration, contending that the Order applied exclusively to Civil Case No. 233-0-91 (for recovery of possession) and did not affect Civil Case No. 225-0-92 (for reversion of property). Petitioner prayed that it be allowed to present its evidence.

Acting favorably on the motion, the trial court allowed the continuation of the presentation of petitioner's evidence in its Order dated 29 June 2005.[11]

Aggrieved, Oribello's heirs filed a Manifestation and Motion, bringing to the attention of the trial court the previous 12 September 1997 Order declaring petitioner to have abandoned the reversion case. Oribello's heirs pointed out that from the time petitioner received the Order in 1997, it did nothing to question the same, making the Order final.

In its Resolution of 12 July 2006, the trial court recalled its 29 June 2005 Order, and declared instead:

> Finding merit in defendants' Motion and Manifestation, the Order dated 29 June 2005 granting the Motion for Reconsideration filed by the Solicitor General is recalled and the above-entitled case is DISMISSED.
>
> SO RESOLVED.[12]

Petitioner appealed to the Court of Appeals.

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[10] *Id.* at 60.

[11] *Id.* at 67.

[12] *Id.* at 62. Penned by Acting Judge Josefina D. Farrales.

The Ruling of the Court of Appeals

The Court of Appeals denied petitioner's appeal. The Court of Appeals held "that the remedy of appeal is no longer available" to petitioner. The appellate court agreed with respondents that petitioner has lost its right to participate in the proceedings of Civil Case No. 225-0-92 when it failed to question the trial court's 12 September 1997 Order, declaring it to have abandoned the case. As a consequence of petitioner's inaction, such order inevitably became final.

Moreover, the Court of Appeals ruled that petitioner is barred by laches and estoppel for failing to challenge the 12 September 1997 Order after almost a decade from receipt thereof. The appellate court stated that "while the general rule is that an action to recover lands of public domain is imprescriptible, said right can be barred by laches or estoppel."

The Court of Appeals disposed of the case as follows:

> **WHEREFORE,** the foregoing premises considered, the instant appeal is hereby DENIED for lack of merit.
>
> **SO ORDERED.**[13] (Emphasis in the original)

The Court of Appeals denied the motion for reconsideration.

The Issues

Petitioner anchors the present petition on the following grounds:

1. Interlocutory orders are not subject of appeal.
2. The consolidated cases, without any order of severance, cannot be subject of multiple appeals.
3. There can be no private ownership over an unclassified public forest.

The Ruling of the Court

Is the 12 September 1997 Order interlocutory?

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[13] *Id.* at 53.

Petitioner contends that the 12 September 1997 Order of the trial court, deeming it to have abandoned the case, is interlocutory in nature; thus, is not appealable.[14] Respondents argue otherwise, maintaining that such Order is a dismissal of the complaint on the ground of failure to prosecute which is, under the Rules,[15] considered an adjudication on the merits, and hence appealable.

We agree with petitioner.

A final order is defined as "one which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court."[16]

Conversely, an interlocutory order "does not dispose of the case completely but leaves something to be decided upon"[17] by

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[14] Section 1, Rule 41 of the Rules of Court provides:

SECTION 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

x x x x x x x x x

(c) An interlocutory order;

x x x x x x x x x

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65. (Emphasis supplied)

[15] Section 3, Rule 17 of the Rules of Court provides:

SEC. 3. *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[16] *RCBC v. Magwin Marketing Corp*., 450 Phil. 720, 737 (2003).

[17] *Silverio, Jr. v. Court of Appeals*, G.R. No. 178933, 16 September 2009, 600 SCRA 1, 14, citing *Tan v. Republic*, G.R. No. 170740, 25 May 2007, 523 SCRA 203, 210-211; *RCBC v. Magwin Marketing Corp., supra.*

the court. Its effects are merely provisional in character and substantial proceedings have to be further conducted by the court in order to finally resolve the issue or controversy.[18]

Based on the records, petitioner has presented testimonial evidence on various hearing dates and marked numerous documents during the trial of Civil Case No. 225-0-92. Such acts do not manifest lack of interest to prosecute. Admittedly there was delay in this case. However, such delay is not the delay warranting dismissal of the complaint. To be a sufficient ground for dismissal, delay must not only be lengthy but also unnecessary resulting in the trifling of court processes.[19] There is no proof that petitioner intended to delay the proceedings in this case, much less abuse judicial processes.

While petitioner failed to appear on the hearing of 12 September 1997, such failure does not constitute a ground for the dismissal of the reversion complaint for failure to prosecute. Petitioner's non-appearance on that date should simply be construed as a waiver of the right to present additional evidence.[20]

We note that prior to the issuance of the 12 September 1997 Order, the trial court already warned petitioner on the likely adverse effect of its non-appearance on the next hearing date. If petitioner fails to attend the next scheduled hearing, the trial court would consider petitioner's presentation of evidence as terminated. Termination of presentation of a party's evidence does not equate to dismissal of the complaint for failure to prosecute. In fact, the trial court merely "deemed" petitioner to have abandoned the case without stating expressly and unequivocally that the complaint for reversion was dismissed. Had the trial court declared, in no uncertain terms, that the

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[18] *Spouses Carpo v. Chua*, 508 Phil. 462, 476 (2005).

[19] *Calalang v. Court of Appeals*, G.R. No. 103185, 22 January 1993, 217 SCRA 462, 473.

[20] See *Sandoval v. House of Representative Electoral Tribunal*, G.R. No. 190067, 9 March 2010, 614 SCRA 793, 806; *Constantino v. Court of Appeals*, 332 Phil. 68, 75 (1996); *Republic v. Sandiganbayan*, 325 Phil. 762, 785 (1996).

reversion suit was dismissed for failure to prosecute, there is no doubt that petitioner would have questioned such ruling, as it now did with respect to the trial court's 29 June 2005 Order.

While it is within the trial court's discretion to dismiss *motu proprio* the complaint on the ground of plaintiff's failure to prosecute, it must be exercised with caution. Resort to such action must be determined according to the procedural history of each case, the situation at the time of the dismissal, and the diligence (or the lack thereof) of the plaintiff to proceed therein.[21] As the Court held in *Gomez v. Alcantara*,[22] if a lesser sanction would achieve the same result, then dismissal should not be resorted to.

> Unless a party's conduct is so indifferent, irresponsible, contumacious or slothful as to provide substantial grounds for dismissal, *i.e.*, equivalent to default or non-appearance in the case, **the courts should consider lesser sanctions which would still amount to achieving the desired end**. In the absence of a pattern or scheme to delay the disposition of the case or of a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss.[23] (Emphasis supplied)

Notably, the trial court, even after its supposed "dismissal" of the case for petitioner's abandonment, continued to recognize petitioner's personality in its proceedings. In fact, in its Order of 16 January 1998, well beyond the "dismissal" on 12 September 1997, the trial court directed the service of such order to the Solicitor General, to wit:

x x x x x x x x x

Should Atty. Dumpit fail to submit the said offer of evidence, it will be deemed a waiver on his part to do so. Atty. Leyco announced that he is presenting evidence for and in behalf of the defendants

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[21] *Gomez v. Alcantara*, G.R. No. 179556, 13 February 2009, 579 SCRA 472, 483.

[22] G.R. No. 179556, 13 February 2009, 579 SCRA 472.

[23] *Id.* at 484.

Oribello in **Civil Case No. 225-0-92 and as plaintiff in Civil Case No. 233-0-91**.

To give way to the filing of said pleadings, cancel the hearing on February 20, 1998. Let the reception of evidence for the plaintiff Oribellos be set on March 20, 1998 at 9:00 a.m. Attys. Leyco and Dumpit are notified in open court. **Furnish a copy of this order the Solicitor General, DENR Office in Angeles City**, as well as Atty. Pascua.[24] (Emphasis supplied)

In addition, the above Order states that Oribello's counsel was presenting evidence on the two consolidated cases. This means that Oribello himself continued to recognize the pendency of the reversion suit (Civil Case No. 225-0-92), contrary to his subsequent allegation that such case has already been dismissed.

Are the consolidated cases subject to multiple appeals?

Section 1, Rule 31 of the Rules of Court provides:

SECTION 1. *Consolidation.* — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated, and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Consolidation is a procedural device to aid the court in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties.[25] To promote this end, the rule allows the consolidation and a single trial of several cases in the court's docket, or the consolidation of issues within those cases.[26] The Court explained, thus:

In the context of legal procedure, the term "consolidation" is used in three different senses:

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[24] *Rollo,* p. 370.

[25] *Republic of the Philippines v. Sandiganbayan*, G.R. No. 152375, 13 December 2011, 662 SCRA 152, 190.

[26] *Id.*

(1) Where all except one of several actions are stayed until one is tried, in which case the judgment in the one trial is conclusive as to the others. This is not actually consolidation but is referred to as such. (quasi-consolidation)
(2) Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint. (actual consolidation)
(3) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other. (consolidation for trial)[27]

In the present case, the complaint for reversion filed by petitioner (Civil Case No. 225-0-92) was consolidated with the complaint for recovery of possession filed by Oribello (Civil Case No. 223-0-91). While these two cases involve common questions of law and fact,[28] each action retains its separate and distinct character. The reversion suit settles whether the subject land will be reverted to the State, while the recovery of possession case determines which private party has the better right of possession over the subject property. These cases, involving different issues and seeking different remedies, require the rendition and entry of separate judgments. The consolidation is merely for joint trial of the cases. Notably, the complaint for recovery of possession proceeded independently of the reversion case, and was disposed of accordingly by the trial court.

Since each action does not lose its distinct character, severance of one action from the other is not necessary to appeal a judgment already rendered in one action. There is no rule or law prohibiting the appeal of a judgment or part of a judgment in one case which is consolidated with other cases. Further, severance is

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

[28] These are whether the sales patent issued in favor of Oribello is valid and whether there was fraud and misrepresentation in the issuance thereof.

within the sound discretion of the court for convenience or to avoid prejudice. It is not mandatory under the Rules of Court that the court sever one case from the other cases before a party can appeal an adverse ruling on such case.

Is the property unclassified public forest?

In its petition, petitioner contended that the subject property remains unclassified public forest, incapable of private appropriation. In its complaint, petitioner alleged that Oribello committed fraud and misrepresentation in acquiring the subject property.

This Court is not a trier of facts. Fraud is a question of fact.[29] Whether there was fraud and misrepresentation in the issuance of the sales patent in favor of Oribello calls for a thorough evaluation of the parties' evidence. Thus, this Court will have to remand the reversion case to the trial court for further proceedings in order to resolve this issue and accordingly dispose of the case based on the parties' evidence on record.

WHEREFORE, the Court **GRANTS** the petition **IN PART** and **SETS ASIDE** the assailed Decision and Resolution of the Court of Appeals. The reversion case is remanded to the trial court for further proceedings. The trial court is ordered to resolve the reversion case with utmost dispatch.

SO ORDERED.

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

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[29] *Sampaco v. Lantud*, G.R. No. 163551, 18 July 2011, 654 SCRA 36, 50; *Rementizo v. Heirs of Pelagia Vda. de Madarieta*, G.R. No. 170318, 15 January 2009, 576 SCRA 109, 117; *Esguerra v. Trinidad*, G.R. No. 169890, 12 March 2007, 518 SCRA 186, 194.

THIRD DIVISION

[G.R. No. 200090. March 6, 2013]

ERLINDA C. SAN MATEO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL MATTERS BELONG TO THE PROPER DETERMINATION OF THE METC, THE RTC AND THE COURT OF APPEALS BUT WHEN SUCH COURTS HAVE OVERLOOKED CERTAIN FACTS AND CIRCUMSTANCES WHICH, IF TAKEN INTO ACCOUNT, WOULD MATERIALLY AFFECT THE RESULT OF THE CASE, THE SUPREME COURT MAY RE-EXAMINE THEIR FINDINGS OF FACTS.—** It is a settled rule that the remedy of appeal through a petition for review on *certiorari* under Rule 45 of the Rules of Court contemplates only errors of law and not errors of fact. The issues of: (1) whether or not the subject checks were issued for valuable consideration; and (2) whether or not the demand letter sent by Sehwani constituted the notice of dishonor required under B.P. 22, are factual matters that belong to the proper determination of the MeTC, the RTC and the CA. But when such courts have overlooked certain facts and circumstances which, if taken into account, would materially affect the result of the case, this Court may re-examine their findings of facts.

2. **CRIMINAL LAW; BOUNCING CHECKS LAW (B.P. 22); VIOLATION THEREOF, ESSENTIAL ELEMENTS.—** To be liable for violation of B.P. 22, the following essential elements must be present: (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.

3. **ID.; ID.; ID.; FIRST AND THIRD ELEMENT, PRESENT; THE ISSUE OF LACK OF VALUABLE CONSIDERATION FOR THE ISSUANCE OF CHECKS WHICH WERE LATER ON DISHONORED FOR INSUFFICIENT FUNDS IS IMMATERIAL TO THE SUCCESS OF A PROSECUTION FOR VIOLATION OF B.P. 22.—** In this case, the third element is present and had been adequately established. With respect to the first element, the Court gives full faith and credit to the findings of the lower courts that the checks were issued for value since San Mateo herself admitted that she drew and issued the same as payment for the yarns she ordered from ITSP. Besides, the Court has consistently pronounced that the issue of lack of valuable consideration for the issuance of checks which were later on dishonored for insufficient funds is immaterial to the success of a prosecution for violation of B.P. 22.

4. **ID.; ID.; ID.; THE PRESUMPTION THAT THE ISSUER WAS AWARE OF THE INSUFFICIENCY OF FUNDS WHEN HE ISSUED THE CHECK AND THE BANK DISHONORED IT, ARISES ONLY AFTER IT IS PROVED THAT THE ISSUER HAD RECEIVED A WRITTEN NOTICE OF DISHONOR AND THAT, WITHIN FIVE DAYS FROM RECEIPT THEREOF, HE FAILED TO PAY THE AMOUNT OF THE CHECK OR TO MAKE ARRANGEMENTS FOR ITS PAYMENT.—** But the Court finds that the second element was not sufficiently established. Section 2 of B.P. 22 creates the presumption that the issuer of the check was aware of the insufficiency of funds when he issued a check and the bank dishonored it. This presumption, however, arises only after it is proved that the issuer had received a written notice of dishonor and that, within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment.

5. **ID.; ID.; ID.; ID.; THE ISSUER'S REQUESTS FOR DEFERMENT OF DEPOSIT OF THE CHECKS WHICH SHE ISSUED, OTHERWISE HER ACCOUNT WILL CLOSE, DID NOT AMOUNT TO AN ADMISSION THAT, WHEN SHE ISSUED THOSE CHECKS, SHE KNEW**

THAT SHE WOULD HAVE NO SUFFICIENT FUNDS IN THE DRAWEE BANK TO PAY FOR THEM.— [T]here is no basis in concluding that San Mateo knew of the insufficiency of her funds. While she may have requested Sehwani in her letters dated October 8, 2005 and November 11, 2005, to defer depositing all the checks, with maturity dates of July and August 2005, otherwise, her account will close, such act did not amount to an admission that, when she issued those checks, she knew that she would have no sufficient funds in the drawee bank to pay for them.

6. **ID.; ID.; ID.; ID.; THE PRESENTATION OF THE REGISTRY CARD WITH AN UNAUTHENTICATED SIGNATURE DOES NOT MEET THE REQUIRED PROOF BEYOND REASONABLE DOUBT THAT THE ACCUSED RECEIVED THE NOTICE OF DISHONOR; IT IS NOT ENOUGH FOR THE PROSECUTION TO PROVE THAT A NOTICE OF DISHONOR WAS SENT TO THE ACCUSED, ACTUAL RECEIPT OF SAID NOTICE MUST ALSO BE PROVED, BECAUSE THE FACT OF SERVICE PROVIDED FOR IN THE LAW IS RECKONED FROM RECEIPT OF SUCH NOTICE OF DISHONOR BY THE ACCUSED.—** [T]he records show that Sehwani tried to serve the notice of dishonor to San Mateo two times. On the first occasion, Sehwani's counsel sent a demand letter to San Mateo's residence at Greenhills, San Juan which the security guard refused to accept. Thus, the liaison officer left the letter with the security guard with the instruction to hand it to San Mateo. But the prosecution failed to show that the letter ever reached San Mateo. On the second occasion, Sehwani's counsel sent a demand letter to San Mateo by registered mail which was returned with the notation "N/S Party Out 12/12/05" and that San Mateo did not claim it despite three notices to her. It has been the consistent ruling of this Court that receipts for registered letters including return receipts do not themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letters, claimed to be a notice of dishonor. To be sure, the presentation of the registry card with an unauthenticated signature, does not meet the required proof beyond reasonable doubt that the accused received such notice. It is not enough for the prosecution to prove that a notice of dishonor was sent to the accused. The prosecution must also prove *actual receipt*

of said notice, because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the accused.

7. **ID.; ID.; ID.; ID.; ABSENT PROOF THAT THE ACCUSED ACTUALLY RECEIVED THE NOTICE OF DISHONOR, HE CANNOT BE CONVICTED WITH MORAL CERTAINTY OF VIOLATION OF B.P. 22.—** Since there is insufficient proof that San Mateo actually received the notice of dishonor, the presumption that she knew of the insufficiency of her funds cannot arise. For this reason, the Court cannot convict her with moral certainty of violation of B.P. 22.

8. **ID.; ID.; ID.; ID.; ID.; ACQUITTAL OF THE ACCUSED OF CHARGE OF VIOLATION OF B.P. 22 BASED ON LACK OF PROOF BEYOND REASONABLE DOUBT DOES NOT ENTAIL THE EXTINGUISHMENT OF HER CIVIL LIABILITY FOR THE DISHONORED CHECKS; INTEREST OF 12% PER ANNUM, IMPOSED.—** [S]an Mateo's acquittal does not entail the extinguishment of her civil liability for the dishonored checks. An acquittal based on lack of proof beyond reasonable doubt does not preclude the award of civil damages. For this reason, the trial court's directive for San Mateo to pay the civil liability in the amount of ₱134,275.00 representing the total value of the 11 checks plus 12% interest per annum from the time the said sum became due and demandable until fully paid, stands.

APPEARANCES OF COUNSEL

Quiason Makalintal Barot Torres Ibarra & Sison and *Jamie Tamondong* for petitioner.
The Solicitor General for respondent.
Gerard P.S. Alegre for private complainant.

D E C I S I O N

ABAD, *J.*:

Sometime in May and July 2005, petitioner Erlinda C. San Mateo ordered assorted yarns amounting to ₱327,394.14 from ITSP International, Incorporated through its Vice-President for

Operations Ravin A. Sehwani. In partial payment thereof, San Mateo issued 11 postdated Metrobank checks amounting to ₱134,275.00.

Whenever a check matured, however, San Mateo would either call or write to Sehwani requesting him not to deposit the checks due to lack of sufficient funds. In consideration of their business relationship, Sehwani acceded to the request. But San Mateo continued to fail to settle her account.

On October 6, 2005, Sehwani deposited Metrobank Check 917604197 dated July 25, 2005 but it was dishonored for insufficiency of funds. Sehwani immediately informed San Mateo of the dishonor, who asked him to defer depositing the other checks since she was encountering financial difficulties. On October 8, 2005, Sehwani received a letter from San Mateo explaining her predicament and reiterating her request to coordinate first with her office before depositing any other check. She also offered to replace Metrobank Check 917604197 with a manager's check but failed to do so.

In November 2005, Sehwani tried to follow up with San Mateo but she never returned his call. On November 7, 2005, he deposited Metrobank Check 917604206 dated July 21, 2005 but San Mateo made a stop payment order. On November 11, 2005, he received a letter from San Mateo apologizing for her failure to pay with a promise to communicate on November 21, 2005. Since San Mateo failed to make payments, Sehwani deposited the remaining checks which were all dishonored because the account had been closed. Sehwani attempted to contact San Mateo but she never responded. He also sent demand letters to her last known address but she still failed to pay the value of the checks.

On November 23, 2005, Sehwani's counsel sent a demand letter to San Mateo's residence at Greenhills, San Juan but the security guard of the townhouse complex refused to accept the letter in compliance with San Mateo's order. Thus, the liaison officer left the letter with the security guard with the instruction to deliver the same to San Mateo. Thereafter, he sent a copy of the demand letter to San Mateo by registered mail which was

returned to his counsel's office with the notation "N/S Party Out 12/12/05" and that San Mateo did not claim it despite three notices to her dated December 12, 2005, December 22, 2005, and January 2, 2006, respectively.

On June 5, 2006, San Mateo was charged with 11 counts of violation of Batas Pambansa (B.P.) 22. During trial, she claimed that she has an agreement with Sehwani not to deposit her checks unless she gave a go signal. But Sehwani ignored this agreement and deposited the nine checks which resulted in the closure of her account.

On August 27, 2009, the Metropolitan Trial Court (MeTC) of Taguig City, Branch 74 found San Mateo guilty of 10 counts of violation of B.P. 22. She was sentenced to suffer the straight penalty of imprisonment of six months for each count and ordered to pay the total value of the 11 checks amounting to ₱134,275.00.

In finding her criminally liable for 10 counts of violation of B.P. 22 but civilly liable for the total value of the 11 checks, the MeTC declared that Metrobank Check 917604206 was dishonored not because of insufficiency of funds or closed account but because of a stop payment order from San Mateo.

San Mateo appealed to the Regional Trial Court (RTC) of Pasig City, Branch 70 which affirmed her conviction on June 1, 2010. The RTC ruled that the third element of notice of dishonor was duly established during the trial by the following facts: (1) her unjustified refusal to claim the demand letter sent to her by registered mail despite three notices from the postmaster; (2) her various letters to Sehwani requesting the latter to defer the deposit of her checks; and (3) her statement in her Amended Affidavit that Sehwani's act of depositing the nine checks resulted in the closure of her account.

Undeterred, San Mateo elevated the case to the Court of Appeals (CA). On August 23, 2011, the CA affirmed the RTC Decision and reiterated that all the elements for violation of B.P. 22 had been sufficiently proven in this case.[1]

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[1] *Rollo,* pp. 34-47.

On March 1, 2012, San Mateo filed a petition for review on *certiorari* before this Court raising the following issues: (1) whether or not the subject checks were issued for valuable consideration; (2) whether or not the demand letter sent by Sehwani constituted the notice of dishonor required under B.P. 22; and (3) whether or not the penalty of imprisonment is proper. In a Resolution dated April 23, 2012, the Court denied the petition for its failure to show that the CA committed reversible error when it upheld the factual findings of both the MeTC and the RTC that all the elements for violation of B.P. 22 had been sufficiently proven to convict San Mateo of the said crime.

On May 30, 2012, San Mateo filed a motion for reconsideration. On July 16, 2012, the Court granted the motion and reinstated the petition.

We grant the petition.

It is a settled rule that the remedy of appeal through a petition for review on *certiorari* under Rule 45 of the Rules of Court contemplates only errors of law and not errors of fact.[2] The issues of: (1) whether or not the subject checks were issued for valuable consideration; and (2) whether or not the demand letter sent by Sehwani constituted the notice of dishonor required under B.P. 22, are factual matters that belong to the proper determination of the MeTC, the RTC and the CA. But when such courts have overlooked certain facts and circumstances which, if taken into account, would materially affect the result of the case, this Court may re-examine their findings of facts.[3]

To be liable for violation of B.P. 22, the following essential elements must be present: (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

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[2] *Llenado v. People*, G.R. No. 193279, March 14, 2012, 668 SCRA 330, 333.

[3] *Bax v. People*, G.R. No. 149858, September 5, 2007, 532 SCRA 284, 289.

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.[4]

In this case, the third element is present and had been adequately established. With respect to the first element, the Court gives full faith and credit to the findings of the lower courts that the checks were issued for value since San Mateo herself admitted that she drew and issued the same as payment for the yarns she ordered from ITSP. Besides, the Court has consistently pronounced that the issue of lack of valuable consideration for the issuance of checks which were later on dishonored for insufficient funds is immaterial to the success of a prosecution for violation of B.P. 22.[5]

But the Court finds that the second element was not sufficiently established. Section 2[6] of B.P. 22 creates the presumption that the issuer of the check was aware of the insufficiency of funds when he issued a check and the bank dishonored it. This presumption, however, arises only after it is proved that the issuer had received a written notice of dishonor and that, within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment.[7]

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[4] *Rico v. People*, 440 Phil. 540, 551 (2002).

[5] *Dreamwork Construction, Inc. v. Janiola*, G.R. No. 184861, June 30, 2009, 591 SCRA 466, 478.

[6] Section 2. *Evidence of knowledge of insufficient funds*. — The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within (5) banking days after receiving notice that such check has not been paid by the drawee.

[7] *Moster v. People*, G.R. No. 167461, February 19, 2008, 546 SCRA 287, 297.

Here, there is no basis in concluding that San Mateo knew of the insufficiency of her funds. While she may have requested Sehwani in her letters dated October 8, 2005 and November 11, 2005, to defer depositing all the checks, with maturity dates of July and August 2005, otherwise, her account will close, such act did not amount to an admission that, when she issued those checks, she knew that she would have no sufficient funds in the drawee bank to pay for them.[8]

Upon the other hand, the records show that Sehwani tried to serve the notice of dishonor to San Mateo two times. On the first occasion, Sehwani's counsel sent a demand letter to San Mateo's residence at Greenhills, San Juan which the security guard refused to accept. Thus, the liaison officer left the letter with the security guard with the instruction to hand it to San Mateo. But the prosecution failed to show that the letter ever reached San Mateo.

On the second occasion, Sehwani's counsel sent a demand letter to San Mateo by registered mail which was returned with the notation "N/S Party Out 12/12/05" and that San Mateo did not claim it despite three notices to her.

It has been the consistent ruling of this Court that receipts for registered letters including return receipts do not themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letters, claimed to be a notice of dishonor.[9] To be sure, the presentation of the registry card with an unauthenticated signature, does not meet the required proof beyond reasonable doubt that the accused received such notice. It is not enough for the prosecution to prove that a notice of dishonor was sent to the accused. The prosecution must also prove *actual receipt* of said notice, because the fact of service provided for

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[8] *Sia v. People*, G.R. No. 149695, April 28, 2004, 428 SCRA 206, 226.

[9] *Svendsen v. People*, G.R. No. 175381, February 26, 2008, 546 SCRA 659, 666.

in the law is reckoned from receipt of such notice of dishonor by the accused.[10]

In *King v. People*,[11] the complainant sent the accused a demand letter *via* registered mail. But the records showed that the accused did not receive it. The postmaster likewise certified that the letter was returned to sender. Yet despite the clear import of the postmaster's certification, the prosecution did not adduce proof that the accused received the post office notice but unjustifiably refused to claim the registered mail. The Court held that it was possible that the drawee bank sent the accused a notice of dishonor, but the prosecution did not present evidence that the bank did send it, or that the accused actually received it. It was also possible that the accused was trying to flee from the complainant by staying in different addresses. But speculations and possibilities cannot take the place of proof. The conviction must rest on proof beyond reasonable doubt.[12]

Since there is insufficient proof that San Mateo actually received the notice of dishonor, the presumption that she knew of the insufficiency of her funds cannot arise. For this reason, the Court cannot convict her with moral certainty of violation of B.P. 22.

Nevertheless, San Mateo's acquittal does not entail the extinguishment of her civil liability for the dishonored checks.[13] An acquittal based on lack of proof beyond reasonable doubt does not preclude the award of civil damages.[14] For this reason, the trial court's directive for San Mateo to pay the civil liability in the amount of ₱134,275.00 representing the total value of

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[10] *Alferez v. People*, G.R. No. 182301, January 31, 2011, 641 SCRA 116, 123-124.

[11] *King v. People*, 377 Phil. 692 (1999).

[12] *Id.* at 710.

[13] *Ambito v. People*, G.R. No. 127327, February 13, 2009, 579 SCRA 69, 94.

[14] *Supra* note 3, at 292-293.

the 11 checks plus 12% interest per annum from the time the said sum became due and demandable until fully paid, stands.

WHEREFORE, the Court **GRANTS** the petition. The assailed Decision dated August 23, 2011 of the Court of Appeals in CA-G.R. CR 33434 finding petitioner Erlinda C. San Mateo guilty of 10 counts of violation of B.P. 22 is **REVERSED** and **SET ASIDE.** Petitioner Erlinda C. San Mateo is hereby **ACQUITTED** on the ground that her guilt has not been established beyond reasonable doubt. She is ordered, however, to indemnify the complainant, ITSP International, Incorporated, represented by its Vice-President for Operations Ravin A. Sehwani, the amount of ₱134,275.00 representing the total value of the 11 checks plus 12% interest per annum from the time the said sum became due and demandable until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 201620. March 6, 2013]

RAMONCITA O. SENADOR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and CYNTHIA JAIME,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; VARIANCE BETWEEN THE ALLEGATIONS OF THE INFORMATION AND THE EVIDENCE OFFERED BY THE PROSECUTION DOES NOT OF ITSELF ENTITLE THE ACCUSED TO AN ACQUITTAL, MORE SO IF THE VARIANCE RELATES

TO THE DESIGNATION OF THE OFFENDED PARTY, A MERE FORMAL DEFECT, WHICH DOES NOT PREJUDICE THE SUBSTANTIAL RIGHTS OF THE ACCUSED; IN CASE OF AN ERROR IN THE DESIGNATION OF THE OFFENDED PARTY IN CRIMES AGAINST PROPERTY, SUCH AS ESTAFA, THE PROPER REMEDY IS THE CORRECTION OF THE INFORMATION, NOT ITS DISMISSAL.— [I]t must be emphasized that variance between the allegations of the information and the evidence offered by the prosecution does **not** of itself entitle the accused to an acquittal, more so if the variance relates to the designation of the offended party, a mere formal defect, which does not prejudice the substantial rights of the accused. As correctly held by the appellate court, Senador's reliance on *Uba* is misplaced. In *Uba*, the appellant was charged with oral defamation, a crime against honor, wherein the identity of the person against whom the defamatory words were directed is a material element. Thus, an erroneous designation of the person injured is material. On the contrary, in the instant case, Senador was charged with estafa, a crime against property that does not absolutely require as indispensable the proper designation of the name of the offended party. Rather, what is absolutely necessary is the correct identification of the **criminal act charged in the information**. Thus, in case of an error in the designation of the offended party in crimes against property, Rule 110, Sec. 12 of the Rules of Court mandates the correction of the information, not its dismissal.

2. **ID.; ID.; ID.; ID.; IN OFFENSES AGAINST PROPERTY, IF THE SUBJECT MATTER OF THE OFFENSE IS GENERIC AND NOT IDENTIFIABLE, AN ERROR IN THE DESIGNATION OF THE OFFENDED PARTY IS FATAL AND WOULD RESULT IN THE ACQUITTAL OF THE ACCUSED. HOWEVER, IF THE SUBJECT MATTER OF THE OFFENSE IS SPECIFIC AND IDENTIFIABLE, AN ERROR IN THE DESIGNATION OF THE OFFENDED PARTY IS IMMATERIAL.—** *Lahoylahoy* cited by Senador supports the doctrine that if the subject matter of the offense is **generic** or one which is not described with such particularity as to properly identify the offense charged, then an erroneous designation of the offended party is material and would result in the violation of the accused's constitutional right to be informed of the nature and cause of the accusation against

her. Such error, *Lahoylahoy* teaches, **would result in the acquittal** of the accused. x x x. The holdings in *United States v. Kepner, Sayson v. People*, and *Ricarze v. Court of Appeals* support the doctrine that if the subject matter of the offense is **specific** or one described with such particularity as to properly identify the offense charged, then an erroneous designation of the offended party is not material and would not result in the violation of the accused's constitutional right to be informed of the nature and cause of the accusation against her. Such error **would not result in the acquittal** of the accused. x x x. Interpreting the previously discussed cases, We conclude that in offenses against property, **if the subject matter of the offense is generic and not identifiable**, such as the money unlawfully taken as in *Lahoylahoy*, **an error in the designation of the offended party is fatal and would result in the acquittal of the accused. However, if the subject matter of the offense is specific and identifiable**, such as a warrant, as in *Kepner,* or a check, such as in *Sayson* and *Ricarze*, **an error in the designation of the offended party is immaterial**.

3. **ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE ERROR IN THE DESIGNATION OF THE OFFENDED PARTY IN THE INFORMATION IS IMMATERIAL AND DID NOT VIOLATE ACCUSED'S CONSTITUTIONAL RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HER SINCE THE SUBJECT MATTER OF THE OFFENSE, WERE SPECIFIC AND SUFFICIENTLY IDENTIFIED.—** In the present case, the subject matter of the offense does not refer to money or any other generic property. Instead, the information **specified** the subject of the offense as "various kinds of jewelry valued in the total amount of ₱705,685.00." The charge was thereafter sufficiently fleshed out and proved by the Trust Receipt Agreement signed by Senador and presented during trial, which enumerates these "various kinds of jewelry valued in the total amount of PhP705,685," x x x. Thus, it is the doctrine elucidated in *Kepner*, *Sayson*, and *Ricarze* that is applicable to the present case, not the ruling in *Uba or Lahoylahoy*. The error in the designation of the offended party in the information is immaterial and did not violate Senador's constitutional right to be informed of the nature and cause of the accusation against her.

4. **CRIMINAL LAW; ESTAFA; CONVICTION OF THE ACCUSED FOR THE CRIME OF ESTAFA AFFIRMED WITH MODIFICATION AS TO AWARD OF EXEMPLARY DAMAGES.—** [S]enador offered to pay her obligations through Keppel Check No. 0003603, which was dishonored because it was drawn against an already closed account. The offer indicates her receipt of the pieces of jewelry thus described and an implied admission that she misappropriated the jewelries themselves or the proceeds of the sale. Rule 130, Section 27 states: In criminal cases. except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised. **an offer of compromise by the accused may he received in evidence as implied admission of guilt.** Taken together, the CA did not err in affirming petitioner's conviction for the crime of estafa. In light of current jurisprudence, the Court, however, finds the award of exemplary damages excessive. Art. 2229 of the Civil Code provides that exemplary damages may be imposed by way of example or correction for the public good. Nevertheless, "exemplary damages are imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions." On this basis, the award of exemplary damages in the amount of PhP 100,000 is reduced to PhP 30,000.

APPEARANCES OF COUNSEL

Flores & Flores Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 seeking the reversal of the May 17, 2011 Decision[1] and March

[1] *Rollo,* pp. 44-55. Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Eduardo L. Delos Santos and Ramon Paul L. Hernando.

30, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR. No. 00952.

In an Information dated August 5, 2002, petitioner Ramoncita O. Senador (Senador) was charged before the Regional Trial Court (RTC), Branch 32 in Dumaguete City with the crime of Estafa under Article 315, par. 1 (b) of the Revised Penal Code,[3] *viz.*:

> That on or about the 10th day of September 2000 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said **accused, having obtained and received from one Cynthia Jaime various kinds of jewelry valued in the total amount of ₱705,685.00** for the purpose of selling the same on consignment basis with express obligation to account for and remit the entire proceeds of the sale if sold or to return the same if unsold within an agreed period of time and despite repeated demands therefor, did, then and there willfully, unlawfully and feloniously **fail to remit proceeds of the sale of said items or to return any of the items that may have been unsold to said Cynthia Jaime** but instead has willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to his/her own use and benefit **to the damage and prejudice of said Cynthia Jaime in the aforementioned amount of ₱705,685.00.**[4] (Emphasis supplied.)

Upon arraignment, petitioner pleaded "not guilty." Thereafter, trial on the merits ensued.

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[2] *Id.* at 61-63.

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

x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

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

[4] *Rollo*, p. 46.

The prosecution's evidence sought to prove the following facts: Rita Jaime (Rita) and her daughter-in-law, Cynthia Jaime (Cynthia), were engaged in a jewelry business. Sometime in the first week of September 2000, Senador went to see Rita at her house in Guadalupe Heights, Cebu City, expressing her interest to see the pieces of jewelry that the latter was selling. On September 10, 2000, Rita's daughter-in-law and business partner, Cynthia, delivered to Senador several pieces of jewelry worth seven hundred five thousand six hundred eighty five pesos (PhP705,685).[5]

In the covering Trust Receipt Agreement signed by Cynthia and Senador, the latter undertook to sell the jewelry thus delivered on commission basis and, thereafter, to remit the proceeds of the sale, or return the unsold items to Cynthia within fifteen (15) days from the delivery.[6] However, as events turned out, Senador failed to turn over the proceeds of the sale or return the unsold jewelry within the given period.[7]

Thus, in a letter dated October 4, 2001, Rita demanded from Senador the return of the unsold jewelry or the remittance of the proceeds from the sale of jewelry entrusted to her. The demand fell on deaf ears prompting Rita to file the instant criminal complaint against Senador.[8]

During the preliminary investigation, Senador tendered to Rita Keppel Bank Check No. 0003603 dated March 31, 2001 for the amount of PhP705,685,[9] as settlement of her obligations. Nonetheless, the check was later dishonored as it was drawn against a closed account.[10]

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[5] *Id.* at 47.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] Folder of exhibits. p. 21.

[10] *Id.* at 22.

Senador refused to testify and so failed to refute any of the foregoing evidence of the prosecution, and instead, she relied on the defense that the facts alleged in the Information and the facts proven and established during the trial differ. In particular, Senador asserted that the person named as the offended party in the Information is not the same person who made the demand and filed the complaint. According to Senador, the private complainant in the Information went by the name "Cynthia Jaime," whereas, during trial, the private complainant turned out to be "Rita Jaime." Further, Cynthia Jaime was never presented as witness. Hence, citing *People v. Uba, et al.*[11] (*Uba*) and *United States v. Lahoylahoy and Madanlog* (*Lahoylahoy*),[12] Senador would insist on her acquittal on the postulate that her constitutional right to be informed of the nature of the accusation against her has been violated.

Despite her argument, the trial court, by Decision dated June 30, 2008, found Senador guilty as charged and sentenced as follows:

> WHEREFORE, the Court finds RAMONCITA SENADOR guilty beyond reasonable doubt of the crime of ESTAFA under Par. 1 (b), Art. 315 of the Revised Penal Code, and is hereby sentenced to suffer the penalty of four (4) years and one (1) day of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum and to indemnify the private complainants, RITA JA[I]ME and CYNTHIA JA[I]ME, the following: 1) Actual Damages in the amount of ₱695,685.00 with interest at the legal rate from the filing of the Information until fully paid; 2) Exemplary Damages in the amount of ₱100,000.00; and 3) the amount of ₱50,000 as Attorney's fees.

Senador questioned the RTC Decision before the CA. However, on May 17, 2011, the appellate court rendered a Decision upholding the finding of the RTC that the prosecution satisfactorily established the guilt of Senador beyond reasonable doubt. The CA opined that the prosecution was able to establish

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[11] 106 Phil. 332 (1959).

[12] 38 Phil. 330 (1918).

beyond reasonable doubt the following undisputed facts, to wit: (1) Senador received the pieces of jewelry in trust under the obligation or duty to return them; (2) Senador misappropriated or converted the pieces of jewelry to her benefit but to the prejudice of business partners, Rita and Cynthia; and (3) Senador failed to return the pieces of jewelry despite demand made by Rita.

Further, the CA — finding that *Uba*[13] is not applicable since Senador is charged with estafa, a crime against property and not oral defamation, as in *Uba* — ruled:

> WHEREFORE, the June 30, 2008 Judgment of the Regional Trial Court, Branch 32, Dumaguete City, in Criminal Case No. 16010, finding accused appellant guilty beyond reasonable doubt of Estafa is hereby AFFIRMED *in toto*.
>
> SO ORDERED.

Senador filed a Motion for Reconsideration but it was denied in a Resolution dated March 30, 2012. Hence, the present petition of Senador.

The sole issue involved in the instant case is whether or not an error in the designation in the Information of the offended party violates, as petitioner argues, the accused's constitutional right to be informed of the nature and cause of the accusation against her, thus, entitling her to an acquittal.

The petition is without merit.

At the outset, it must be emphasized that variance between the allegations of the information and the evidence offered by the prosecution does **not** of itself entitle the accused to an acquittal,[14] more so if the variance relates to the designation of the offended party, a mere formal defect, which does not prejudice the substantial rights of the accused.[15]

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[13] *Supra* note 11.

[14] *People v. Catli*, No. L-11641, November 29, 1962, 6 SCRA 642, 647. (Emphasis supplied.)

[15] *Ricarze v. Court of Appeals*, G.R. No. 160451, February 9, 2007, 515 SCRA 302, 321.

As correctly held by the appellate court, Senador's reliance on *Uba* is misplaced. In *Uba*, the appellant was charged with oral defamation, a crime against honor, wherein the identity of the person against whom the defamatory words were directed is a material element. Thus, an erroneous designation of the person injured is material. On the contrary, in the instant case, Senador was charged with estafa, a crime against property that does not absolutely require as indispensable the proper designation of the name of the offended party. Rather, what is absolutely necessary is the correct identification of the **criminal act charged in the information**.[16] Thus, in case of an error in the designation of the offended party in crimes against property, Rule 110, Sec. 12 of the Rules of Court mandates the correction of the information, not its dismissal:

SEC. 12. *Name of the offended party*. — The complaint or information must state the name and surname of the person against whom or against whose property the offense was committed, or any appellation or nickname by which such person has been or is known. If there is no better way of identifying him, he must be described under a fictitious name.

(a) **In offenses against property, if the name of the offended party is unknown, the property must be described with such particularity as to properly identify the offense charged.**

(b) If the true name of the person against whom or against whose property the offense was committed is thereafter disclosed or ascertained, **the court must cause such true name to be inserted in the complaint or information and the record**. x x x (Emphasis supplied.)

It is clear from the above provision that in offenses against property, the materiality of the erroneous designation of the offended party would depend on whether or not the subject matter of the offense was sufficiently described and identified.

Lahoylahoy cited by Senador supports the doctrine that if the subject matter of the offense is **generic** or one which is not

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[16] *Id.;* citing *Sayson v. People*, No. 51745, October 28, 1988, 166 SCRA 680.

described with such particularity as to properly identify the offense charged, then an erroneous designation of the offended party is material and would result in the violation of the accused's constitutional right to be informed of the nature and cause of the accusation against her. Such error, *Lahoylahoy* teaches, **would result in the acquittal** of the accused, *viz.*:

> The second sentence of Section 7 of General Orders No. 58 declares that when an offense shall have been described with sufficient certainty to identify the act, an erroneous allegation as to the person injured shall be deemed immaterial. **We are of the opinion that this provision can have no application to a case where the name of the person injured is matter of essential description as in the case at bar; and at any rate, supposing the allegation of ownership to be eliminated, the robbery charged in this case would not be sufficiently identified.** A complaint stating, as does the one now before us, that the defendants "took and appropriated to themselves with intent of gain and against the will of the owner thereof the sum of ₱100" could scarcely be sustained in any jurisdiction as a sufficient description either of the act of robbery or of the subject of the robbery. There is a saying to the effect that **money has no earmarks; and generally speaking the only way money, which has been the subject of a robbery, can be described or identified in a complaint is by connecting it with the individual who was robbed as its owner or possessor.** And clearly, when the offense has been so identified in the complaint, the proof must correspond upon this point with the allegation, or there can be no conviction.[17] (Emphasis supplied.)

In *Lahoylahoy*, the subject matter of the offense was money in the total sum of PhP100. Since money is **generic** and has no earmarks that could properly identify it, the only way that it (money) could be described and identified in a complaint is by connecting it to the offended party or the individual who was robbed as its owner or possessor. Thus, the identity of the offended party is material and necessary for the proper identification of the offense charged. Corollary, the erroneous designation of the offended party would also be material, as the subject matter

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[17] *Supra* note 12, at 336-337.

of the offense could no longer be described with such particularity as to properly identify the offense charged.

The holdings in *United States v. Kepner*,[18] *Sayson v. People*,[19] and *Ricarze v. Court of Appeals*[20] support the doctrine that if the subject matter of the offense is **specific** or one described with such particularity as to properly identify the offense charged, then an erroneous designation of the offended party is not material and would not result in the violation of the accused's constitutional right to be informed of the nature and cause of the accusation against her. Such error **would not result in the acquittal** of the accused.

In the 1902 case of *Kepner*, this Court ruled that the erroneous designation of the person injured by a criminal act is not material for the prosecution of the offense because the subject matter of the offense, **a warrant**, was sufficiently identified with such particularity as to properly identify the particular offense charged. We held, thus:

> The allegation of the complaint that the unlawful misappropriation of the proceeds of the **warrant** was to the prejudice of Aun Tan may be disregarded by virtue of Section 7 of General Orders, No. 58, which declares that **when an offense shall have been described in the complaint with sufficient certainty to identify the act, an erroneous allegation as to the person injured shall be deemed immaterial**. In any event the defect, if defect it was, was one of form which did not tend to prejudice any substantial right of the defendant on the merits, and can not, therefore, under the provisions of Section 10 of the same order, affect the present proceeding.[21] (Emphasis supplied.)

In *Sayson*, this Court upheld the conviction of Sayson for attempted estafa, even if there was an erroneous allegation as to the person injured because the subject matter of the offense, **a check**, is specific and sufficiently identified. We held, thus:

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[18] 1 Phil. 519 (1902).

[19] *Supra* note 16.

[20] *Supra* note 15.

[21] *Supra* note 18, at 526.

In *U.S. v. Kepner* x x x, this Court laid down the rule that when an offense shall have been described in the complaint with sufficient certainty as to identify the act, an erroneous allegation as to the person injured shall be deemed immaterial as the same is a mere formal defect which did not tend to prejudice any substantial right of the defendant. Accordingly, in the aforementioned case, which had a factual backdrop similar to the instant case, where the defendant was charged with estafa for the misappropriation of the proceeds of a warrant which he had cashed without authority, the erroneous allegation in the complaint to the effect that the unlawful act was to the prejudice of the owner of the cheque, when in reality the bank which cashed it was the one which suffered a loss, was held to be immaterial on the ground that the subject matter of the estafa, the warrant, was described in the complaint with such particularity as to properly identify the particular offense charged. **In the instant suit for estafa which is a crime against property under the Revised Penal Code, since the check, which was the subject-matter of the offense, was described with such particularity as to properly identify the offense charged, it becomes immaterial, for purposes of convicting the accused, that it was established during the trial that the offended party was actually Mever Films and not Ernesto Rufino, Sr. nor Bank of America as alleged in the information**."[22] (Emphasis supplied.)

In *Ricarze*, We reiterated the doctrine espousing an erroneous designation of the person injured is not material because the subject matter of the offense, **a check**, was sufficiently identified with such particularity as to properly identify the particular offense charged.[23]

Interpreting the previously discussed cases, We conclude that in offenses against property, **if the subject matter of the offense is generic and not identifiable**, such as the money unlawfully taken as in *Lahoylahoy*, **an error in the designation of the offended party is fatal and would result in the acquittal of the accused. However, if the subject matter of the offense is specific and identifiable**, such as a warrant, as in *Kepner*, or a check, such as in *Sayson* and *Ricarze*, **an error in the designation of the offended party is immaterial**.

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[22] *Supra* note 16, at 693.

[23] *Supra* note 15.

In the present case, the subject matter of the offense does not refer to money or any other generic property. Instead, the information **specified** the subject of the offense as "various kinds of jewelry valued in the total amount of ₱705,685.00." The charge was thereafter sufficiently fleshed out and proved by the Trust Receipt Agreement[24] signed by Senador and presented during trial, which enumerates these "various kinds of jewelry valued in the total amount of PhP705,685," *viz.*:

Quality	**Description**
1	#1878 1 set rositas w/brills 14 kt. 8.5 grams
1	#2126 1 set w/brills 14 kt. 8.3 grams
1	#1416 1 set tri-color rositas w/brills 14 kt. 4.1 grams
1	#319 1 set creolla w/brills 14 kt. 13.8 grams
1	#1301 1 set creolla 2 colors w/brills 20.8 grams
1	#393 1 set tepero & marquise 14 kt. 14 grams
1	#2155 1 yg. Bracelet w/ brills ruby and blue sapphire14 kt. 28 grams
1	#1875 1 set yg. w/ choker 14 kt. (oval) 14.6 grams
1	#2141 1 yg. w/ pearl & brills 14 kt. 8.8 grams
1	#206 1 set double sampaloc creolla 14 kt. 14.2 grams
1	#146 1 set princess cut brills 13.6 grams
1	#2067 1 pc. brill w/ pearl & brill 14 kt. 2.0 grams
1	#2066 1 pc. earrings w/ pearl & brills 14 kt. 4.5 grams
1	#1306 1 set creolla w/ brills 14 kt. 12.6 grams
1	#1851 1 pc. lady's ring w/ brills 14 kt. 7.8 grams
1	#1515 1 set w/ brills 14 kt. 11.8 grams
1	#1881 1 pc. yg. ring w/princess cut 14 kt. 4.1 grams

[24] Folder of exhibits, p. 11.

Thus, it is the doctrine elucidated in *Kepner, Sayson*, and *Ricarze* that is applicable to the present case, not the ruling in *Uba* or *Lahoylahoy*. The error in the designation of the offended party in the information is immaterial and did not violate Senador's constitutional right to be informed of the nature and cause of the accusation against her.

Lest it be overlooked, Senador offered to pay her obligations through Keppel Check No. 0003603, which was dishonored because it was drawn against an already closed account. The offer indicates her receipt of the pieces of jewelry thus described and an implied admission that she misappropriated the jewelries themselves or the proceeds of the sale. Rule 130, Section 27 states:

> In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, **an offer of compromise by the accused may be received in evidence as implied admission of guilt**. (Emphasis supplied.)

Taken together, the CA did not err in affirming petitioner's conviction for the crime of estafa.

In light of current jurisprudence,[25] the Court, however, finds the award of exemplary damages excessive. Art. 2229 of the Civil Code provides that exemplary damages may be imposed by way of example or correction for the public good. Nevertheless, "exemplary damages are imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions."[26] On this basis, the award of exemplary damages in the amount of PhP100,000 is reduced to PhP30,000.

WHEREFORE, the Decision dated May 17, 2011 and Resolution dated March 30, 2012 of the Court of Appeals in

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[25] *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797.

[26] *Yuchengco v. The Manila Chronicle Publishing Corporation*, G.R. No. 184315, November 28, 2011, 661 SCRA 392, 405-406.

CA-G.R. CR. No. 00952, finding Ramoncita Senador guilty beyond reasonable doubt of the crime of **ESTAFA** under par. 1 (b), Art. 315 of the Revised Penal Code, are hereby **AFFIRMED** with **MODIFICATION that the award of exemplary damages be reduced to PhP30,000.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 201845. March 6, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGARDO ADRID *y* FLORES,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF *SHABU*; THE ABSENCE OF A PRIOR SURVEILLANCE IS NEITHER A NECESSARY REQUIREMENT FOR THE VALIDITY OF A DRUG-RELATED ENTRAPMENT OR BUY-BUST OPERATION NOR DETRIMENTAL TO THE PEOPLE'S CASE, ESPECIALLY WHEN THE POLICE OFFICERS ARE ACCOMPANIED BY THE INFORMANT IN THE CONDUCT OF THE OPERATION.—** The Court has long held that the absence of a prior surveillance is neither a necessary requirement for the validity of a drug-related entrapment or buy-bust operation nor detrimental to the People's case. The immediate conduct of the buy-bust routine is within the discretion of the police officers, especially, as in this case, when they are accompanied by the informant in the conduct of the operation. We categorically ruled in *People v. Lacbanes*:

x x x In *People v. Ganguso*, it has been held that prior surveillance is not a prerequisite for the validity of an entrapment operation, especially when the buy-bust team members were accompanied to the scene by their informant. In the instant case, the arresting officers were led to the scene by the poseur-buyer. Granting that there was no surveillance conducted before the buy-bust operation, this Court held in *People v. Tranca*, that there is no rigid or textbook method of conducting buy-bust operations. Flexibility is a trait of good police work. The police officers may decide that time is of the essence and dispense with the need for prior surveillance.

2. **ID.; ID.; ID.; THE BUY-BUST TEAM'S COORDINATION WITH THE PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA) IS NOT AN INDISPENSABLE ELEMENT OF A PROPER BUY-BUST OPERATION; RATIONALE.—** Whether or not the buy-bust team coordinated PDEA is, under the premises, of little moment, for coordination with PDEA , while perhaps ideal, is not an indispensable element of a proper buy-bust operation. The Court, in *People v. Roa*, has explained the rationale and practicality of this sound proposition in the following wise: In the first place, coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86 of Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug-related matters," the provision does not, by so saying, make PDEA 's participation a condition *sine qua non* for every buy-bust operation. After all, a buy-bust is just a form of an *in flagrante* arrest sanctioned by Section 5, Rule 113 of the Rules of the Court, which police authorities may rightfully resort to in apprehending violators of Republic Act No. 9165 in support of the PDEA . A buy-bust operation is not invalidated by mere non-coordination with the PDEA.

3. **REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL OR FRAME-UP; BARE DENIAL OF AN ACCUSED CANNOT PREVAIL OVER THE POSITIVE ASSERTIONS OF APPREHENDING POLICE OPERATIVES, ABSENT ILL MOTIVES ON THE PART OF THE LATTER TO IMPUTE SUCH A SERIOUS CRIME AS POSSESSION OR SELLING OF PROHIBITED DRUGS.—** Neither can appellant's defense

of alibi or frame-up save the day for him. Frame-up, denial, or alibi, more particularly when based on the accused's testimony alone, as here, is an inherently weak form of defense. As the prosecution aptly observed and as jurisprudence itself teaches, the defense of denial or frame-up has been viewed with disfavor for it can easily be concocted and is a common defense plot in most prosecutions for violations of anti-drug laws. Bare denial of an accused cannot prevail over the positive assertions of apprehending police operatives, absent ill motives on the part of the latter to impute such a serious crime as possession or selling of prohibited drugs.

4. **ID.; ID.; BURDEN OF PROOF; THE ONUS OF PROVING THE GUILT OF THE ACCUSED LIES WITH THE PROSECUTION WHICH MUST RELY ON THE STRENGTH OF ITS OWN EVIDENCE AND NOT ON THE WEAKNESS OF THE DEFENSE.—** [A]ppellant is still entitled to an acquittal considering that certain critical circumstances that had been overlooked below, which, if properly appreciated, engender moral uncertainty as to his guilt. Nothing less than evidence of criminal culpability beyond reasonable doubt can overturn the presumption of innocence. In this regard, the onus of proving the guilt of the accused lies with the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense.

5. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE IDENTITY OF THE SUBSTANCE ILLEGALLY SOLD OR POSSESSED AND THAT ADDUCED IN COURT MUST BE ESTABLISHED WITH THE SAME EXACTING DEGREE OF CERTITUDE AS THAT REQUIRED SUSTAINING A CONVICTION; CHAIN OF CUSTODY REQUIREMENT, EXPLAINED.—** In every prosecution for illegal sale of dangerous drugs under Sec. 5, Art. II of RA 9165, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it. As it were, the dangerous drug itself forms an integral and key part of the *corpus delicti* of the offense of possession or sale of prohibited drugs. Withal, it is essential in the prosecution of drug cases that the identity of the prohibited drug be established beyond

reasonable doubt. This means that on top of the elements of possession or illegal sale, the fact that the substance illegally sold or possessed is, in the first instance, the very substance adduced in court must likewise be established with the same exacting degree of certitude as that required sustaining a conviction. The chain of custody requirement, as stressed in *People v. Cervantes*, and other cases, performs this function in that it ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed. *People v. Cervantes* describes the mechanics of the custodial chain requirement, thusly: As a mode of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. In context, this would ideally include testimony about every link in the chain, from the seizure of the prohibited drug up to the time it is offered into evidence, in such a way that everyone who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition it was delivered to the next link in the chain.

6. **ID.; ID.; ID.; STRICT ADHERENCE TO THE CUSTODIAL CHAIN PROCESS IS REQUIRED; RATIONALE.—** The Court has to be sure stressed the need for the strict adherence to the custodial chain process and explained the reason behind the rules on the proper procedure in handling of specimen illegal drugs. *People v. Obmiranis* readily comes to mind: The Court certainly cannot reluctantly close its eyes to the possibility of substitution, alteration or contamination—whether intentional or unintentional—of narcotic substances at any of the links in the chain of custody thereof especially because practically such possibility is great where the item of real evidence is small and is similar in form to other substances to which people are familiar in their daily lives. x x x Reasonable safeguards are provided for in our drugs laws to protect the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders. **Section 21 of R.A. No. 9165** materially requires the apprehending team having initial custody and control of the drugs to, 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, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. The same requirements are also found in Section 2 of its implementing rules as well as in Section 2 of the Dangerous Drugs Board Regulation No. 1, series of 2002.

7. **ID.; ID.; ID.; AN UNBROKEN CHAIN OF CUSTODY OF THE SEIZED ILLEGAL DRUGS IS INDISPENSABLE AND ESSENTIAL; EXPOUNDED.—** We stressed why evidence of an unbroken chain of custody of the seized illegal drugs is necessary: Be that as it may, although testimony about a perfect chain does not always have to be the standard because it is almost always impossible to obtain, an unbroken chain of custody indeed becomes indispensable and essential when the item of real evidence is a narcotic substance. A unique characteristic of narcotic substances such as *shabu* is that they are not distinctive and are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. And because they cannot be readily and properly distinguished visually from other substances of the same physical and/or chemical nature, they are susceptible to alteration, tampering, contamination, substitution and exchange— whether the alteration, tampering, contamination, substitution and exchange be inadvertent or otherwise not. It is by reason of this distinctive quality that the condition of the exhibit at the time of testing and trial is critical. Hence, in authenticating narcotic specimens, a standard more stringent than that applied to objects which are readily identifiable must be applied—a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or contaminated or tampered with.

8. **ID.; ID.; ID.; A REASONABLE DOUBT ON THE INTEGRITY OF THE DRUGS PRESENTED IN COURT STRONGLY ARGUE AGAINST A FINDING OF GUILT.—** Not lost on the Court is the prosecution's admission that the "*Forensic Chemical Officer has no personal knowledge as to where or from whom the specimen she examined originally came from x x x; that several hands got hold of the said specimen*

before the presentation of the same in court." This admission puts into serious question whether it was in fact the same SPO1 Pama who turned over the specimen for laboratory testing, or some other police officer or person took possession of the specimen before it was brought to the laboratory. The prosecution's own misgivings created a reasonable doubt on the integrity of the drugs presented in court, and necessarily strongly argue against a finding of guilt. As the Court stated in *Malillin v. People*, "When moral certainty as to culpability hands in the balance, acquittal on reasonable doubt inevitably becomes a matter of right." x x x. In *People v. Librea*, the Court acquitted the accused for the reason that the circumstances of how the person who delivered the specimen for laboratory testing came into possession of the specimen remained unexplained.

9. **ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO PROVIDE EACH AND EVERY LINK IN THE CHAIN OF CUSTODY RUNS COUNTER TO THE RULE THAT THE *CORPUS DELICTI* SHOULD BE IDENTIFIED WITH UNWAVERING EXACTITUDE.—** The CA, x x x. Gravely erred in ruling that the integrity and evidentiary value of the confiscated prohibited drug were properly preserved. On the contrary, the prosecution failed to provide each and every link in the chain of custody. This runs contrary to the rule that the *corpus delicti* should be identified with unwavering exactitude. It is worthy to note, as a final consideration, that the trial court acquitted appellant in Criminal Case No. 06-247287, for illegal possession of drugs, on this ground: the subject *shabu* was not identified in court. What the trial court failed to appreciate, however, is that while SPO1 Marinda identified a sachet of *shabu* in court, his testimony failed to establish that it was the same one submitted for laboratory testing. The trial court, in the case for illegal sale, should not have so easily trusted the alleged integrity of the *shabu* identified in court, when the evidence of the prosecution itself casts a doubt on the integrity of the specimen presented and identified in court.

APPEARANCES OF COUNSEL

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

DECISION

VELASCO, JR., *J*.:

The Case

This is an appeal from the Decision[1] dated February 24, 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03775, which affirmed the judgment of the Regional Trial Court (RTC), Branch 35 in Manila, in Criminal Case No. 06-247286, finding accused-appellant Edgardo Adrid *y* Flores (Adrid) guilty beyond reasonable doubt of illegal sale of methamphetamine hydrochloride, commonly known as *shabu*, in violation of Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

In two separate Informations[2] filed on October 11, 2006, Adrid was charged with violation of Secs. 5 and 11, Art. II of RA 9165, allegedly committed as follows:

Crim. Case No. 06-247286

That on or about October 8, 2006, in the City of Manila, Philippines, the said accused, without being authorized by law to sell, trade, deliver, or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell to SPO1 ARISTEDES MARINDA, who acted as poseur-buyer, one (1) heat-sealed transparent plastic sachet of white crystalline substance marked by the police as "DAID-1" with net weight of ZERO POINT ZERO EIGHT SIX (0.086) gram, commonly known as "*SHABU,*" which substance, after a qualitative examination, gave positive results for methylamphetamine hydrochloride, which is a dangerous drug.

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[1] *Rollo,* pp. 2-16. Penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Jose C. Reyes, Jr. and Michael P. Elbinias.

[2] Records, pp. 2-3.

Crim. Case No. 06-247287

That on or about October 8, 2006, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully, and knowingly have in his possession and under his custody and control white crystalline substance contained in one (1) heat-sealed transparent plastic sachet marked by the police as "DAID-2" with net weight of ZERO POINT ZERO SIX SIX (0.066) gram, known as "*SHABU*" containing Methylamphetamine hydrochloride, a dangerous drug.

At the instance of the prosecution, these cases were consolidated with Crim. Case No. 06-247288 against Romeo Pacaul *y* Lagbo (Pacaul), who was arrested together with Adrid during the same buy-bust incident. When arraigned, Adrid pleaded not guilty.[3]

During the pre-trial, the parties agreed to dispense with the testimony of Forensic Chemical Officer Police Senior Inspector Maritess Mariano (PS/Insp. Mariano) and stipulated on the tenor of her testimony to the following effect: she was a Forensic Chemical Officer of the Western Police District Crime Laboratory, and on duty on October 9, 2009; on that day, she received a memorandum-request from the District Anti-Illegal Drugs-Special Operations Task Group (DAID-SOTG); said memorandum came with three plastic sachets containing white crystalline substance; her examination of the substance presented yielded a positive result for methylamphetamine hydrochloride.[4]

Trial on the merits ensued.

Version of the Prosecution

The prosecution's account of the events, pieced together from the testimony of Senior Police Officer 1 Aristedes Marinda (SPO1 Marinda)[5] and documentary and object evidence, is as follows:

At around 10 o'clock in the evening of October 8, 2006, a male informant arrived at the Manila Police District (MPD)

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[3] *Id.* at 57.

[4] *Id.* at 60-61.

[5] "SPO2 Marinda" in some parts of the records.

Anti-Illegal Drugs Unit (DAID) to report that one "Jon Jon" is pushing illegal drugs at Chesa, Tondo, Manila.[6] Acting on this tip, the DAID Chief immediately formed a team to conduct a buy-bust operation and named a certain SPO1 Macasling as team leader. Designated as poseur-buyer was SPO1 Marinda, while Police Officer 1 Jaycee John Galutera and Police Officer 2 Arnold Delos Santos (PO2 Delos Santos) were to serve as back-up officers. Following the usual instructions, the buy-bust group was given two PhP100 bills bearing the initials "DAID," to serve as marked money.[7]

Thereafter, or at about 10:30 p.m., the operatives proceeded to the target area. Once there, the informant approached and then had a brief conversation with a person, later identified as "Jon Jon," standing at the entry of an alley. The informant then called SPO1 Marinda, who, after being introduced to "Jon Jon," expressed his desire to purchase *shabu* as test buy to determine the quality of the goods.[8]

During the course of the negotiations, Pacaul arrived and asked Adrid in the vernacular, "*Tol, pakuha ng pang-gamit lang may bisita lang ako*." (Bro, can you give me some, I have a visitor.) SPO1 Marinda then saw Adrid hand over to Pacaul one plastic sachet containing suspected *shabu*. Pacaul then left the scene, and PO2 Delos Santos immediately followed him.[9]

The negotiations continued, and SPO1 Marinda told the accused that he is buying "*dos*," meaning, that he was buying the value of PhP200. The accused replied, "*Sigue ho, meron namon ho ako ng halagang hinahanap ninyo*."[10] (Okay sir, I have the amount you are looking for). He then handed to SPO1 Marinda a sealed plastic sachet, with a white substance in the appearance

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[6] TSN, October 11, 2007, pp. 3-4.

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

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

[9] Records, p. 8.

[10] TSN, October 11, 2007, p. 9.

of "*vetsin*."[11] SPO1 Marinda received the filled sachet with his left hand, and handed Adrid the PhP200 marked money using his right hand. This sachet was later marked as "DAID-1." SPO1 Marinda then immediately grabbed Adrid's arm, introduced himself as a police officer, and arrested the latter.[12] Found in Adrid's possession when frisked was another sachet of suspected *shabu*, later marked as "DAID-2." Some persons who tried to intervene in the entrapment episode were likewise arrested.

From the target area, Adrid and two other individuals were brought to MPD DAID. There, the police officers learned that the real name of "Jon Jon" is Edgardo Adrid, the same accused in the case here. In his testimony during the trial, SPO1 Marinda claimed that he turned over the plastic sachets recovered from Adrid, together with the marked money, to the investigator at DAID, a certain SPO1 Pama who, in his (SPO1 Marinda's) presence, marked the recovered sachets as "DAID-1"[13] and "DAID-2." The sachet recovered from Pacaul was marked as "DAID-3."

SPO1 Marinda's direct narrative ended with the statement that these three sachets were submitted for laboratory examination to the DAID Forensic Chemistry Division. He, however, admitted having no participation in the submission of the specimen for examination. The examination later yielded positive results for methylamphetamine hydrochloride or *shabu*.[14]

During cross-examination, SPO1 Marinda testified that prior to the buy-bust operation, his group coordinated with the Philippine Drug Enforcement Agency (PDEA). He was not sure, however, if the pre-operation report is present in the records of the case, albeit he admitted not indicating the fact of coordination in his Affidavit of Apprehension.[15]

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[11] *Id.*

[12] *Id.* at 10-12.

[13] *Id.* at 16.

[14] Records, p. 76.

[15] TSN, October 11, 2007, p. 21.

Version of the Defense

The evidence for the defense, meanwhile, consisted of the lone testimony of accused Adrid himself. His narration of what purportedly transpired during the period material is as follows:

On October 6, 2006, at about 7:30 in the evening, after having supper, several men suddenly entered his house on Magsaysay St., Tondo, Manila, introduced themselves as police officers and without so much of an explanation apprehended and handcuffed him.[16] When he asked them, "*ano po ang kasalanan ko, bakit ninyo ako hinuhuli sir?*" (What did I do sir, why are you arresting me?), the intruders simply gave a dismissive reply, "*sumama ka na lang sa amin*."[17] (Just come with us.)

At the MPD DAID, he was mauled and forced to admit something regarding the sale of drugs.[18] The police, according to Adrid, was actually after a certain "Jon Jon" who was into selling drugs, but who have given the police officers a slip. For its failure to nab "Jon Jon," the police turned to Adrid to admit to some wrongdoings.[19] And albeit he has no actual knowledge of "Jon Jon's" full name, he is aware of his being a well-known drug lord in their area and knows where "Jon Jon" lives, as he, "Jon Jon" has in fact been to his (Adrid's) house three times to have a PlayStation game.[20]

The Ruling of the RTC

After trial, the Manila RTC rendered on October 22, 2008 a Joint Decision,[21] finding the accused Adrid guilty beyond reasonable doubt in Crim. Case No. 06-247286 (sale of illegal drugs). The trial court, however, acquitted Adrid in Crim. Case No. 06-247287 and Pacaul in Crim. Case No. 06-247288 (both

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[16] TSN, March 4, 2008, p. 3.

[17] *Id.* at 4.

[18] *Id.* at 5.

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

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

[21] CA *rollo*, pp. 14-18. Penned by Judge Eugenio C. Mendinueto.

for illegal possession of drugs), for insufficiency of evidence to sustain a conviction. The *fallo* of the RTC Decision, in its pertinent part, reads:

> ACCORDINGLY, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. 06-247286 finding the accused Edgardo Adrid *y* Flores GUILTY beyond reasonable doubt of the offense of Violation of Section 5, Article II of RA [9165] (Sale of Dangerous Drug), he is hereby sentenced to suffer the penalty of life imprisonment; to pay a fine of Five Hundred [Thousand] (₱500,000) Pesos; and cost of suit;
>
>   Let a commitment order be issued for the transfer of his custody to the Bureau of Corrections, Muntinlupa City, pursuant to SC OCA Circulars Nos. 4-92-A and 26-2000;
>
> 2. With respect to Criminal Case No. 06-247287, finding the evidence insufficient to establish the guilt of accused Edgardo Adrid *y* Flores beyond reasonable doubt, he is hereby ACQUITTED of the offense charged therein;
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> 3. With respect to Criminal Case No. 06-247288, finding the evidence insufficient to establish the guilt of accused Romeo Pacaul *y* Lagbo beyond reasonable doubt, he is hereby ACQUITTED of the offense charged.
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> x x x x x x x x x
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> The plastic sachet with *shabu* (Exh. "C"), as well as Exhs. "D" and "E", which were also positive for *shabu*, are hereby confiscated in favor of the Government. x x x
>
> SO ORDERED.

The trial court based its judgment of conviction on the charge of illegal sale on the combined application of the following factors: (1) SPO1 Marinda's inculpatory testimony which was given in a positive, categorical, and straightforward manner and thus worthy of belief; (2) the absence of credible evidence of bad faith or other improper motive on the part of the police officers; and (3) the presumption of regularity in the performance of official duties.[22]

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[22] *Id.* at 16.

As to the identity of the dangerous drugs seized and presented in court in evidence, the RTC stated the following observations:

Thus, as testified to by SPO1 Marinda, from the place of arrest and recovery, he was in custody of the dangerous drug involved in this case (Exh. "C"). Upon arrival at the police station, he promptly turned it over to the duty investigator, SPO1 Pama who placed markings thereon of the capital letters "DAID," in his presence. Thereafter, it was brought to the MPD Crime Laboratory for chemical analysis of its contents which gave positive result for methylamphetamine hydrochloride, or "*shabu,*" a dangerous drug. The specimen itself was produced in Court and was positively identified by SPO1 Marinda as the same plastic sachet with white crystalline substance which accused handed to him in exchange for the two One Hundred Peso bills buy-bust money (Exhs. "G" and "G-1").[23]

On December 3, 2008, Adrid filed a Notice of Appeal,[24] pursuant to which the RTC forwarded the records to the CA.

The Ruling of the CA

On February 24, 2011, the CA rendered its assailed affirmatory Decision, disposing as follows:

WHEREFORE, the foregoing premises considered, the judgment of the Regional Trial Court (RTC), National Capital Region, Branch 35, Manila in Criminal Case No. 06-247286 is AFFIRMED.

Just like the RTC, the CA gave credence to the testimony of SPO1 Marinda to prove a consummated sale of a prohibited drug involving Adrid,[25] noting in this regard that the integrity and evidentiary value of the confiscated prohibited drug had been properly preserved, thus satisfying the rule on chain of custody.[26]

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[23] *Id.* at 17.

[24] *Id.* at 20.

[25] *Rollo,* p. 12.

[26] *Id.* at 14.

On the conduct of the buy-bust operation, the CA rejected Adrid's protestation about the lack of prior surveillance before the buy-bust operation was set in motion. As the appellate court stressed, a prior surveillance is not a prerequisite for the validity of an entrapment operation,[27] which is presumed to have been conducted regularly, absent proof of ill motive on the part of the apprehending police officers.[28]

Hence, this appeal.

On July 30, 2012, this Court, by Resolution, required the parties to submit supplemental briefs if they so desired. The People, through the Office of the Solicitor General, manifested having already exhaustively addressed the issues and arguments involving the case, and expressed its willingness to submit the case on the basis of available records. Similarly, appellant Adrid manifested that he is adopting all the defenses and arguments that he raised in his Appellant's Brief before the CA, capsulated in the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE PROSECUTION'S VERSION DESPITE THE PATENT IRREGULARITIES IN THE CONDUCT OF THE BUY-BUST OPERATION.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE DRUG SPECIMEN ALLEGEDLY CONFISCATED.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[29]

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[27] *Id.* at 12.

[28] *Id.* at 14-15.

[29] CA *rollo*, p. 41.

In fine, the issues raised by appellant revolve around the conduct of the buy-bust operation, and the subsequent handling and examination of the seized substance inside the sachet. Appellant insists that the incredibility of the manner of the conduct of the supposed buy-bust operation supports his claim that there was no such operation and that he was, in fact, a victim of a frame-up.[30] Even assuming that the buy-bust operation was actually conducted, appellant argues, he deserves to be acquitted for the prosecution's failure to establish his guilt beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious. Appellant must be acquitted but not because of his defense of frame-up or the perceived flaw in the conduct of the buy-bust which, as alleged, was carried out without prior surveillance and in coordination with the PDEA.

The Court has long held that the absence of a prior surveillance is neither a necessary requirement for the validity of a drug-related entrapment or buy-bust operation nor detrimental to the People's case. The immediate conduct of the buy-bust routine is within the discretion of the police officers, especially, as in this case, when they are accompanied by the informant in the conduct of the operation. We categorically ruled in *People v. Lacbanes*:[31]

> x x x In *People v. Ganguso*, it has been held that prior surveillance is not a prerequisite for the validity of an entrapment operation, especially when the buy-bust team members were accompanied to the scene by their informant. In the instant case, the arresting officers were led to the scene by the poseur-buyer. Granting that there was no surveillance conducted before the buy-bust operation, this Court held in *People v. Tranca*, that there is no rigid or textbook method of conducting buy-bust operations. Flexibility is a trait of good police work. The police officers may decide that time is of the essence and dispense with the need for prior surveillance. (citations omitted)

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[30] CA *rollo*, p. 41.

[31] 336 Phil. 933, 941 (1997).

Of the same tenor is the holding in *People v. Dela Rosa*,[32] We underscored the leeway given to the police officers in conducting buy-bust operations:

> That no test buy was conducted before the arrest is of no moment for there is no rigid or textbook method of conducting buy-bust operations. For the same reason, the absence of evidence of a prior surveillance does not affect the regularity of a buy-bust operation, especially when, like in this case, the buy-bust team members were accompanied to the scene by their informant. The Court cannot pretend to establish on *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. The selection of appropriate and effective means of entrapping drug traffickers is best left to the discretion of police authorities.

Whether or not the buy-bust team coordinated with the PDEA is, under the premises, of little moment, for coordination with PDEA, while perhaps ideal, is not an indispensable element of a proper buy-bust operation. The Court, in *People v. Roa,* has explained the rationale and practicality of this sound proposition in the following wise:

> In the first place, coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86 of Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug-related matters," the provision does not, by so saying, make PDEA's participation a condition *sine qua non* for every buy-bust operation. After all, a buy-bust is just a form of an *in flagrante* arrest sanctioned by Section 5, Rule 113 of the Rules of the Court, which police authorities may rightfully resort to in apprehending violators of Republic Act No. 9165 in support of the PDEA. A buy-bust operation is not invalidated by mere non-coordination with the PDEA.[33]

Neither can appellant's defense of alibi or frame-up save the day for him. Frame-up, denial, or alibi, more particularly when

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[32] G.R. No. 185166, January 26, 2011, 640 SCRA, 635, 649.

[33] G.R. No. 186134, May 6, 2010, 620 SCRA 359, 368-370.

based on the accused's testimony alone, as here, is an inherently weak form of defense. As the prosecution aptly observed and as jurisprudence itself teaches, the defense of denial or frame-up has been viewed with disfavor for it can easily be concocted and is a common defense plot in most prosecutions for violations of anti-drug laws. Bare denial of an accused cannot prevail over the positive assertions of apprehending police operatives, absent ill motives on the part of the latter to impute such a serious crime as possession or selling of prohibited drugs.[34]

The foregoing notwithstanding, appellant is still entitled to an acquittal considering that certain critical circumstances that had been overlooked below, which, if properly appreciated, engender moral uncertainty as to his guilt. Nothing less than evidence of criminal culpability beyond reasonable doubt can overturn the presumption of innocence. In this regard, the *onus* of proving the guilt of the accused lies with the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense.

In every prosecution for illegal sale of dangerous drugs under Sec. 5, Art. II of RA 9165, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it.[35] As it were, the dangerous drug itself forms an integral and key part of the *corpus delicti* of the offense of possession or sale of prohibited drugs. Withal, it is essential in the prosecution of drug cases that the identity of the prohibited drug be established beyond reasonable doubt. This means that on top of the elements of possession or illegal sale, the fact that the substance illegally sold or possessed is, in the first instance, the very substance adduced in court must likewise be established with the same exacting degree of certitude as that required sustaining a conviction. The chain of custody requirement, as stressed in

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[34] *People v. Dela Rosa, supra* note 32, at 656-657.

[35] *People v. Politico*, G.R. No. 191394, October 18, 2010, 633 SCRA 404, 412; citing *People v. Alberto*, G.R. No. 179717, February 5, 2010, 611 SCRA 706, 713.

People v. Cervantes,[36] and other cases, performs this function in that it ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed. *People v. Cervantes* describes the mechanics of the custodial chain requirement, thusly:

> As a mode of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. In context, this would ideally include testimony about every link in the chain, from the seizure of the prohibited drug up to the time it is offered into evidence, in such a way that everyone who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition it was delivered to the next link in the chain.[37] x x x

The Court has to be sure to stressed the need for the strict adherence to the custodial chain process and explained the reason behind the rules on the proper procedure in handling of specimen illegal drugs. *People v. Obmiranis*[38] readily comes to mind:

> The Court certainly cannot reluctantly close its eyes to the possibility of substitution, alteration or contamination — whether intentional or unintentional — of narcotic substances at any of the links in the chain of custody thereof especially because practically such possibility is great where the item of real evidence is small and is similar in form to other substances to which people are familiar in their daily lives. x x x
>
> Reasonable safeguards are provided for in our drugs laws to protect the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders. **Section 21 of R.A. No. 9165** materially requires the apprehending team having initial custody and control of the drugs to, immediately after seizure and confiscation, physically inventory and photograph the same in the

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[36] G.R. No. 181494, March 17, 2009, 581 SCRA 762.

[37] *Id.* at 777; citing *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

[38] G.R. No. 181492, December 16, 2008, 574 SCRA 140, 151-155.

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, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. The same requirements are also found in Section 2 of its implementing rules as well as in Section 2 of the Dangerous Drugs Board Regulation No. 1, series of 2002. (Emphasis supplied.)

In the same case, We stressed why evidence of an unbroken chain of custody of the seized illegal drugs is necessary:

> Be that as it may, although testimony about a perfect chain does not always have to be the standard because it is almost always impossible to obtain, an unbroken chain of custody indeed becomes indispensable and essential when the item of real evidence is a narcotic substance. A unique characteristic of narcotic substances such as *shabu* is that they are not distinctive and are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. And because they cannot be readily and properly distinguished visually from other substances of the same physical and/or chemical nature, they are susceptible to alteration, tampering, contamination, substitution and exchange — whether the alteration, tampering, contamination, substitution and exchange be inadvertent or otherwise not. It is by reason of this distinctive quality that the condition of the exhibit at the time of testing and trial is critical. Hence, in authenticating narcotic specimens, a standard more stringent than that applied to objects which are readily identifiable must be applied — a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or contaminated or tampered with.[39]

Appellant contends that the police officers failed to follow the proper procedure laid down in Sec. 21 of RA 9165, in relation to the chain of custody rule. He argues:

> [T]he prosecution failed to supply all the links in the chain of custody rule. SPO2 Marinda testified that he supposedly turned-over the confiscated plastic sachets to the investigator SPO1 Pama.

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[39] *Id.* at 150-151.

However, the latter was never presented to testify on this matter. The prosecution also failed to testify on what happened to the subject specimens after these were turned-over to Pama and who delivered these to the forensic chemist. Thus, there is an unexplained gap in the chain of custody of the dangerous drug, from the time the same were supposedly seized by SPO2 Marinda from accused-appellant, until these were turned-over to the crime laboratory.

It also appears that the prosecution's evidence failed to reveal the identity of the person who had the custody and safekeeping of the drugs after its examination and pending its presentation in court. This unexplained link also created doubt as to the integrity of the evidence. This should have been considered as a serious source of doubt favorable to the accused-appellant.[40]

Appellant's contention is very much well-taken. The Court particularly notes that of the individuals who came into direct contact with or had physical possession of the sachets of *shabu* allegedly seized from appellant, only SPO1 Marinda testified for the specific purpose of identifying the evidence. But his testimony failed to sufficiently demonstrate an unbroken chain, for he himself admits that at the police station he transferred the possession of the specimen to an investigator at the MPD DAID, one SPO1 Pama to be precise. The following is the extent of SPO1 Marinda's testimony regarding his knowledge of the whereabouts of the specimen:

Q You said you received the plastic container containing the supposed *shabu* from John John, what happened to that plastic sachet?

A I turned that over to out investigator at DAID.

Q So you were the one who brought that from the scene of the incident to your office?

A Yes, sir.

Q And after you turned over the stuff to the investigator, what happened to that, if any?

A It was marked by our investigator DAID-1.

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[40] CA *rollo*, pp. 43-44.

COURT:

Q Who marked the evidence?

A Our investigator, Your Honor.

Q Who is he?

A SPO1 Pama, Your Honor.

FISCAL:

Q And how did you know that it was marked with DAID-1?

A We were present when it was marked, sir.

x x x x x x x x x

Q And after you turned over the plastic sachet and *alias* Jon-Jon to the investigator, what happened next?

A The evidence were submitted to the laboratory for examination, sir.[41]

And after this turnover of the specimen, SPO1 Marinda no longer had personal knowledge of the whereabouts of the *shabu*-containing sachet. In plain language, the custodial link ended with SPO1 Marinda when he testified that the specimen was submitted for laboratory examination, he was veritably assuming the occurrence of an event; he was not testifying on the fact of submission out of personal knowledge, because he took no part in the transfer of the specimen from the police station to the laboratory. This testimony of SPO1 Marinda alone, while perhaps perceived by the courts below as straightforward and clear, is incomplete to satisfy the rule on chain of custody.

It baffles this Court no end why the prosecution opted not to present the investigator, identified as SPO1 Pama, to whom SPO1 Marinda allegedly handed over the confiscated sachets for recording and marking. If SPO1 Pama indeed received the sachets containing the illegal drugs and then turned them over to the laboratory for testing, his testimony is vital in establishing the whereabouts of the seized illegal drugs and how they were

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[41] TSN, October 11, 2007, pp. 16-17.

handled from the time SPO1 Marinda turned them over to him, until he actually delivered them to the laboratory. He could have accounted for the whereabouts of the illegal drugs from the time he possessed them.

The indispensability of SPO1 Pama testimony cannot be over-emphasized. He could have provided the link between the testimony of SPO1 Marinda and the tenor of the testimony of PS/Insp. Mariano, which the prosecution and appellant have already stipulated on. As the evidence on record stands, there is a considerable amount of time, a gaping hiatus as it were, in which the whereabouts of the illegal drugs were unaccounted for. This constitutes a clear but unexplained break in the chain of custody. Then too no one testified on how the specimen was handled and cared following the analysis. And of course no one was presented to prove that the specimen turned over for analysis, if that be the case, and eventually presented in court as exhibits were the same substance SPO1 Pama received from SPO1 Marinda. There are so many unanswered questions regarding the possibility of evidence tampering and the identity of evidence. These questions should be answered satisfactorily to determine whether the integrity and the evidentiary value of the seized substance have been compromised in any way. Else, the prosecution cannot plausibly maintain that it was able to prove the guilt of appellant beyond reasonable doubt.[42] Thus, the trial court should not have easily accorded the drugs presented in court much credibility.

Not lost on the Court is the prosecution's admission that the "**Forensic Chemical Officer has no personal knowledge as to where or from whom the specimen she examined originally came from x x x; that several hands got hold of the said specimen before the presentation of the same in court**."[43] This admission puts into serious question whether it was in fact the same SPO1 Pama who turned over the specimen for

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[42] *People v. Ong*, G.R. No. 137348, June 21, 2004, 432 SCRA 470, 490.

[43] Records, p. 60.

laboratory testing, or some other police officer or person took possession of the specimen before it was brought to the laboratory.

The prosecution's own misgivings created a reasonable doubt on the integrity of the drugs presented in court, and necessarily strongly argue against a finding of guilt. As the Court stated in *Malillin v. People*, "When moral certainty as to culpability hands in the balance, acquittal on reasonable doubt inevitably becomes a matter of right."[44]

Apropos too is what the Court said in *People v. Almorfe*:

> The presentation of the drugs which constitute the corpus delicti of the offenses, calls for the necessity of proving beyond doubt that they are the same seized objects. This function is performed by the "chain of custody" requirement as defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which requirement is necessary to erase all doubts as to the identity of the seized drugs by establishing its movement from the accused, to the police, to the forensic chemist, and finally to the court.
>
> x x x x x x x x x
>
> It bears recalling that while the parties stipulated on the existence of the sachets, they did not stipulate with respect to their "source."
>
> *People v. Sanchez* teaches that the testimony of the forensic chemist which is stipulated upon merely covers the handling of the specimen at the forensic laboratory and the result of the examination, but not the manner the specimen was handled before it came to the possession of the forensic chemist and after it left his possession.
>
> While a perfect chain of custody is almost always impossible to achieve, an unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange. Hence, every link must be accounted for.
>
> In fine, the prosecution failed to account for every link of the chain starting from its turn over by Janet to the investigator, and from the latter to the chemist.

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[44] *Supra* note 37, at 639.

As for the presumption of regularity in the performance of official duty relied upon by the courts *a quo*, the same cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt.[45] (citations omitted)

In *People v. Librea*,[46] the Court acquitted the accused for the reason that the circumstances of how the person who delivered the specimen for laboratory testing came into possession of the specimen remained unexplained.

The CA, thus, gravely erred in ruling that the integrity and evidentiary value of the confiscated prohibited drug were properly preserved.[47] On the contrary, the prosecution failed to provide each and every link in the chain of custody. This runs contrary to the rule that the *corpus delicti* should be identified with unwavering exactitude.[48]

It is worthy to note, as a final consideration, that the trial court acquitted appellant in Criminal Case No. 06-247287, for illegal possession of drugs, on this ground: the subject *shabu* was not identified in court. What the trial court failed to appreciate, however, is that while SPO1 Marinda identified a sachet of *shabu* in court, his testimony failed to establish that it was the same one submitted for laboratory testing. The trial court, in the case for illegal sale, should not have so easily trusted the alleged integrity of the *shabu* identified in court, when the evidence of the prosecution itself casts a doubt on the integrity of the specimen presented and identified in court.

WHEREFORE, the instant appeal is **GRANTED.** Accused-appellant Edgardo Adrid *y* Flores is hereby **ACQUITTED** of the crime of violating Sec. 5, Art. II of RA 9165 on account of reasonable doubt. The Director of the Bureau of Corrections is

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[45] G.R. No. 181831, March 29, 2010, 617 SCRA 52, 60-62.

[46] G.R. No. 179937, July 17, 2009, 593 SCRA 258, 262-263.

[47] *Rollo,* p. 14.

[48] *People v. Dela Cruz*, G.R. No. 181545, October 8, 2008, 568 SCRA 273, 282; citing *Zarraga v. People*, G.R. No. 162064, March 14, 2006, 484 SCRA 639.

ordered to cause the immediate release of accused-appellant, unless he is being lawfully held for any other cause. Accordingly, the CA Decision dated February 24, 2011 in CA-G.R. CR-H.C. No. 03775 is hereby **REVERSED** and **SET ASIDE.**

No costs.

SO ORDERED.

Brion,[*] *Abad, Mendoza*, and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 202205. March 6, 2013]

FOREST HILLS GOLF & COUNTRY CLUB, *petitioner, vs.* **VERTEX SALES AND TRADING, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; THE REMEDY OF APPEAL IS AVAILABLE TO A PARTY WHO HAS A PRESENT INTEREST IN THE SUBJECT MATTER OF THE LITIGATION AND IS AGGRIEVED OR PREJUDICED BY THE JUDGMENT; A PARTY IS DEEMED AGGRIEVED OR PREJUDICED WHEN HIS INTEREST, RECOGNIZED BY LAW IN THE SUBJECT MATTER OF THE LAWSUIT, IS INJURIOUSLY AFFECTED BY THE JUDGMENT, ORDER OR DECREE.—** [W]e declare that the question of rescission of the sale of the share is a settled matter that the Court can no longer review in this petition.

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[*] Additional member per raffle dated June 18, 2012.

While Forest Hills questioned and presented its arguments against the CA ruling rescinding the sale of the share in its petition, it is not the proper party to appeal this ruling. As correctly pointed out by Forest Hills, it was not a party to the sale even though the subject of the sale was its share of stock. The corporation whose shares of stock are the subject of a transfer transaction (through sale, assignment, donation, or any other mode of conveyance) need not be a party to the transaction, as may be inferred from the terms of Section 63 of the Corporation Code. However, to bind the corporation as well as third parties, it is necessary that the transfer is recorded in the books of the corporation. In the present case, the parties to the sale of the share were FEGDI as the seller and Vertex as the buyer (after it succeeded RSACC). As party to the sale, FEGDI is the one who may appeal the ruling rescinding the sale. The remedy of appeal is available to a party who has "a present interest in the subject matter of the litigation and **[is] aggrieved or prejudiced by the judgment**. A party, in turn, is deemed aggrieved or prejudiced **when his interests, recognized by law in the subject matter of the lawsuit, is injuriously affected by the judgment, order or decree**." The rescission of the sale does not in any way prejudice Forest Hills in such a manner that its interest in the subject matter — the share of stock — is injuriously affected. Thus, Forest Hills is in no position to appeal the ruling rescinding the sale of the share. Since FEGDI, as party to the sale, filed no appeal against its rescission, we consider as final the CA 's ruling on this matter.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; RESCISSION OF CONTRACTS; THE PARTIES TO A RESCINDED CONTRACT MUST BE BROUGHT BACK TO THEIR ORIGINAL SITUATION PRIOR TO THE INCEPTION OF THE CONTRACT; HENCE, THEY MUST RETURN WHAT THEY RECEIVED PURSUANT TO THE CONTRACT; PETITIONER IS NOT LIABLE FOR RESTITUTION, NOT BEING A PARTY TO THE RESCINDED CONTRACT.—** The CA 's ruling ordering the "return to [V ertex] the amount it paid by reason of the sale" did not specify in detail what the amount to be returned consists of and it did not also state the extent of Forest Hills, FEGDI, and FELI's liability with regard

to the amount to be returned. x x x. A necessary consequence of rescission is restitution: the parties to a rescinded contract must be brought back to their original situation prior to the inception of the contract; hence, they must return what they received pursuant to the contract. Not being a party to the rescinded contract, however, Forest Hills is under no obligation to return the amount paid by Vertex by reason of the sale. Indeed, Vertex failed to present sufficient evidence showing that Forest Hills received the purchase price for the share or any other fee paid on account of the sale (other than the membership fee which we will deal with after) to make Forest Hills jointly or solidarily liable with FEGDI for restitution. Although Forest Hills received ₱150,000.00 from Vertex as membership fee, it should be allowed to retain this amount. For three years prior to the rescission of the sale, the nominees of Vertex enjoyed membership privileges and used the golf course and the amenities of Forest Hills. We consider the amount paid as sufficient consideration for the privileges enjoyed by Vertex's nominees as members of Forest Hills.

APPEARANCES OF COUNSEL

Carlos Valera Cabochan Tolentino De Vera and Torredes for petitioner.

Belo Gozon Elma Parel Asuncion & Lucila for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*,[1] filed under Rule 45 of the Rules of Court, assailing the decision[2] dated February 22, 2012 and the resolution[3] dated May 31, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 89296.

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[1] *Rollo,* pp. 9-29.

[2] Penned by Associate Justice Isaias P. Dicdican, and concurred in by Associate Justices Jane Aurora C. Lantion and Ramon A. Cruz; *id.* at 35-45.

[3] *Id.* at 46-47.

THE FACTS

Petitioner Forest Hills Golf & Country Club (*Forest Hills*) is a domestic non-profit stock corporation that operates and maintains a golf and country club facility in Antipolo City. Forest Hills was created as a result of a joint venture agreement between Kings Properties Corporation (*Kings*) and Fil-Estate Golf and Development, Inc. (*FEGDI*). Accordingly, Kings and FEGDI owned the shares of stock of Forest Hills, holding 40% and 60% of the shares, respectively.

In August 1997, FEGDI sold to RS Asuncion Construction Corporation (*RSACC*) one (1) Class "C" common share of Forest Hills for ₱1.1 million. Prior to the full payment of the purchase price, RSACC transferred its interests over FEGDI's Class "C" common share to respondent Vertex Sales and Trading, Inc. (*Vertex*).[4] RSACC advised FEGDI of the transfer and FEGDI, in turn, requested Forest Hills to recognize Vertex as a shareholder. Forest Hills acceded to the request, and Vertex was able to enjoy membership privileges in the golf and country club.

Despite the sale of FEGDI's Class "C" common share to Vertex, the share remained in the name of FEGDI, prompting Vertex to demand for the issuance of a stock certificate in its name.[5] As its demand went unheeded, Vertex filed a **complaint**[6] **for rescission with damages against defendants Forest Hills, FEGDI, and Fil-Estate Land, Inc**. (*FELI*) — the developer of the Forest Hills golf course. Vertex averred that the defendants defaulted in their obligation as sellers when they failed and refused to issue the stock certificate covering the Class "C" common share. It prayed for the rescission of the sale and the return of the sums it paid; it also claimed payment of actual damages for the defendants' unjustified refusal to issue the stock certificate.

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[4] Evidenced by a Deed of Absolute Sale dated February 11, 1999; *id*. at 36.

[5] Vertex's demand letters dated July 28, 2000 and March 17, 2001, both addressed to FEGDI; *id*. at 37.

[6] Docketed as Civil Case No. 68791; *id*. at 48-56.

Forest Hills denied transacting business with Vertex and claimed that it was not a party to the sale of the share; FELI claimed the same defense. While admitting that no stock certificate was issued, FEGDI alleged that Vertex nonetheless was recognized as a stockholder of Forest Hills and, as such, it exercised rights and privileges of one. FEGDI added that during the pendency of Vertex's action for rescission, a stock certificate was issued in Vertex's name,[7] but Vertex refused to accept it.

THE RTC RULING

In its March 1, 2007 decision,[8] the **Regional Trial Court (*RTC*) dismissed Vertex's complaint** after finding that the failure to issue a stock certificate did not constitute a violation of the essential terms of the contract of sale that would warrant its rescission. The RTC noted that the sale was already consummated notwithstanding the non-issuance of the stock certificate. The issuance of a stock certificate is a collateral matter in the consummated sale of the share; the stock certificate is not essential to the creation of the relation of a shareholder. Hence, the RTC ruled that the non-issuance of the stock certificate is a mere casual breach that would not entitle Vertex to rescind the sale.[9]

THE CA RULING

Vertex appealed the RTC's dismissal of its complaint. In its February 22, 2012 decision,[10] **the CA reversed the RTC**. It declared that "in the sale of shares of stock, physical delivery of a stock certificate is one of the essential requisites for the transfer of ownership of the stocks purchased."[11] It based its ruling on Section 63 of the Corporation Code,[12] which requires

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[7] Certificate of Stock No. C-0362 was issued by Forest Hills in Vertex's name on January 23, 2002; *id.* at 38.

[8] Penned by Judge Nicanor A. Manalo, Jr., RTC of Pasig City, Branch 161; *id.* at 173-179.

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

[10] *Supra* note 2.

[11] *Rollo,* p. 42.

[12] Sec. 63. Certificate of stock and transfer of shares. — The capital stock of stock corporations shall be divided into shares for which certificates

for a valid transfer of stock —

(1) the delivery of the stock certificate;

(2) the endorsement of the stock certificate by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and

(3) to be valid against third parties, the transfer must be recorded in the books of the corporation.

Without the issuance of the stock certificate and despite Vertex's full payment of the purchase price, the share cannot be considered as having been validly transferred. Hence, **the CA rescinded the sale of the share and ordered the defendants to return the amount paid by Vertex by reason of the sale.** The dispositive portion reads:

> WHEREFORE, in view of the foregoing premises, the appeal is hereby GRANTED and the March 1, 2007 Decision of the Regional Trial Court, Branch 161, Pasig City in Civil Case No. 68791 is hereby REVERSED AND SET ASIDE. Accordingly, **the sale of x x x one (1) Class "C" Common Share of Forest Hills Golf and Country Club is hereby rescinded** and **defendants-appellees are hereby ordered to return to Vertex Sales and Trading, Inc. the amount it paid by reason of the said sale**.[13] (emphasis ours)

The CA denied Forest Hills' motion for reconsideration in its resolution of May 31, 2012.[14]

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signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. *Shares of stock* so issued are personal property and **may be transferred by delivery of the certificate or certificates endorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation** showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. [emphases ours; italics supplied]

[13] *Rollo,* p. 45.

[14] *Supra* note 3.

THE PARTIES' ARGUMENTS

Forest Hills filed the present petition for review on *certiorari* to assail the CA rulings. It argues that rescission should be allowed only for substantial breaches that would defeat the very object of the parties making the agreement.

The delay in the issuance of the stock certificate could not be considered as a substantial breach, considering that Vertex was recognized as, and enjoyed the privileges of, a stockholder.

Forest Hills also objects to the CA ruling that required it to return the amount paid by Vertex for the share of stock. It claims that it was not a party to the contract of sale; hence, it did not receive any amount from Vertex which it would be obliged to return on account of the rescission of the contract.

In its comment to the petition,[15] Vertex disagrees and claims that its compliance with its obligation to pay the price and the other fees called into action the defendants' compliance with their reciprocal obligation to deliver the stock certificate, but the defendants failed to discharge this obligation. The defendants' three (3)-year delay in issuing the stock certificate justified the rescission of the sale of the share of stock. On account of the rescission, Vertex claims that mutual restitution should take place. It argues that Forest Hills should be held solidarily liable with FEGDI and FELI, since the delay was caused by Forest Hills' refusal to issue the share of FEGDI, from whom Vertex acquired its share.

THE COURT'S RULING

The assailed CA rulings (a) declared the rescission of the sale of one (1) Class "C" common share of Forest Hills to Vertex and (b) ordered the return by Forest Hills, FEGDI, and FELI to Vertex of the amount the latter paid by reason of the sale. While Forest Hills argues that the ruling rescinding the sale of the share is erroneous, its ultimate prayer was for the reversal

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[15] *Rollo*, pp. 192-211.

and setting aside of the ruling holding it liable to return the amount paid by Vertex for the sale.[16]

The Court finds Forest Hills' prayer justified.

Ruling on rescission of sale is a settled matter

At the outset, we declare that the question of rescission of the sale of the share is a settled matter that the Court can no longer review in this petition. While Forest Hills questioned and presented its arguments against the CA ruling rescinding the sale of the share in its petition, it is not the proper party to appeal this ruling.

As correctly pointed out by Forest Hills, it was not a party to the sale even though the subject of the sale was its share of stock. The corporation whose shares of stock are the subject of a transfer transaction (through sale, assignment, donation, or any other mode of conveyance) need not be a party to the transaction, as may be inferred from the terms of Section 63 of the Corporation Code. However, to bind the corporation as well as third parties, it is necessary that the transfer is recorded in the books of the corporation. In the present case, the parties to the sale of the share were FEGDI as the seller and Vertex as the buyer (after it succeeded RSACC). As party to the sale, FEGDI is the one who may appeal the ruling rescinding the sale. The remedy of appeal is available to a party who has "a present interest in the subject matter of the litigation and **[is] aggrieved or prejudiced by the judgment**. A party, in turn, is deemed aggrieved or prejudiced **when his interest, recognized by law in the subject matter of the lawsuit, is injuriously affected by the judgment, order or decree**."[17] The rescission of the sale does not in any way prejudice Forest Hills in such a manner that its interest in the subject matter — the share of stock — is injuriously affected. Thus, Forest Hills is in no position to appeal the ruling rescinding the sale of the share. Since FEGDI,

[16] *Id.* at 28.

[17] *Gabatin v. Land Bank of the Philippines*, 486 Phil. 366, 382 (2004). Citations omitted; emphases ours.

as party to the sale, filed no appeal against its rescission, we consider as final the CA's ruling on this matter.

Ruling on return of amounts paid by reason of the sale modified

The CA's ruling ordering the "return to [Vertex] the amount it paid by reason of the sale"[18] did not specify in detail what the amount to be returned consists of and it did not also state the extent of Forest Hills, FEGDI, and FELI's liability with regard to the amount to be returned. The records, however, show that the following amounts were paid by Vertex to Forest Hills, FEGDI, and FELI by reason of the sale:

Payee	Date of Payment	Purpose	Amount Paid
FEGDI	February 9, 1999	Purchase price for one (1) Class "C" Common share	₱780,000.00[19]
FEGDI	February 9, 1999	Transfer fee	₱60,000.00[20]
Forest Hills	**February 23, 1999**	**Membership fee**	**₱150,000.00**[21]
FELI	September 25, 2000	Documentary Stamps	₱6,300.00[22]
FEGDI	September 25, 2000	Notarial fees	₱200.00[23]

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[18] *Rollo*, p. 45.

[19] Covered by a receipt dated February 9, 1999 and admitted by FEGDI in its Answer; *id*. at 60-61.

[20] Covered by FEGDI's Official Receipt No. 45163 dated February 9, 1999 and admitted by FEGDI in its Answer; *id*. at 61.

[21] Covered by Forest Hills' Official Receipt Nos. 4386 and 4387, both dated February 23, 1999, and admitted by Forest Hills in its Amended Answer; *id*. at 86. *See* also TSN of June 4, 2004; *id*. at 122.

[22] Covered by FELI's Receipt dated September 25, 2000 and admitted by FELI in its Answer; *id*. at 62.

[23] Covered by FEGDI's Receipt No. 0499 dated September 25, 2000 and admitted by FEGDI in its Answer; *id*. at 51-52.

A necessary consequence of rescission is restitution: the parties to a rescinded contract must be brought back to their original situation prior to the inception of the contract; hence, they must return what they received pursuant to the contract.[24] Not being a party to the rescinded contract, however, Forest Hills is under no obligation to return the amount paid by Vertex by reason of the sale. Indeed, Vertex failed to present sufficient evidence showing that Forest Hills received the purchase price for the share or any other fee paid on account of the sale (other than the membership fee which we will deal with after) to make Forest Hills jointly or solidarily liable with FEGDI for restitution.

Although Forest Hills received ₱150,000.00 from Vertex as membership fee, it should be allowed to retain this amount. For three years prior to the rescission of the sale, the nominees of Vertex enjoyed membership privileges and used the golf course and the amenities of Forest Hills.[25] We consider the amount paid as sufficient consideration for the privileges enjoyed by Vertex's nominees as members of Forest Hills.

WHEREFORE, in view of the foregoing, the Court **PARTIALLY GRANTS** the petition for review on *certiorari*. The decision dated February 22, 2012 and the resolution dated May 31, 2012 of the Court of Appeals in CA-G.R. CV No. 89296 are hereby **MODIFIED.** Petitioner Forest Hills Golf & Country Club is **ABSOLVED** from liability for any amount paid by Vertex Sales and Trading, Inc. by reason of the rescinded sale of one (1) Class "C" common share of Forest Hills Golf & Country Club.

SO ORDERED.

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

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[24] See *Laperal v. Solid Homes, Inc*., 499 Phil. 367, 378 (2005).

[25] *Rollo*, pp. 38 and 42.

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Bernas, The Constitution of the Republic of the
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Noblejas, Land Titles and Deeds, 1986 Ed., p. 32 266
J. Cezar S. Sangco, Philippine Law on Torts and
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Friedenthal, Kane & Miller, Civil Procedure, West Group,
Hornbook Series, 2nd Edition, §6.3, p. 321 455-456

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Consolidation of cases — A procedural device to aid the court in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties; the rule allows the consolidation and a single trial of several cases in the court's docket, or the consolidation of issues within those cases; in legal procedure, the term "consolidation" is used in three different senses: 1) Where all except one of several actions are stayed until one is tried, in which case the judgment in the one trial is conclusive as to the others. (quasi-consolidation); 2) Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. (actual consolidation); 3) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. (consolidation for trial). (Rep. of the Phils. *vs*. Heirs of Enrique Oribello, Jr., G.R. No. 199501, March 06, 2013) p. 614

— The consolidation of reversion suit and the complaint for recovery of possession is merely for joint trial of the cases for while both involve common questions of law and fact, each action retains its separate and distinct character and require the rendition and entry of separate judgments; cases involving different issues and seeking different remedies require the rendition and entry of separate judgments; severance is within the sound discretion of the court for convenience or to avoid prejudice. *(Id.)*

Dismissal for failure to prosecute — Non-appearance of the party on the date of the hearing does not constitute a ground for the dismissal of the complaint, but should simply be construed as a waiver of the right to present additional evidence. (Rep. of the Phils. *vs*. Heirs of Enrique Oribello, Jr., G.R. No. 199501, March 06, 2013) p. 614

— Resort to dismissal of the complaint on the ground of plaintiff's failure to prosecute must be exercised with caution and determined according to the procedural history of each case, the situation at the time of the dismissal, and the diligence (or the lack thereof) of the plaintiff to proceed therein; in the absence of a pattern or scheme to delay the disposition of the case or of a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, courts should decide to dispense with rather than wield their authority to dismiss. *(Id.)*

— The termination of presentation of a party's evidence does not equate to dismissal of the complaint for failure to prosecute; the trial court merely "deemed" petitioner to have abandoned the case without stating expressly and unequivocally that the complaint for reversion was dismissed. *(Id.)*

— To be sufficient, delay must not only be lengthy but also unnecessary resulting in the trifling of court processes; there must be proof that petitioner intended to delay the proceedings in the case or abuse judicial processes. *(Id.)*

Dismissal of the action without prejudice — Plainly indicates that the re-filing of the petition is not barred; while the petition for review under Rule 43 is required to be filed within fifteen (15) days from notice of the award, judgment, final order or resolution or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo, the OSG, in the interest of substantial justice, may be granted a fresh period of fifteen (15) days within which to re-file the petition before the CA. (Rep. of the Phils. *vs*. Heirs of Enrique Oribello, Jr., G.R. No. 199501, March 06, 2013) p. 614

ADMINISTRATIVE CASES

Dishonesty — Incurred when an individual intentionally makes a false statement of any material fact, practicing or attempting to practice any deception or fraud in order to

secure his examination, registration, appointment, or promotion; implies the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; the disposition to defraud, deceive or betray; it is a malevolent act that puts serious doubt upon one's ability to perform his duties with the integrity and uprightness demanded of a public officer or employee; a grave offense under the Revised Uniform Rules on Administrative Cases in Civil Service, with the penalty of dismissal from the service at the first infraction. (Office of the Ombudsman *vs*. Bernardo, G.R. No. 181598, March 06, 2013) p. 524

Negligence — Defined as the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time, and of the place; in the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable. (Office of the Ombudsman *vs*. Bernardo, G.R. No. 181598, March 06, 2013) p. 524

Simple negligence — Committed by respondent who was able to successfully overcome the onus of demonstrating that he does not possess any unexplained wealth and that the omissions in his SALNs did not betray any sense of bad faith or the intent to mislead or deceive considering that he actually disclosed the extent of his and his wife's assets and business interests. (Office of the Ombudsman *vs*. Bernardo, G.R. No. 181598, March 06, 2013) p. 524

ADMINISTRATIVE PROCEEDINGS

Quantum of proof — The quantum of proof required for a finding of guilt is only substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and not proof beyond reasonable doubt which requires moral certainty to justify affirmative findings. (Office of the Ombudsman *vs*. Bernardo, G.R. No. 181598, March 06, 2013) p. 524

ALIBI

Defense of — An inherently weak defense because it is easy to fabricate and highly unreliable; to merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. (Escamilla *y* Jugo *vs*. People of the Phils., G.R. No. 188551, Feb. 27, 2013) p. 188

ANTI-MONEY LAUNDERING ACT OF 2001 (R.A. NO. 9160)

Freeze order — An extraordinary and interim relief issued by the Court of Appeals to prevent the dissipation, removal, or disposal of properties that are suspected to be the proceeds of, or related to, unlawful activities as defined in Section 3(i) of R.A. No. 9160, as amended; its primary objective is to temporarily preserve monetary instruments or property that are in any way related to an unlawful activity or money laundering, by preventing the owner from utilizing them during the duration of the freeze order; expounded. (Ret. Lt. Gen. Ligot *vs*. Rep. of the Phils., G.R. No. 176944, March 06, 2013) p. 477

— Requisites for issuance thereof based on Section 10 of R.A. No. 9160, as amended by R.A. No. 9194 are: (1) the application ex parte by the Anti-Money Laundering Council and (2) the determination of probable cause by the Court of Appeals. *(Id.)*

— The Rule in Civil Forfeiture Cases fixed the maximum allowable extension on the freeze order's effectivity at six months; before or upon the lapse of this period, the Republic should have already filed a case for civil forfeiture against the property owner with the proper courts and accordingly secure an asset preservation order or it should have filed the necessary information; otherwise, the property owner should already be able to fully enjoy his property without any legal process affecting it; the continued extension beyond the six-month period violated the right to due process. *(Id.)*

In relation to the rule in civil forfeiture cases — The Rule in Civil Forfeiture Cases came into effect on December 15, 2005; Section 59 thereof provides that it shall apply to all pending civil forfeiture cases or petitions for freeze order at the time of its effectivity. (Ret. Lt. Gen. Ligot *vs*. Rep. of the Phils., G.R. No. 176944, March 06, 2013) p. 477

Probable cause for issuance of freeze order — Refers to such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or a money laundering offense is about to be, is being or has been committed and that the account or any monetary instrument or property subject thereof sought to be frozen is in any way related to said unlawful activity and/or money laundering offense; the probable cause required for the issuance of a freeze order differs from the probable cause required for the institution of a criminal action. (Ret. Lt. Gen. Ligot *vs*. Rep. of the Phils., G.R. No. 176944, March 06, 2013) p. 477

— Refers to the sufficiency of the relation between an unlawful activity and the property or monetary instrument; Section 10 (allowing the extension of the freeze order) and Section 28 of RA No. 9160 (allowing a separate petition for the issuance of a freeze order to proceed independently) of the Rule in Civil Forfeiture Cases are consistent with the very purpose of the freeze order, which is to give the government the necessary time to prepare its case and to file the appropriate charges without having to worry about the possible dissipation of the assets related to the suspected illegal activity. *(Id.)*

APPEALS

Distinguished from a petition for certiorari as a special civil action — The remedies of appeal under Rule 41 and certiorari under Rule 65 of the Revised Rules of Civil Procedure are mutually exclusive and not alternative or successive; their simultaneous filing cannot be allowed since one remedy would necessarily cancel out the other. (Villamar-Sandoval *vs*. Cailipan, G.R. No. 200727, March 04, 2013) p. 312

Factual findings of labor officials — Factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality, and bind us when supported by substantial evidence. (Bankard, Inc. *vs*. NLRC, G.R. No. 171664, March 06, 2013) p. 428

Factual findings of labor tribunals — An established doctrine in labor cases is that factual questions are for labor tribunals to resolve; their consistent findings are binding and conclusive and will normally not be disturbed, since this Court is not a trier of facts. (Tegimenta Chemical Phils. *vs*. Oco, G.R. No. 175369, Feb. 27, 2013) p. 57

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. (Bankard, Inc. *vs*. NLRC, G.R. No. 171664, March 06, 2013) p. 428

Factual findings of the Sandiganbayan — Conclusive on the courts, subject to limited exceptions. (Flores *vs*. People of the Phils., G.R. No. 181354, Feb. 27, 2013) p. 119

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. (San Mateo *vs*. People of the Phils., G.R. No. 200090, March 06, 2013) p. 630

(Office of the Ombudsman *vs*. Bernardo, G.R. No. 181598, March 06, 2013) p. 524

(Heirs of Lorenzo Buensuceso *vs*. Perez, G.R. No. 173926, March 06, 2013) p. 460

(Philippine Plaza Holdings, Inc. *vs*. Episcope, G.R. No. 192826, Feb. 27, 2013) p. 210

— Question of who is entitled to the continued possession of the disputed lot involves factual issues and is not the proper subject of a Rule 45 petition; where the tribunals below conflict in their factual findings, exception to Rule 45 requirement. (Heirs of Lorenzo Buensuceso *vs*. Perez, G.R. No. 173926, March 06, 2013) p. 460

— When there is insufficient or insubstantial evidence on record to support the factual findings of the tribunal or court a quo, the Court, exceptionally, may review factual issues raised in a petition under Rule 45 in the exercise of its discretionary appellate jurisdiction. (Bankard, Inc. *vs*. NLRC, G.R. No. 171664, March 06, 2013) p. 428

Questions of fact — Fraud is a question of fact; whether there was fraud and misrepresentation in the issuance of the sales patent calls for a thorough evaluation of the parties' evidence; the reversion case was remanded to the trial court for further proceedings in order to resolve this issue. (Rep. of the Phils. *vs*. Heirs of Enrique Oribello, Jr., G.R. No. 199501, March 06, 2013) p. 614

Question of law distinguished from question of fact — A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted; a question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation. (Asian Terminals, Inc. *vs.* Simon Enterprises, Inc., G.R. No. 177116, Feb. 27, 2013) p. 83

Rules on appeal —The remedy of appeal is available to a party who has a present interest in the subject matter of the litigation and is aggrieved or prejudiced by the judgment; a party is deemed aggrieved or prejudiced when his interest, recognized by law in the subject matter of the lawsuit, is injuriously affected by the judgment, order or decree; the corporation whose shares of stock are the subject of a transfer transaction (through sale, assignment, donation, or any other mode of conveyance) need not be a party to the transaction, as may be inferred from the terms of Section 63 of the Corporation Code; however, to bind the corporation as well as third parties, it is necessary that the transfer is recorded in the books of the corporation. (Forest Hills Golf & Country Club *vs.* Vertex Sales and Trading, Inc., G.R. No. 202205, March 06, 2013) p. 678

ATTORNEYS

Duties — A lawyer is expected to champion the cause of his client with wholehearted fidelity, care, and devotion; lawyers should not be afraid of the possibility that they may displease the general public, however, they should only make defenses that are honestly debatable under the law; lawyers shall employ only fair and honest means to attain lawful objectives. (Trinidad *vs.* Atty. Villarin, A.C. No. 9310, Feb. 27, 2013) p. 1

Failure to comply with the lawful orders of the Committee on Bar Discipline — Failure to comply with the Committee on Bar Discipline's directives for respondent to file pleadings on time and to religiously attend hearings, demonstrates not only his irresponsibility but also his disrespect for the Judiciary and his fellow lawyers; such conduct was unbecoming of a lawyer who is called upon to obey court orders and processes and is expected to stand foremost in complying with court directives as an officer of the court. (Jinon *vs*. Atty. Jiz, A.C. No. 9615, March 05, 2013) p. 321

Misappropriation of client's funds — Failure to return upon demand the funds entrusted to the lawyer for a specific purpose, such as for the processing of transfer of land title, gives rise to the presumption that he has appropriated the same for his own use. (Jinon *vs*. Atty. Jiz, A.C. No. 9615, March 05, 2013) p. 321

Negligence in protecting the interest of his client — Committed when the lawyer, aside from sending the demand letter, failed to perform any other positive act in order to recover the transfer certificate of title of his client for more than a year. (Jinon *vs*. Atty. Jiz, A.C. No. 9615, March 05, 2013) p. 321

BOUNCING CHECKS LAW (B.P. BLG. 22)

Civil liability — An acquittal based on lack of proof beyond reasonable doubt does not preclude the award of civil damages; the total value of the checks plus 12% interest per annum from the time the said sum became due and demandable until fully paid, imposed. (San Mateo *vs*. People of the Phils., G.R. No. 200090, March 06, 2013) p. 630

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. (San Mateo *vs.* People of the Phils., G.R. No. 200090, March 06, 2013) p. 630

— It has been the consistent ruling of this Court that receipts for registered letters including return receipts do not themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letters, claimed to be a notice of dishonor. *(Id.)*

— Section 2 of B.P. Blg. 22 creates the presumption that the issuer of the check was aware of the insufficiency of funds when he issued a check and the bank dishonored it; this presumption arises only after it is proved that the issuer had received a written notice of dishonor and that, within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment. *(Id.)*

— Since there is insufficient proof that the accused actually received the notice of dishonor, the presumption that she knew of the insufficiency of her funds cannot arise; for this reason, the Court cannot convict her with moral certainty of violation of B.P. Blg. 22. *(Id.)*

— The issue of lack of valuable consideration for the issuance of checks which were later on dishonored for insufficient funds is immaterial to the success of a prosecution for violation of B.P. Blg. 22. *(Id.)*

— The issuer's requests for deferment of deposit of the checks which she issued otherwise her account will close, did not amount to an admission that, when she issued those checks, she knew that she would have no sufficient funds in the drawee bank to pay for them. *(Id.)*

CERTIORARI

Petition for — Only questions of law may be entertained by the Court in a petition for review on certiorari; exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. (Asian Terminals, Inc. *vs*. Simon Enterprises, Inc., G.R. No. 177116, Feb. 27, 2013) p. 83

CIVIL FORFEITURE

Application — Section 57 of the Rule in Civil Forfeiture cases explicitly provides the remedy available in cases involving freeze orders issued by the Court of Appeals; the petitioners should have filed a petition for review on certiorari and not a petition for certiorari, to assail the resolution extending the effectivity period of the freeze order over their properties. (Ret. Lt. Gen. Ligot *vs*. Rep. of the Phils., G.R. No. 176944, March 06, 2013) p. 477

CIVIL SERVICE

Dropping from the rolls — Section 2 (2.2), Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions (Memorandum Circular No. 40, Series of 1998) states the requisites when an official or employee may be dropped from the rolls: 1) the official or employee was rated poor in performance for one evaluation period;

2) the official or employee was notified in writing of the status of her performance not later than the 4th month of the rating period with sufficient warning that failure to improve her performance within the remaining period of the semester shall warrant her separation from the service; and 3) such notice contained adequate information that would enable her to prepare an explanation. (Atty. Manalang-Demigillo *vs*. Trade and Investment Devt.Corp. of the Phils. [TIDCORP], G.R. No. 168613, March 05, 2013) p. 331

Non-career classification — A coterminous employment falls under the non-career service classification of positions in the civil service, its tenure being limited or specified by law, or coterminous with that of the appointing authority, or at the latter's pleasure. (CSC *vs*. Pililla Water District, G.R. No. 190147, March 05, 2013) p. 378

Primarily confidential position — A position is considered to be primarily confidential when there is a primarily close intimacy between the appointing authority and the appointee, which ensures the highest degree of trust and unfettered communication and discussion on the most confidential of matters; functions of the position must not be routinary, ordinary and day to day in character; a position is not necessarily confidential though the one in office may sometimes hold confidential matters or documents. (CSC *vs*. Pililla Water District, G.R. No. 190147, March 05, 2013) p. 378

CIVIL SERVICE COMMISSION (CSC)

Rule-making power — Section 12, Book V, Title I-A of the 1987 Administrative Code empowers CSC to implement the civil service law and other pertinent laws, and to promulgate policies, standards and guidelines for the civil service; its rule-making power as a constitutional grant is an aspect of its independence as a constitutional commission, subject to the same limitations applicable to other administrative bodies; the rules that it formulates must not override, but must be in harmony with, the law it seeks to apply and implement. (Trade and Investment Devt.Corp. of the Phils. *vs*. CSC, G.R. No. 182249, March 05, 2013) p. 357

COLLECTIVE BARGAINING AGREEMENT (CBA)

Interpretation of — A resolution made according to grievance procedure outlined in the Collective Bargaining Agreement is not a modification; it only provides for the proper implementation of the CBA provision. (Octavio *vs*. PLDT Co., G.R. No. 175492, Feb. 27, 2013) p. 69

— Under Article 260 of the Labor Code, grievances arising from the interpretation or implementation of the parties' CBA should be resolved in accordance with the grievance procedure embodied therein; all unsettled grievances shall be automatically referred for voluntary arbitration as prescribed in the CBA. *(Id.)*

— When parties have validly agreed on a procedure for resolving grievances and to submit a dispute to voluntary arbitration then that procedure should be strictly observed; before a party is allowed to seek the intervention of the court, it is a precondition that he should have availed of all the means of administrative processes afforded him; the premature invocation of the court's judicial intervention is fatal to one's cause of action. *(Id.)*

COMMON CARRIERS

Presumption of negligence — Though common carriers are presumed to have been at fault or to have acted negligently if the goods transported by them are lost, destroyed, or deteriorated, and the common carrier must prove that it exercised extraordinary diligence in order to overcome the presumption, the plaintiff must still, before the burden is shifted to the defendant, prove that the subject shipment suffered actual shortage; this can only be done if the weight of the shipment at the port of origin and its subsequent weight at the port of arrival have been proven by a preponderance of evidence, and the former weight is considerably greater than the latter weight, taking into consideration the exceptions provided in Article 1734 of the Civil Code. (Asian Terminals, Inc. *vs*. Simon Enterprises, Inc., G.R. No. 177116, Feb. 27, 2013) p. 83

COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657)

Certificate of land transfer — Any sale or disposition of agricultural lands made after the effectivity of R.A. No. 6657 which has been found contrary to its provisions shall be null and void. (Heirs of Lorenzo Buensuceso *vs*. Perez, G.R. No. 173926, March 06, 2013) p. 460

— Mere issuance of this certificate does not vest full ownership on the holder and does not automatically operate to divest the landowner of all of his rights over the landholding; under R.A. No. 6657 in relation with P.D. No. 27 and E.O. No. 228, requirements before the title to the landholding shall be issued to the tenant-farmer: 1) payment in full of the just compensation for the landholding, duly determined by final judgment of the proper court; 2) possession of the qualifications of a farmer-beneficiary under the law; 3) full-pledged membership of the farmer-beneficiary in a duly recognized farmers' cooperative; and 4) actual cultivation of the landholding. *(Id.)*

— While the landowner retained an interest over the disputed lot, failure of the CLT holder to comply with his obligations did not automatically result in the cancellation of the CLT nor reversion of the lot to the landowner; lands acquired under P.D. No. 27 do not revert to the landowner but must be transferred back to the government and the landowner could not, by himself, institute the new tenant-beneficiary. *(Id.)*

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operations — Section 86 of R.A. No. 9165 requires the National Bureau of Investigation, Philippine National Police and the Bureau of Customs to maintain close coordination with the Philippine Drug Enforcement Agency (PDEA) on all drug-related matters, but it does not make PDEA's participation a condition sine qua non for every buy-bust operation; a buy-bust is a form of an in flagrante arrest

sanctioned by Section 5, Rule 113 of the Rules of the Court. (People of the Phils. *vs*. Adrid *y* Flores, G.R. No. 201845, March 06, 2013) p. 654

— The absence of a prior surveillance is neither a necessary requirement for the validity of a drug-related entrapment or buy-bust operation nor detrimental to the People's case; the immediate conduct of the buy-bust routine is within the discretion of the police officers, especially when accompanied by the informant in the conduct of the operation; no rigid or textbook method of conducting buy-bust operations. *(Id.)*

— The delivery of the contraband to the poseur-buyer and the seller's receipt of the marked money successfully consummate the buy-bust transaction between the entrapping officers and the accused; unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve faith and credit. (People of the Phils. *vs*. Judge Lagos, G.R. No. 184658, March 06, 2013) p. 570

— The fact that it was the confidential informant who initially provided the information or "tip" does not negate the subsequent consummation of the illegal sale of drugs, where the arrest was made, not on the basis of that information, but of the actual buy-bust operation in which the violator is caught *in flagrante delicto*; the police officers conducting a buy-bust operation are not only authorized but also duty-bound to apprehend the violators and to search them for anything that may have been part of or used in the commission of the crime. *(Id.)*

— The validity of buy-bust transactions as an effective way of apprehending drug dealers in the act of committing an offense is well-settled. *(Id.)*

Chain of custody rule — Consistency with the chain of custody rule requires that the marking of the seized items should be done; 1) in the presence of the apprehended violator;

2) immediately upon confiscation. (People of the Phils. *vs*. Secreto *y* Villanueva, G.R. No. 198115, Feb. 27, 2013) p. 274

— Failure of arresting officers to: 1) make a physical inventory of the seized items; 2) take photographs of the items; and 3) establish that a representative each from the media and the Department of Justice, and any elected public official had been contacted and were present during the marking of the items are lapses that effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. *(Id.)*

— In authenticating narcotic specimens, a standard more stringent than that applied to objects which are readily identifiable must be applied—a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or contaminated or tampered with; expounded. (People of the Phils. *vs*. Adrid *y* Flores, G.R. No. 201845, March 06, 2013) p. 654

— The Court has stressed the need for strict adherence to the custodial chain process; reason, explained in *People vs. Obmiranis*; Section 21 of R.A. No. 9165 materially requires the apprehending team having initial custody and control of the drugs to, 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, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; the same requirements are found in Section 2 of its Implementing Rules and in Section 2 of the Dangerous Drugs Board Regulation No. 1, s. 2002. *(Id.)*

— The dangerous drug itself forms an integral and key part of the *corpus delicti* of the offense of possession or sale of prohibited drugs; the identity of the prohibited drug must be established beyond reasonable doubt; the chain of custody requirement ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed; the mechanics of the requirement described in People *vs*. Cervantes. *(Id.)*

— The failure of the prosecution to provide each and every link in the chain of custody runs contrary to the rule that the *corpus delicti* should be identified with unwavering exactitude. *(Id.)*

— The prosecution's own misgivings created a reasonable doubt on the integrity of the drugs presented in court, and necessarily strongly argue against a finding of guilt; as stated in *Malillin vs. People*, "When moral certainty as to culpability hands in the balance, acquittal on reasonable doubt inevitably becomes a matter of right." *(Id.)*

— Where the procedure thereon is not observed, it is necessary for the prosecution to show that the integrity and evidentiary value of the confiscated items are nonetheless preserved. (People of the Phils. *vs*. Secreto *y* Villanueva, G.R. No. 198115, Feb. 27, 2013) p. 274

Illegal possession of dangerous drugs — Elements are: 1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. (People of the Phils. *vs*. Diwa *y* Gutierrez, G.R. No. 194253, Feb. 27, 2013) p. 240

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*. Secreto *y* Villanueva, G.R. No. 198115, Feb. 27, 2013) p. 274

(People of the Phils. *vs*. Diwa *y* Gutierrez, G.R. No. 194253, Feb. 27, 2013) p. 240

Prosecution for violation of — Testimony of the confidential informant is not indispensable for the prosecution of drug cases, since it would be merely corroborative of and cumulative with that of the poseur-buyer who was presented in court and testified on the facts and circumstances of the sale and delivery of the prohibited drug except; when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers; or there are reasons to believe that the officers had motives to falsely testify against the accused; or that it was the informant who acted as the poseur-buyer. (People of the Phils. *vs*. Judge Lagos, G.R. No. 184658, March 06, 2013) p. 570

CONSPIRACY

Existence of — Conspiracy may be deduced from the mode, method, and manner in which the offense was perpetrated; or inferred from the acts of the accused when those acts point to a joint purpose and design, concerted action, and community of interests; proof of a previous agreement and decision to commit the crime is not essential, but the fact that the malefactors acted in unison pursuant to the same objective suffices. (People of the Phils. *vs*. Pondivida, G.R. No. 188969, Feb. 27, 2013) p. 201

CONTRACTS

Construction — The plain language and literal interpretation must be applied. (Star Two [SPV-AMC], Inc. *vs.* Paper City Corporation of the Phils., G.R. No. 169211, March 06, 2013) p. 408

Rescission of contracts — A necessary consequence of rescission is restitution: the parties to a rescinded contract must be brought back to their original situation prior to the inception of the contract, hence, they must return what they received pursuant to the contract; petitioner is not liable for

restitution, not being a party to the rescinded contract. (Forest Hills Golf & Country Club *vs*. Vertex Sales and Trading, Inc., G.R. No. 202205, March 06, 2013) p. 678

— Does not merely terminate the contract and release the parties from further obligations to each other, but abrogates the contract from its inception and restores the parties to their original positions as if no contract has been made; mutual restitution entails the return of the benefits that each party may have received as a result of the contract. (Gotesco Properties, Inc. *vs*. Sps. Fajardo, G.R. No. 201167, Feb. 27, 2013) p. 294

CORPORATIONS

Corporate officers — In the absence of malice and bad faith, they cannot be made personally liable for liabilities of the corporation which, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members. (Gotesco Properties, Inc. *vs*. Sps. Fajardo, G.R. No. 201167, Feb. 27, 2013) p. 294

Doctrine of piercing the veil of corporate fiction —In order to hold the officer personally liable for the debts of the corporation and thus pierce the veil of corporate fiction, his bad faith must first be established clearly and convincingly; the Court refused to allow the execution of a corporate judgment debt against the general manager of the corporation, since he is not the owner of the corporate property. (*Vda. de* Roxas *vs*. Our Lady's Foundation, Inc., G.R. No. 182378, March 06, 2013) p. 545

Doctrine of separate juridical personality — Since the corporation's general manager was not a party to the case, he cannot be held personally liable for the obligation of the corporation; a corporation is a juridical entity with a legal personality separate and distinct from those acting for and on its behalf and, in general, of the people comprising it; the obligations incurred by the corporation, acting through its officers, are its sole liabilities. (*Vda. de* Roxas *vs*. Our Lady's Foundation, Inc., G.R. No. 182378, March 06, 2013) p. 545

COURT PERSONNEL

Administrative complaint against court personnel — Complainant must be able to prove the allegations in the complaint with substantial evidence; the Court does not give credence to charges based on mere suspicion and speculation; in the absence of evidence to the contrary, it is presumed that the respondent has regularly performed his duties. (*Re*: Missing Exhibits and Court Properties in RTC, Br. 4, Panabo City, Davao Del Norte, A.M. No. 10-2-41-RTC, Feb. 27, 2013) p. 8

COURTS

Powers and duties — As stated in Section 5(g) of Rule 135, every court shall have the inherent power to amend and control its processes and orders, so as to make them conformable to law and justice; this power includes the right to reverse itself, especially when in its honest opinion it has committed an error or mistake in judgment, and that to adhere to its decision will cause injustice to a party-litigant. (Tegimenta Chemical Phils. *vs.* Oco, G.R. No. 175369, Feb. 27, 2013) p. 57

DAMAGES

Actual damages — Adequate compensation is awarded only if the pecuniary loss suffered is proven by competent proof and by the best evidence obtainable showing the actual amount of loss; only expenses supported by receipts, and not merely a list thereof, are allowed as bases for the award of actual damages. (Gonzales *vs.* Camarines Sur II Electric Cooperative, Inc., G.R. No. 181096, March 06, 2013) p. 511

Exemplary damages — Art. 2229 of the Civil Code provides that exemplary damages may be imposed by way of example or correction for the public good; exemplary damages are imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions. (Senador *vs.* People of the Phils., G.R. No. 201620, March 06, 2013) p. 640

Temperate damages — Article 2224 of the Civil Code provides that temperate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty; even if the pecuniary loss suffered by the claimant is capable of proof, an award of temperate damages is not precluded; the grant thereof is drawn from equity to provide relief to those definitely injured. (Gonzales *vs*. Camarines Sur II Electric Cooperative, Inc., G.R. No. 181096, March 06, 2013) p. 511

— Even if the claim was raised only for the first time on appeal and, hence, generally not cognizable by the Supreme Court, it nevertheless gave due course to newly raised questions that are closely related to or dependent on an assigned error; as an illustrative case, *Viron Transportation Co., Inc. vs. Delos Santos,* cited. *(Id.)*

DECISION

Validity of — That the *ponente* and some members of the deciding division of the Sandiganbayan were not present during the trial, does not invalidate the decision; the validity of a decision is not necessarily impaired by the fact that the *ponente* only took over from a colleague who had earlier presided at the trial, unless there is a showing of grave abuse of discretion in the factual findings reached by him; the Sandiganbayan, which functions in divisions of three Justices each, is a collegial body which arrives at its decisions only after deliberation, the exchange of view and ideas, and the concurrence of the required majority vote. (Flores *vs*. People of the Phils., G.R. No. 181354, Feb. 27, 2013) p. 119

DEMURRER TO EVIDENCE

Grant of — Tantamount to an acquittal; an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal; this rule is not without exception; the rule on double jeopardy is subject to the exercise of judicial review by way of the extraordinary writ

of certiorari under Rule 65 of the Rules of Court. (People of the Phils. *vs*. Judge Lagos, G.R. No. 184658, March 06, 2013) p. 570

— The grant of the demurrer was not supported by prevailing jurisprudence and constituted grave abuse of discretion in case at bar; the prosecution's evidence was prima facie sufficient to prove the criminal charges filed against respondents, subject to the defenses they may present in the course of a full-blown trial. *(Id.)*

DENIAL AND FRAME-UP

Defenses of — Invariably viewed with disfavor by this Court for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act. (People of the Phils. *vs*. Fernandez *y* Hertez *a.k.a.* "Debon," G.R. No. 188841, March 06, 2013) p. 583

DISMISSAL OF ACTIONS

Dismissal for failure to prosecute — Non-appearance of the party on the date of the hearing does not constitute a ground for the dismissal of the complaint, but should simply be construed as a waiver of the right to present additional evidence. (Rep. of the Phils. *vs*. Heirs of Enrique Oribello, Jr., G.R. No. 199501, March 06, 2013) p. 614

— Resort to dismissal of the complaint on the ground of plaintiff's failure to prosecute must be exercised with caution and determined according to the procedural history of each case, the situation at the time of the dismissal, and the diligence (or the lack thereof) of the plaintiff to proceed therein; in the absence of a pattern or scheme to delay the disposition of the case or of a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, courts should decide to dispense with rather than wield their authority to dismiss. *(Id.)*

— Termination of presentation of a party's evidence does not equate to dismissal of the complaint for failure to prosecute; the trial court merely "deemed" petitioner to

have abandoned the case without stating expressly and unequivocally that the complaint for reversion was dismissed. *(Id.)*

— To be a sufficient ground for dismissal, delay must not only be lengthy but also unnecessary resulting in the trifling of court processes; there must be proof that petitioner intended to delay the proceedings in the case or abuse judicial processes. *(Id.)*

Dismissal of the action without prejudice — Plainly indicates that the re-filing of the petition is not barred; while the petition for review under Rule 43 is required to be filed within fifteen (15) days from notice of the award, judgment, final order or resolution or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo, the OSG, in the interest of substantial justice, may be granted a fresh period of fifteen (l5) days within which to re-file the petition before the CA. (Rep. of the Phils. *vs*. Heirs of Cecilio and Moises Cuizon, G.R. No. 191531, March 06, 2013) p. 596

EMPLOYER-EMPLOYEE RELATIONSHIP

Management prerogatives — For abandonment to exist, two factors must be present: (1) the failure to report for work or absence without a valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts; mere absence of an employee is not sufficient to constitute abandonment; the employer has the burden of proof to show the deliberate and unjustified refusal of the employee to resume the latter's employment without any intention of returning. (Tegimenta Chemical Phils. *vs*. Oco, G.R. No. 175369, Feb. 27, 2013) p. 57

Prohibition against diminution of benefits — Even assuming that there has been a diminution of benefits on the part of an employee, Article 100 of the Labor Code does not prohibit a union from offering agreeing to reduce wages and benefits of the employees as the right to free collective bargaining includes the right to suspend it; bargaining should not be equated to an adversarial litigation where rights and obligations are delineated and remedies applied; instead, it covers a process of finding a reasonable and acceptable solution to stabilize labor-management relations to promote stable industrial peace. (Octavio *vs.* PLDT Co., G.R. No. 175492, Feb. 27, 2013) p. 69

EMPLOYMENT, TERMINATION OF

Abandonment of work as a ground — Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts; for abandonment to be appreciated, there must be a "clear, wilful, deliberate, and unjustified refusal of the employee to resume employment"; intention to leave work not present with the mere asking for separation pay after being told not to report for work anymore; it is a mere exercise of option under Article 279 of the Labor Code, which entitles the employee to either reinstatement and back wages or payment of separation pay. (Tegimenta Chemical Phils. *vs.* Oco, G.R. No. 175369, Feb. 27, 2013) p. 57

— For abandonment to exist, two factors must be present: (1) the failure to report for work or absence without a valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts; mere absence of an employee is not sufficient to constitute abandonment; the employer has the burden of proof to show the deliberate and unjustified refusal of the employee to resume the latter's employment without any intention of returning. *(Id.)*

Loss of trust and confidence as a ground — Proof beyond reasonable doubt is not required in dismissing an employee on the ground of loss of trust and confidence; only substantial evidence is required; it is sufficient that there lies some basis to believe that the employee concerned is responsible for the misconduct and that the nature of the employee's participation therein rendered him absolutely unworthy of trust and confidence demanded by his position. (Philippine Plaza Holdings, Inc. *vs.* Episcope, G.R. No. 192826, Feb. 27, 2013) p. 210

— Under Article 296 (c) (formerly Article 282 [c] of the Labor Code), an employer may terminate the services of an employee for fraud or willful breach of the trust reposed in him; requirements: 1) the employee concerned must be holding a position of trust and confidence and 2) there must be an act that would justify the loss of trust and confidence; two classes of positions of trust: 1) managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; and 2) fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. *(Id.)*

ESTOPPEL

Doctrine of — Unjustified failure to act within a reasonable time to question an invalidity constitutes estoppel and waiver to question its defect or invalidity; mortgagors desiring to attack a mortgage as invalid should act with reasonable promptness, and unreasonable delay may amount to ratification. (Sps. Ramos *vs.* Obispo, G.R. No. 193804, Feb. 27, 2013) p. 221

EVIDENCE

Admission of guilt — In criminal cases except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as implied admission of guilt. (Senador *vs*. People of the Phils., G.R. No. 201620, March 06, 2013) p. 640

Allegation of fraud — He who alleges fraud or mistake affecting a transaction must substantiate his allegation by clear and convincing evidence, since it is presumed that a person takes ordinary care of his concerns and that private transactions have been fair and regular. (Sps. Ramos *vs*. Obispo, G.R. No. 193804, Feb. 27, 2013) p. 221

Burden of proof — In civil cases, basic is the rule that the party making allegations has the burden of proving them by a preponderance of evidence; parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent; the principle equally holds true, even if the defendant had not been given the opportunity to present evidence because of a default order. (Sps. Ramos *vs*. Obispo, G.R. No. 193804, Feb. 27, 2013) p. 221

— Nothing less than evidence of criminal culpability beyond reasonable doubt can overturn the presumption of innocence; the onus of proving the guilt of the accused lies with the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense. (People of the Phils. *vs*. Adrid *y* Flores, G.R. No. 201845, March 06, 2013) p. 654

Circumstantial evidence — There may be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime; this is

the second type of positive identification forming part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion that the accused is the author of the crime to the exclusion of all others. (People of the Phils. *vs*. Pondivida, G.R. No. 188969, Feb. 27, 2013) p. 201

Factual findings of trial court — Findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are accorded great weight; this is because the trial judge has the distinct advantage of closely observing the demeanor of the witnesses, as well as the manner in which they testify, and is in a better position to determine whether or not they are telling the truth. (People of the Phils. *vs*. Diwa *y* Gutierrez, G.R. No. 194253, Feb. 27, 2013) p. 240

Preponderance of evidence — The weight, credit, and value of the aggregate evidence on either side and is usually considered synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence;" a phrase which means probability of the truth; evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto. (Sps. Ramos *vs*. Obispo, G.R. No. 193804, Feb. 27, 2013) p. 221

EXECUTIVE DEPARTMENT

Doctrine of qualified political agency — Postulates that the heads of the various executive departments are the alter egos of the President, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts; in our presidential form of government, all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. (Atty. Manalang-Demigillo *vs*. Trade and Investment Devt.Corp. of the Phils. [TIDCORP], G.R. No. 168613, March 05, 2013) p. 331

EXEMPLARY DAMAGES AND ATTORNEY'S FEES

Award of — In order to obtain exemplary damages, the claimant must prove that the assailed actions of the defendant are not just wrongful, but also wanton, fraudulent, reckless, oppressive or malevolent; the award of attorney's fees shall be given if exemplary damages are awarded; or if the defendant acted in gross and evident bad faith in refusing to satisfy a valid, just and demandable claim. (Gonzales *vs*. Camarines Sur II Electric Cooperative, Inc., G.R. No. 181096, March 06, 2013) p. 511

FRAME-UP, DENIAL, OR ALIBI

Defenses of — Frame-up, denial, or alibi, more particularly when based on the testimony of accused alone, is an inherently weak form of defense; viewed with disfavor for it can easily be concocted and is a common defense plot in most prosecutions for violations of anti-drug laws; bare denial of an accused cannot prevail over the positive assertions of apprehending police operatives, absent ill motives on the part of the latter to impute such a serious crime as possession or selling of prohibited drugs. (People of the Phils. *vs*. Adrid y Flores, G.R. No. 201845, March 06, 2013) p. 654

GOVERNMENT INFRASTRUCTURE PROJECTS BY PROHIBITING LOWER COURTS FROM ISSUING TROs, PRELIMINARY INJUNCTIONS OR PRELIMINARY MANDATORY INJUNCTIONS, AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF (R.A. NO. 8975)

Prohibition for judges — The governing law as regards the prohibition to issue restraining orders and injunctions against government infrastructure projects is R.A. No. 8975, which modified P.D. No. 1818; should a judge violate the preceding section, R.A. No. 8975 provides a penalty; the prohibition covers only judges, and does not apply to the National Commission on Indigenous Peoples (NCIP) or its hearing officers; in this respect, R.A. No. 8975 conforms to the coverage of P.D. No. 605 and

P.D. No. 1818, both of which enjoin only the courts. (Baguio Regreening Movement, Inc. *vs*. Atty. Masweng, G.R. No. 180882, Feb. 27, 2013) p. 103-104

HOMICIDE

Elements — The intent to kill, as an essential element of homicide at whatever stage, may be before or simultaneous with the infliction of injuries; the evidence to prove intent to kill may consist of, inter alia, the means used; the nature, location and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of, or immediately after the killing of the victim. (Escamilla *y* Jugo *vs*. People of the Phils., G.R. No. 188551, Feb. 27, 2013) p. 188

INFORMATION

Formal defect in — Error in the designation of the offended party in the information is immaterial and did not violate the constitutional right of the accused to be informed of the nature and cause of the accusation against her since the subject matter of the offense was specific and sufficiently identified. (Senador *vs*. People of the Phils., G.R. No. 201620, March 06, 2013) p. 640

— In offenses against property, if the subject matter of the offense is generic and not identifiable, such as money unlawfully taken, an error in the designation of the offended party is fatal and would result in the acquittal of the accused; however, if the subject matter of the offense is specific and identifiable, such as a warrant or a check, an error in the designation of the offended party is immaterial. *(Id.)*

— Variance between the allegations of the information and the evidence offered by the prosecution does not of itself entitle the accused to an acquittal, more so if the variance relates to the designation of the offended party, a mere formal defect, which does not prejudice the substantial rights of the accused; in a crime against property that does not absolutely require as indispensable the proper

designation of the name of the offended party, what is absolutely necessary is the correct identification of the criminal act charged in the information; Rule 110, Sec. 12 of the Rules of Court mandates the correction of the information, not its dismissal. *(Id.)*

JUDGES

Administrative complaint against — The conviction of the judge for indirect contempt was procedurally defective because he was not afforded an opportunity to rebut the contempt charges against him; while the essence of due process consists in giving the parties an opportunity to be heard, it also entails that when the party concerned has been so notified and thereafter complied with such notification by explaining his side, it behooves the court to admit the explanation and duly consider it in resolving the case. (Hon. Belen *vs*. Comilang, G.R. No. 184487, Feb. 27, 2013) p. 165

Discipline of — The Office of the Court Administrator (OCA) is divested of its right to institute a new administrative case against a judge after his compulsory retirement; the remedy is to file the appropriate civil or criminal case against the judge for the alleged transgression; in order for the Court to acquire jurisdiction over an administrative case, the complaint must be filed during the incumbency of the respondent because once jurisdiction is acquired, it is not lost by reason of respondent's cessation from office. (*Re*: Missing Exhibits and Court Properties in RTC, Br. 4, Panabo City, Davao Del Norte, A.M. No. 10-2-41-RTC, Feb. 27, 2013) p. 8

— Under Section 1 of Rule 140 of the Rules of Court, anonymous complaints may be filed against judges, but they must be supported by public records of indubitable integrity; courts have acted in such instances needing no corroboration by evidence to be offered by the complainant. (Anonymous *vs*. Judge Achas, A.M. No. MTJ-11-1801(Formerly OCA IPI No. 11-2438 MTJ), Feb. 27, 2013) p. 17

Duties of — Under the 1987 Constitution, trial judges are mandated to decide and resolve cases within 90 days from submission for decision or resolution; this mandate also applies to motions or interlocutory matters or incidents pending before the magistrate; corollary, Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary requires judges to perform all judicial duties efficiently, fairly, and with reasonable promptness. (OCAD *vs*. Judge Fuentes III, A.M. No. RTJ-13-2342 [Formerly: A.M. No. 11-8-152-RTC], March 06, 2013) p. 400

Gross inefficiency — An inexcusable failure to decide a case within the prescribed 90-day period constitutes gross inefficiency, warranting the imposition of administrative sanctions such as suspension from office without pay or fine on the defaulting judge; the fines imposed vary in each case, depending chiefly on the number of cases not decided within the reglementary period and other factors, such as the presence of aggravating or mitigating circumstances, the damage suffered by the parties as a result of the delay, the health and age of the judge, and other analogous circumstances. (OCAD *vs*. Judge Fuentes III, A.M. No. RTJ-13-2342 [Formerly: A.M. No. 11-8-152-RTC], March 06, 2013) p. 400

Integrity and propriety — Judges' personal behavior outside the court, and not only while in the performance of his official duties, must be beyond reproach; not commendable, proper or moral for a judge to be perceived as going out with a woman not his wife; judges should avoid mingling with a crowd of cockfighting enthusiasts and bettors. (Anonymous *vs*. Judge Achas, A.M. No. MTJ-11-1801[Formerly OCA IPI No. 11-2438 MTJ], Feb. 27, 2013) p. 17

Judgment of dismissal from service in administrative case — A judge's dismissal from service cannot bar a review of his conviction for indirect contempt; a single act may offend against two or more distinct and related provisions of law and thus give rise to criminal as well as administrative

liability; an administrative and criminal proceeding are both distinct and independent from the other such that the disposition in one case does not inevitably govern the resolution of the other case/s and vice versa. (Hon. Belen *vs*. Comilang, G.R. No. 184487, Feb. 27, 2013) p. 165

Reduction of penalty of fine — Proper, considering that this is the first infraction of the judge in his more than 15 years in service and he exerted earnest effort to fully comply with the directives of the Court as contained in the resolution. (OCAD *vs*. Judge Fuentes III, A.M. No. RTJ-13-2342 [Formerly: A.M. No. 11-8-152-RTC], March 06, 2013) p. 400

JUDGMENT, ANNULMENT OF

Petition — It is incumbent that when a court finds no substantial merit in a petition for annulment of judgment, it may dismiss the petition outright but the "specific reasons for such dismissal" shall be clearly set out, as stated in Section 5, Rule 47 of the Rules of Court. (Castigador *vs*. Nicolas, G.R. No. 184023, March 04, 2013) p. 306

— Need not categorically state the exact words extrinsic fraud; rather, the allegations in the petition should be so crafted to easily point out the ground on which it was based; fraud is extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. *(Id.)*

— The Court is not in the proper position to determine the veracity and validity of allegations that entail a factual assessment of the records; where the petition was summarily dismissed, the case should be remanded to the Court of Appeals for further proceedings. *(Id.)*

JUDGMENTS

Execution of RTC judgment — The execution of the RTC judgment cannot be considered as a supervening event that would automatically moot the issues in the appealed case for

accion publiciana, which is pending before the Court of Appeals; Section 5, Rule 39 of the Rules of Court provides that for cases of reversal or annulment of an executed judgment, there should be restitution or reparation as warranted by justice and equity. (Diaz Carpio *vs.* CA, G.R. No. 183102, Feb. 27, 2013) p. 153

Writ of execution — Since the writ of execution was manifestly void for having been issued without compliance with the rules, it is without any legal effect; it is as if no writ was issued at all; consequently, all actions taken pursuant to the void writ of execution must be deemed to have not been taken and to have had no effect. (Diaz Carpio *vs.* CA, G.R. No. 183102, Feb. 27, 2013) p. 153

JUSTIFYING CIRCUMSTANCES

Self-defense — The most important element is unlawful aggression; there can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense; unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person; it presupposes actual, sudden, unexpected or imminent danger — not merely threatening and intimidating action. (Flores *vs.* People of the Phils., G.R. No. 181354, Feb. 27, 2013) p. 119

— To successfully claim self-defense, the accused must satisfactorily prove the concurrence of its elements; under Article 11 of the Revised Penal Code, any person who acts in defense of his person or rights does not incur any criminal liability provided that the following circumstances concur: 1) unlawful aggression; 2) reasonable necessity of the means employed to prevent or repel it; and 3) lack of sufficient provocation on the part of the person defending himself. *(Id.)*

— Unlawful aggression ceased when the perceived threat to life was no longer attendant so the defender no longer has any justification to kill or wound the original aggressor; the means employed by a person claiming self-defense must be commensurate to the nature and the extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression; retaliation distinguished from self-defense. *(Id.)*

LAND REGISTRATION

Claim of ownership — Documentary evidence consisting of muniments of title, tax declarations and realty payments which were not disputed by petitioner, and the testimony as regards the actual possession for more than 30 years sufficiently proved that respondent and his predecessors-in-interest were in open, continuous, exclusive, and notorious possession of the subject realties, as required by our registration laws. (Rep. of the Phils. *vs*. Ng, G.R. No. 182449, March 06, 2013) p. 556

Innocent purchaser for value — A person dealing in registered land has the right to rely on the Torrens Certificate of Title and to dispense with the need of inquiring further, except when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry; a transferee who acquires the property covered by a reissued owner's copy of the certificate of title without taking the ordinary precautions of honest persons in doing business and examining the records of the proper Registry of Deeds, or who fails to pay the full market value of the property is not considered an innocent purchaser for value. (Sps. Cusi *vs*. Domingo, G.R. No. 195825, Feb. 27, 2013) p. 255

— Purchasers have the clear obligation to purchase the property not only in good faith but also for value; a purchaser in good faith is one who buys the property of another without notice that some other person has a right to, or interest in, such property and pays full and fair price for the same. *(Id.)*

MORAL DAMAGES

Award of — Petitioners are entitled to moral damages, since they adduced proof of moral suffering, mental anguish, fright and the like; in *Danao v. Court of Appeals*, the Court ruled that "the fairness of the award of damages by the trial court also calls for an appellate determination such that where the award of moral damages is far too excessive compared to the actual losses sustained by the claimants, the former may be reduced." (Gonzales *vs*. Camarines Sur II Electric Cooperative, Inc., G.R. No. 181096, March 06, 2013) p. 511

MORTGAGES

Accommodation mortgage — Intent, being a state of mind, is rarely susceptible of direct proof and must ordinarily be inferred from the parties' circumstances, conduct and unguarded expressions; while the the facts, as narrated by petitioner-spouses, are beyond the normal occurrence of events, their unwavering testimonies, both on direct and cross-examination, suffice to establish their claims. (Sps. Ramos *vs*. Obispo, G.R. No. 193804, Feb. 27, 2013; *Sereno, C.J., dissenting opinion*) p. 221

— The validity of an accommodation mortgage is allowed under Article 2085 of the Civil Code which provides that "third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property;" an accommodation mortgagor, ordinarily, is not himself a recipient of the loan. (Sps. Ramos *vs*. Obispo, G.R. No. 193804, Feb. 27, 2013) p. 221

— Validity upheld in the absence of evidence of irregularity in its execution; it is not always necessary that the accommodation mortgagor be apprised beforehand of the entire amount of the loan nor should it first be determined before the execution of the Special Power of Attorney in favor of the debtor; this is especially true when the words used by the parties indicate that the mortgage serves as a continuing security for credit obtained as well as future loan availments. *(Id.)*

Mortgage contract — The bank failed to exercise the extraordinary diligence required from it as a banking institution; the bank officer who served as an instrumental witness to the real estate mortgage contract, and who had the duty to witness its execution, admitted that the petitioner-spouses did not sign the contract in his presence. (Sps. Ramos *vs*. Obispo, G.R. No. 193804, Feb. 27, 2013; *Sereno, C.J., dissenting opinion*) p. 221

MOTION FOR RECONSIDERATION

Requires notice of hearing — Every motion must be set for hearing by the movant except for those motions which the court may act upon without prejudice to the rights of the adverse party; the notice of hearing must be addressed to all parties and must specify the time and date of the hearing, with proof of service; under Sections 4 and 5 of Rule 15 of the Rules of Court, the requirement is mandatory; a motion without a notice of hearing is considered pro forma and does not affect the reglementary period for the appeal or the filing of the requisite pleading. (Flores *vs*. People of the Phils., G.R. No. 181354, Feb. 27, 2013) p. 119

NEGLIGENCE

Contributory negligence — The conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection; petitioner's acceptance of the subject check for deposit despite the one year postdate written on its face was a clear violation of established banking regulations and practices; failure to comply with this basic policy regarding post-dated checks was "a telling sign of its lack of due diligence in handling checks coursed through it." (Allied Banking Corp. *vs*. Bank of the Philippine Islands, G.R. No. 188363, Feb. 27, 2013) p. 174

Doctrine of last clear chance — The negligence of the plaintiff does not preclude a recovery for the negligence of the defendant where it appears that the defendant, by exercising reasonable care and prudence, might have avoided injurious consequences to the plaintiff notwithstanding the plaintiff's negligence; the doctrine necessarily assumes negligence on the part of the defendant and contributory negligence on the part of the plaintiff, and does not apply except upon that assumption. (Allied Banking Corp. *vs*. Bank of the Philippine Islands, G.R. No. 188363, Feb. 27, 2013) p. 174

OMBUDSMAN

Decision of — A decision of the Office of the Ombudsman is immediately executory even pending appeal. (Office of the Ombudsman *vs*. De Leon, G.R. No. 154083, Feb. 27, 2013) p. 26

Disciplinary authority over government officials — Disciplinary authority of the Office of the Ombudsman over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries; the only officials not under its disciplinary authority are those who may be removed only by impeachment, the Members of Congress, and the Justices and Judges of the Judiciary; other powers, discussed. (Office of the Ombudsman *vs*. De Leon, G.R. No. 154083, Feb. 27, 2013) p. 26

ORDERS

Final order and interlocutory order, distinguished — A final order is defined as one which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court; an interlocutory order does not dispose of the case completely but leaves something to be decided upon by the court, its effects are merely provisional in character and substantial

proceedings have to be further conducted by the court in order to finally resolve the issue or controversy. (Rep. of the Phils. *vs.* Heirs of Enrique Oribello, Jr., G.R. No. 199501, March 06, 2013) p. 614

PARTIES TO CIVIL ACTIONS

Real party in interest — One who stands to be benefited or injured by the judgment in the suit, or one who is entitled to the avails of the suit; to be a real party in interest in whose name an action must be prosecuted, a person should appear to be the present real owner of the right sought to be enforced, that is, his interest must be a present substantial interest, not a mere expectancy, or a future, contingent, subordinate, or consequential interest; where the plaintiff is not the real party in interest, the ground for the motion to dismiss is lack of cause of action. (Stronghold Ins. Co., Inc. *vs.* Cuenca, G.R. No. 173297, March 06, 2013) p. 441

— Stockholders are not the real parties in interest to claim and recover damages arising from the wrongful attachment of the corporation's assets; their stockholdings represented only their proportionate or aliquot interest in the properties of the corporation, but did not vest in them any legal right or title to any specific properties of the corporation; the damages occasioned to the properties by the levy on attachment, wrongful or not, prejudiced the corporation, not the stockholders; only the corporation has the right under the substantive law to claim and recover such damages. *(Id.)*

— The purposes of the requirement for the real party in interest prosecuting or defending an action are: a) to prevent the prosecution of actions by persons without any right, title or interest in the case; b) to require that the actual party entitled to legal relief be the one to prosecute the action; c) to avoid a multiplicity of suits; and d) to discourage litigation and keep it within certain bounds, pursuant to sound public policy. *(Id.)*

— The real party in interest need not be the person who ultimately will benefit from the successful prosecution of the action; to aid itself in the proper identification of the real party in interest, the court should first ascertain the nature of the substantive right being asserted, and then determine whether the party asserting that right is recognized as the real party in interest under the rules of procedure; that a party stands to gain from the litigation is not necessarily controlling. *(Id.)*

PRESUMPTIONS

Presumption of regularity in the performance of official duties — Can only be overcome through clear and convincing evidence showing either: 1) that they were not properly performing their duty, or 2) that they were inspired by any improper motive. (People of the Phils. *vs.* Diwa *y* Gutierrez, G.R. No. 194253, Feb. 27, 2013) p. 240

— Overturned when there is a gross, systematic, or deliberate disregard of the procedural safeguards. (People of the Phils. *vs*. Secreto *y* Villanueva, G.R. No. 198115, Feb. 27, 2013) p. 274

PROPERTY

Encroachments on property — Under Articles 448 and 450, the owner of the land encroached upon has the option to require the builder to pay the price of the land; in the event that the seller elects to sell the lot, the price must be fixed at the prevailing market value at the time of payment; the reckoning period is at the time that the landowner elected the choice, and not at the time that the property was purchased; in *Sarmiento vs. Agana*, the valuation of the property was reckoned at the time that the real owner of the land asked the builder to vacate the property encroached upon; the oft-cited *Depra vs. Dumlao* ordered the courts of origin to compute the current fair price of the land in cases of encroachment on real properties. (*Vda. de* Roxas *vs*. Our Lady's Foundation, Inc., G.R. No. 182378, March 06, 2013) p. 545

Proof of ownership — The voluntary declaration of a piece of property for taxation purposes is an announcement of one's claim against the State and all other interested parties; these documents already constitute prima facie evidence of possession; if the holders of the land present a deed of conveyance in their favor from its former owner to support their claim of ownership, the declaration of ownership and tax receipts relative to the property may be used to prove their good faith in occupying and possessing it; when considered with actual possession of the property, tax receipts constitute evidence of great value in support of the claim of title of ownership by prescription. (Rep. of the Phils. *vs*. Ng, G.R. No. 182449, March 06, 2013) p. 556

— While tax declarations and realty tax payments on property are not conclusive evidence of ownership, they are nevertheless good indicia of possession in the concept of owner, for no one in the right frame of mind would be paying taxes for a property that is not in one's actual or at least constructive possession. *(Id.)*

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Judicial confirmation of title under original registration — Applicants may obtain the registration of title to land upon a showing that they or their predecessors-in-interest have been in 1) open, continuous, exclusive, and notorious possession and occupation of 2) agricultural lands of the public domain, 3) under a bona fide claim of acquisition or ownership 4) for at least 30 years immediately preceding the filing of the application for confirmation of title, except when prevented by war or force majeure; the burden of proof in land registration cases rests on applicants. (Rep. of the Phils. *vs*. Ng, G.R. No. 182449, March 06, 2013) p. 556

Nature of the possession required to confirm one's title — Respondent must prove that his predecessors-in-interest openly, continuously, exclusively, and notoriously possessed the realties; possession is acquired in any of the following ways: 1) by the material occupation of the

thing; 2) by the exercise of a right; 3) by the fact that the property is subject to the action of our will; and 4) by the proper acts and legal formalities established for acquiring the right. (Rep. of the Phils. *vs*. Ng, G.R. No. 182449, March 06, 2013) p. 556

PUBLIC OFFICIALS AND EMPLOYEES

Dishonesty — Absent a clear showing of intent to conceal relevant information in the employee's Statements of Assets, Liabilities and Net Worth (SALN), administrative liability cannot attach; a statement in the employee's SALN that his wife is a "businesswoman" is a manifestation to divulge and not to conceal his and his wife's business interests; the missing particulars may be subject of an inquiry or investigation. (Office of the Ombudsman *vs*. Bernardo, G.R. No. 181598, March 06, 2013) p. 524

Gross neglect of duty — Committed by the Provincial Environment and Natural Resources Officer when he did nothing affirmative to put a stop to the illegal quarrying complained of, or to do any other action that was entirely within his power to do that the complaint demanded to be done; he was the primary implementor and enforcer within his area of responsibility of all the laws and administrative orders concerning the environment. (Office of the Ombudsman *vs*. De Leon, G.R. No. 154083, Feb. 27, 2013) p. 26

Gross neglect of duty, distinguished from simple neglect of duty — Gross neglect of duty or gross negligence, defined; in cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable while simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference." (Office of the Ombudsman *vs*. De Leon, G.R. No. 154083, Feb. 27, 2013) p. 26

Reassignment of a corporate officer — Reassignment to another unit was by no means a diminution in rank and status considering that the rank was maintained with an accompanying increase in pay grade; reinstatement of a corporate officer to her position as senior vice president in her former unit became legally and physically impossible when the reorganization plan abolished the unit and put in place a completely different set-up, including a new staffing pattern. (Atty. Manalang-Demigillo *vs*. Trade and Investment Devt.Corp. of the Phils. [TIDCORP], G.R. No. 168613, March 05, 2013) p. 331

— The assignment to another unit did not violate an employee's security of tenure as protected by R.A. No. 6656; the Court has already upheld reassignments in the Civil Service resulting from valid reorganizations; an agency, whether public or private, has the essential prerogative to change the work assignment or to transfer the civil servant to an assignment where she would be most useful and effective. *(Id.)*

SALES

Contract to sell — The seller's obligation to deliver the corresponding certificates of title is simultaneous and reciprocal to the buyer's full payment of the purchase price; Section 25 of P.D. No. 957 imposes on the subdivision owner or developer the obligation to cause the transfer of the corresponding certificate of title to the buyer upon full payment. (Gotesco Properties, Inc. *vs*. Sps. Fajardo, G.R. No. 201167, Feb. 27, 2013) p. 294

SOLICITOR GENERAL, OFFICE OF THE (OSG)

Specific powers and functions — Deputation of the lawyers of the client-agency not only requires express authorization from the OSG but also its retention of supervision and control over the lawyer deputized; exceptions to the OSG'S mandate is strictly construed; in *Republic vs. Hon. Aniano Desierto*, the Court gave due course to the petition filed by the Philippine Commission on Good Government despite

the initial lack of participation by the OSG, on the ground that the latter's subsequent signature as co-counsel in the Consolidated Reply effectively cured the defect of authorization. (Rep. of the Phils. *vs*. Heirs of Cecilio and Moises Cuizon, G.R. No. 191531, March 06, 2013) p. 596

— Enumerated in Section 35, Book IV, Title III, Chapter 12, Executive Order 292: 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. x x x 8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts, and exercise supervision and control over such legal Officers with respect to such cases; the Solicitor General cannot refuse to perform his duty to represent the government, its agencies, instrumentalities, officials and agents without a just and valid reason. *(Id.)*

— Even in cases of disagreement with its client agency, it is still incumbent upon the OSG to present to the Court the position that will legally uphold the best interests of the Government. *(Id.)*

— In the discharge of his task, the Solicitor General must see to it that the best interest of the government is upheld within the limits set by law; when confronted with a situation where one government office takes an adverse position against another government agency, he should not refrain from performing his duty as the lawyer of the government; *Orbos vs. Civil Service Commission*, cited. *(Id.)*

— Owing to the mandatory character of the exercise of its functions, the OSG cannot arbitrarily abdicate the same in the course of proceedings involving a client-agency and only insist on the performance thereof in the event that the handling of the case by the lawyers of the client agency results in an adverse decision. *(Id.)*

— Power to deputize is subject to the following conditions: first, there must be an express authorization by the OSG, naming therein the legal officers who are being deputized; second, the cases must involve the respective offices of the deputized legal officers; and despite such deputization, the OSG should retain supervision and control over such legal officers with respect to the cases. *(Id.)*

— The Office of the Solicitor General, as principal law officer and legal defender of the government, possesses the unequivocal mandate to appear for and in its behalf in legal proceedings. *(Id.)*

STARE DECISIS ET NON QUIETA MOVERE

Principle of — Explained by the Court in *Ting vs. Velez-Ting*; the principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by this Court in its final decisions; based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument; it is a bar to any attempt to relitigate the same issues. (Baguio Regreening Movement, Inc. *vs*. Atty. Masweng, G.R. No. 180882, Feb. 27, 2013) p. 103-104

STATUTES

Interpretation of — If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation; this plain-meaning rule or *verba legis* is derived from the maxim index *animi sermo est* (speech is the index of intention) and rests on the valid presumption that the words employed by the

legislature in a statute correctly express its intent and preclude the court from construing it differently. (Trade and Investment Devt. Corp. of the Phils. *vs*. CSC, G.R. No. 182249, March 05, 2013) p. 357

TAXES

Gross Receipts Tax (GRT) — The Court has resolved that gross receipts comprise "the entire receipts without any deduction;" the 20% final withholding tax should form part of petitioner's total gross receipts for purposes of computing the GRT; supported by Section 7 (c) of Revenue Regulations No. 17-84 which includes all interest income in computing the GRT; the exclusion sought by petitioner of the 20% final tax on its passive income from the taxpayer's tax base constitutes a tax exemption, which is highly disfavored. (China Banking Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 175108, Feb. 27, 2013) p. 46

TENANCY RELATIONSHIP

Termination of — Abandonment as a ground for termination of tenancy relations under Section 8 of R.A. No. 3844 and under Section 22 of R.A. No. 6657 as well as under DAR Administrative Order No. 02-94; requisites: 1) a clear intent to abandon; and 2) an external act showing such intent; it entails, among others, the relinquishment of possession of the lot for at least two (2) calendar years and the failure to pay the amortization for the same period; intent must be shown to be deliberate and clear, and must be established by the factual failure to work on the landholding absent any valid reason; allowing and acquiescing to the execution of the lease contract through his signature, with presumed full awareness of its implications, constitutes an external act of abandonment. (Heirs of Lorenzo Buensuceso *vs*. Perez, G.R. No. 173926, March 06, 2013) p. 460

TENANT EMANCIPATION DECREE (P.D. NO. 27)

Damages for delay in payment — The award of 12% interest is imposed in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance; this is to ensure prompt payment of the value of the land and limit the opportunity loss of the owner that can drag from days to decades. (Land Bank of the Phils. *vs.* Anson Rivera, G.R. No. 182431, Feb. 27, 2013) p. 139

Just compensation — Proper computation, explained; following A.O. 13-94, the 6% yearly interest compounded annually, reckoned in accordance with A.O. 06-08; interpretation of the term "actual payment" in the Administration Orders as "full payment" pursuant to the ruling in Land Bank of the *Philippines vs. Obias* and *Land Bank of the Philippines vs. Soriano*; simple interest of 12% added to the compounded amount until the promulgation of the decision due to the delay incurred by LBP in not paying the full just compensation; then, final just compensation plus interest at the rate of 12% per annum from the finality of the decision until full payment. (Land Bank of the Phils. *vs.* Anson Rivera, G.R. No. 182431, Feb. 27, 2013) p. 139

— The Land Bank of the Philippines approved the amount for the property in favor of the landowners but way below what should have been received by the landowners based on the valuations adjudged by the agrarian court, Court of Appeals and the Supreme Court; just compensation must be fair and equitable and the landowners must have received it without any delay; the delay in this case is traceable to the undervaluation of the property by the government. *(Id.)*

UNFAIR LABOR PRACTICE

Commission of — In unfair labor practice (ULP) cases, the alleging party has the burden of proof; such principle finds justification in the fact that ULP is punishable with both civil and/or criminal sanctions; absent any showing

that the company was motivated by ill will, bad faith or malice, or that it was aimed at interfering with its employees' right to self-organize, it cannot be said to have committed an act of unfair labor practice. (Bankard, Inc. *vs*. NLRC, G.R. No. 171664, March 06, 2013) p. 428

Evidence required — More than a mere scintilla of evidence; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. (Bankard, Inc. *vs*. NLRC, G.R. No. 171664, March 06, 2013) p. 428

— Substantial evidence is required to support the claim that the employer committed an unfair labor practice under the Labor Code. *(Id.)*

WITNESSES

Credibility of — A categorical and consistent positive identification of the accused, without any showing of ill motive on the part of the eyewitnesses, prevails over denial. (Escamilla *y* Jugo *vs*. People of the Phils., G.R. No. 188551, Feb. 27, 2013) p. 188

— Inconsistencies in the testimonies of witnesses on minor details do not impair their credibility; while witnesses may differ in their recollections of an incident, as long as the mass of testimony jibes on material points, the slightly clashing statements neither dilute the witnesses' credibility or the veracity of their testimony, for such inconsistencies are but natural and even enhance credibility as these discrepancies indicate that the responses are honest and unrehearsed. (People of the Phils. *vs*. Fernandez *y* Hertez *a.k.a.* "Debon," G.R. No. 188841, March 06, 2013) p. 583

— Testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself; the test to determine the value or credibility of the testimony of a witness is whether the same is in conformity with common knowledge and is consistent with the experience of mankind. (Flores *vs*. People of the Phils., G.R. No. 181354, Feb. 27, 2013) p. 119

— When a case involves violation of the Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary; the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded respect, if not conclusive effect; this is more true if such findings were affirmed by the appellate court, because in such a case, said findings are generally binding upon this Court. (People of the Phils. *vs*. Fernandez *y* Hertez *a.k.a.* "Debon," G.R. No. 188841, March 06, 2013) p. 583