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FROM

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2015

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 9120. March 11, 2013]
(Formerly CBD Case No. 06-1783)

AUGUSTO P. BALDADO, *complainant, vs.* **ATTY. AQUILINO A. MEJICA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; JUDGMENTS; DECISION OF TRIAL COURT IN AN ELECTION CASE, WHEN PROMULGATED; EXPOUNDED; FAILURE OF THE TRIAL COURT TO SERVE NOTICE IN ADVANCE OF THE PROMULGATION OF ITS DECISION AS REQUIRED BY THE COMELEC RULES IS CONSIDERED A PROCEDURAL LAPSE BUT WHICH WILL NOT PREJUDICE THE RIGHTS OF THE PARTIES AND WHICH WILL NOT VITIATE THE VALIDITY OF THE DECISION NOR OF THE PROMULGATION OF SAID DECISION.—** The Court notes that respondent cited *Lindo v. COMELEC*, in his Position Paper. *Lindo v. COMELEC* should have enlightened respondent about his confusion regarding when the trial court's Decision in an election case is promulgated, and when he should have filed an appeal from the trial court's Decision with the COMELEC. As *Lindo v. COMELEC* stated: "It is the contention of petitioner Lindo that the act of merely furnishing the parties with a copy of the decision, as was done in the trial court, violated COMELEC rules and did not constitute a valid promulgation. Since there was no valid

promulgation, the five (5) day period within which the decision should be appealed to the COMELEC did not commence to run. This contention is untenable. **Promulgation is the process by which a decision is published, officially announced, made known to the public or delivered to the clerk of court for filing, coupled with notice to the parties or their counsel x x x.** It is the delivery of a court decision to the clerk of court for filing and publication x x x. It is the filing of the signed decision with the clerk of court x x x. The additional requirement imposed by the COMELEC rules of notice in advance of promulgation is not part of the process of promulgation. Hence, We do not agree with petitioner's contention that there was no promulgation of the trial court's decision. The trial court did not deny that it had officially made the decision public. From the recital of facts of both parties, copies of the decision were sent to petitioner's counsel of record and petitioner himself. Another copy was sent to private respondent. What was wanting and what the petitioner apparently objected to was not the promulgation of the decision but the failure of the trial court to serve notice in advance of the promulgation of its decision as required by the COMELEC rules. The failure to serve such notice in advance of the promulgation may be considered a procedural lapse on the part of the trial court which did not prejudice the rights of the parties and did not vitiate the validity of the decision of the trial court nor of the promulgation of said decision." x x x From the foregoing, herein respondent should have filed an appeal from the Decision of the trial court within five days from receipt of a copy of the decision on May 19, 2005.

2. ID.; MOTION TO DISMISS; SHOULD BE FILED WITHIN THE TIME FOR FILING THE ANSWER; EXCEPTIONS; EVEN IF THE MOTION TO DISMISS ON GROUND OF LACK OF JURISDICTION WAS DENIED BY THE TRIAL COURT, THE PARTY MAY STILL RAISE THE ALLEGED LACK OF JURISDICTION OF THE TRIAL COURT ON APPEAL BEFORE THE COMELEC.— As regards the filing of the motion to dismiss after filing an Answer, *Panganiban v. Pilipinas Shell Petroleum Corporation* held that the requirement that a motion to dismiss should be filed within the time for filing the answer is not absolute. Even after an answer has been filed, a defendant can still file a

motion to dismiss on the following grounds: (1) lack of jurisdiction, (2) *litis pendentia* (3) lack of cause of action, and (4) discovery during trial of evidence that would constitute a ground for dismissal. In this case, respondent sought the dismissal of the *quo warranto* case on the ground of lack of jurisdiction. Even if the trial court denied the motion to dismiss, respondent could still have raised the alleged lack of jurisdiction of the trial court in the appeal of the trial court's decision to the COMELEC; however, no such appeal was filed.

3. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; ONCE A LAWYER AGREES TO TAKE UP THE CAUSE OF A CLIENT, HE OWES ENTIRE DEVOTION TO THE INTEREST OF THE CLIENT, WARM ZEAL IN THE MAINTENANCE AND DEFENSE OF HIS CLIENT'S RIGHTS, AND THE EXERTION OF HIS UTMOST LEARNING AND ABILITY TO THE END THAT NOTHING BE TAKEN OR WITHHELD FROM HIS CLIENT, SAVE BY THE RULES OF LAW, LEGALLY APPLIED.—** [R]espondent's negligence in protecting the interest of his client was the failure to appeal the trial court's decision in the *quo warranto* case before the COMELEC. The circumstances of this case show violation of Canon 18: Rules 18.01, 18.02 and 18.03 of the Code of Professional Responsibility x x x. Once a lawyer agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. A lawyer who performs his duty with diligence and candor not only protects the interest of his client, he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.

4. **ID.; ID.; FAILURE TO APPEAL THE DECISION OF THE TRIAL COURT IN THE *QUO WARRANTO* CASE BEFORE THE COMELEC WITHIN THE REGLEMENTARY PERIOD CONSTITUTES GROSS NEGLIGENCE, GROSS INCOMPETENCE AND GROSS IGNORANCE OF THE LAW; THREE-MONTHS SUSPENSION FROM THE**

PRACTICE OF LAW, IMPOSED.— The Court sustains the findings and conclusions of the Board of Governors of the IBP that respondent is guilty of gross negligence, gross incompetence and gross ignorance of the law for failing to appeal the Decision of the trial court in the *quo warranto* case before the COMELEC within the reglementary period. x x x. The Court notes that this is the first case respondent handled after he passed the bar examinations in September 2003, took his oath and signed the roll of attorneys. Respondent prays for compassionate justice as he is the only breadwinner in the family. In *Tolentino v. Mangapit*, the Court took into consideration the fact that the omission committed by respondent counsel therein to inform her client and the latter's other lawyers of the adverse decision may be traced to her inexperience, as the case and decision was the first she handled after passing the bar, and she acted under an honest mistake in the exercise of her duty as a lawyer. Thus, in *Tolentino*, the Court merely admonished the respondent instead of suspending her from the practice of law for at least a month, as recommended by the Solicitor General. In this case, suspending respondent from the practice of law for three months is proper.

D E C I S I O N

PERALTA, *J.*:

On July 17, 2006, complainant Augusto P. Baldado filed a Complaint with the Integrated Bar of the Philippines (IBP) Committee on Bar Discipline, charging respondent Atty. Aquilino A. Mejica with gross incompetence, gross negligence and gross ignorance of the law for his failure to render legal service to the complainant as mandated by Canon 17 and Canon 18, Rules 18.01, 18.02 and 18.03 of the Code of Professional Responsibility.

The facts are as follows:

Complainant Augusto P. Baldado was a former member of the *Sangguniang Bayan* of the Municipality of Sulat, Eastern Samar. He ran and won in the 2004 National and Local Elections.

Florentino C. Nival, a losing candidate during the said elections, filed a Petition for *Quo Warranto* with the Regional Trial Court

(RTC) of Borongan, Eastern Samar against complainant, questioning his qualifications as a candidate, as he was allegedly an American citizen. The case was docketed as Civil Case No. 3900 and assigned to the RTC of Borongan, Eastern Samar, Branch 2 (*trial court*).

Complainant hired the legal services of respondent for the said case.

Respondent filed an Answer, and later filed a motion to dismiss on the ground of lack of jurisdiction of the trial court over the case due to the failure of Florentino C. Nival to pay the appropriate filing or docket fee.

The trial court denied the motion to dismiss on the ground that the motion is proscribed after the filing of an Answer, as provided in Section 1, Rule 16 of the 1997 Rules of Civil Procedure.

Respondent filed a motion for reconsideration from the denial of the motion to dismiss. In a Resolution[1] dated January 14, 2005, the trial court denied the motion on the ground that there was no notice of hearing pursuant to Sections 4, 5 and 6, Rule 15 of the 1997 Rules of Civil Procedure.

Respondent filed a second motion for reconsideration, which was denied by the trial court in a Resolution dated April 29, 2005, for being a prohibited pleading under Section 2, Rule 52 of the 1997 Rules of Civil Procedure.

On May 6, 2005, the trial court rendered a Decision,[2] directing the issuance of a Writ of *Quo Warranto* ousting complainant Augusto P. Baldado from the Office of the *Sangguniang Bayan* of the Municipality of Sulat, Eastern Samar, and declaring vacant the position of complainant as *Sangguniang Bayan* member.[3] The trial court stated that when complainant, formerly an American citizen, reacquired his Philippine citizenship on

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

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

[3] *Id.* at 15.

September 29, 2003, he also reacquired his residency in the Philippines on September 29, 2003, short of the required one-year period immediately preceding the election. Hence, the trial court held that complainant was not eligible to register as a candidate for the Office of the *Sangguniang Bayan* of Sulat, Eastern Samar during the May 2004 elections.

On May 19, 2005, respondent received a copy of the Decision of the trial court, and he had a period of five days within which to appeal the trial court's Decision to the Commission on Elections (COMELEC).

On May 21, 2005, complainant and his wife, having obtained their own copy of the trial court's Decision, proceeded hurriedly to respondent and urged him to immediately file a notice of appeal from the said decision.

Respondent did not heed the prodding of complainant to file a Notice of Appeal, because according to respondent, the notice of the decision could not be deemed to have been officially received by him as the said decision had not yet been promulgated in open court; hence, the prescriptive period to appeal would not toll yet.

On May 26, 2005,[4] respondent filed with the COMELEC a Petition for *Certiorari* and Prohibition with prayer for restraining order and/or injunction to annul or set aside the trial court's Resolutions dated January 14, 2005 and April 29, 2005, denying the motions for reconsideration of the trial court's Resolution dated November 10, 2004, denying the motion to dismiss the *quo warranto* case. Respondent did not appeal from the trial court's Decision dated May 6, 2005.

On May 16, 2006, the First Division of the COMELEC issued a Resolution[5] dismissing the petition for *certiorari* for lack of merit. It held that the correct filing fees had been paid by petitioner Florentino P. Nival, as evidenced by the Legal Fees Form,[6]

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[4] Complaint, *id*. at 3.

[5] *Rollo*, pp. 28-35.

[6] *Id.* at 50.

which barred complainant from assailing the jurisdiction of the trial court. The COMELEC declared that complainant's petition was moot and academic with the rendition of the trial court's Decision in the *quo warranto* case. It stated that as the trial court had acquired jurisdiction over the case, the remedy of complainant should have been to appeal the trial court's Decision under Section 14, Rule 36 of the COMELEC Rules of Procedure, which provides that from any decision rendered by the court, the aggrieved party may appeal to the COMELEC within five days after the promulgation of the decision. On the other hand, *certiorari*, under Section 1, Rule 28 of the COMELEC Rules of Procedure, is allowed only when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. The COMELEC stated that petitioner lost his opportunity to appeal granted by law.

Florentino Nival filed a motion for execution in the *quo warranto* case, which was granted by the trial court. On July 11, 2006, complainant was removed from his office as member of the *Sangguniang Bayan* of the Municipality of Sulat, Eastern Samar.

Complainant hired a new counsel, who filed a motion for reconsideration of the Resolution of the First Division of the COMELEC, dated May 16, 2006. However, the motion for reconsideration was denied for lack of merit by the COMELEC *en banc* in a Resolution[7] dated June 21, 2007.

On July 17, 2006, complainant filed this administrative case against respondent. Complainant contended that in handling his case, respondent committed these serious errors: (1) Respondent improperly filed a Motion to Dismiss after he had filed his Answer, allegedly due to lack of jurisdiction for failure of therein petitioner Florentino C. Nival to pay the correct docket fees, but the trial court denied said motion because a motion to dismiss is proscribed after filing an Answer; (2) Respondent filed a Motion for Reconsideration from the denial of his Motion to Dismiss which was denied for failure to attach the Notice of Hearing;

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[7] *Id.* at 81-88.

(3) respondent filed a second motion for reconsideration, which was again denied on the ground that it was a prohibited pleading; and (4) Respondent refused to file a Notice of Appeal from the Decision of the trial court on the Petition for *Quo Warranto* without justification despite the advice and insistence of complainant, and instead filed a petition for *certiorari* before the COMELEC, assailing the trial court's Resolutions dated January 14, 2005 and April 29, 2005 denying the motions for reconsideration of the denial of the motion to dismiss the *quo warranto* case.

Complainant contended that respondent's mishandling of his case amounted to gross incompetence and gross negligence in rendering service to his client, as well as gross ignorance of the law, in violation of Canon 17 and Canon 18: Rules 18.01, 18.02 and 18.03 of the Code of Professional Responsibility[8] for which respondent should be disbarred or suspended from legal practice. Complainant stated that respondent's failure to render legal service, in accordance with the Code of Professional Responsibility, caused him (complainant) to lose in the *quo warranto* case, which resulted in his removal from his office, and made him suffer grave and irreparable damage, mental anguish, wounded feelings and social humiliation.

In his Position Paper,[9] respondent explained that a Motion to Dismiss was filed after the Answer was filed, because he

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[8] CANON 17 — A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.01 — A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.

Rule 18.02 — A lawyer shall not handle any legal matter without adequate preparation.

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

[9] *Rollo*, pp. 89-105.

found out days after filing the Answer that Florentino C. Nival failed to pay the filing fee amounting to ₱300.00. Respondent claimed that the trial court failed to understand that Section 1, Rule 16 (Motion to Dismiss) of the Rules of Court is the general rule, while the exceptions are found in Section 1, Rule 9 of the Rules of Court, which provides that lack of jurisdiction over the subject matter, among others, is a defense that is not deemed waived even if it is not pleaded in a motion to dismiss or in the answer.

Respondent stated that he failed to place a notice of hearing in his motion for reconsideration (of the denial of his motion to dismiss) due to inadvertence. However, he contended that since the adverse party submitted an Opposition to the Motion for Reconsideration, it is sufficient proof that petitioner was given the opportunity to be heard; hence, the dismissal of the motion for reconsideration due to the absence of notice of hearing was improper.

Moreover, respondent asserted that the alleged omission or negligence regarding the failure to file an appeal from the trial court's Decision was neither induced by bad faith nor malice, but founded on good faith and a well-researched legal opinion that the five-day period within which to file a notice of appeal did not commence due to the failure of the trial court to promulgate its decision, as required under Section 12, Rule 36 of the COMELEC Rules of Procedure.

In his Report and Recommendation, the Investigating Commissioner, Atty. Salvador B. Hababag, found respondent liable for gross ignorance of the law, gross incompetence and gross negligence, and recommended that respondent be suspended for six months from legal practice with a warning that the commission of the same infractions in the future will be dealt with more severely.

On November 10, 2007, the Board of Governors of the IBP passed Resolution No. XVIII-2007-234,[10] adopting and approving the Report and Recommendation of the Investigating

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[10] *Id.* at 108.

Commissioner, finding respondent guilty of gross negligence of the law, gross incompetence and gross negligence, and imposing upon respondent the penalty of suspension from the practice of law for six months with a warning that a future infraction will be dealt with more severely.

Respondent's motion for reconsideration was denied by the Board of Governors of the IBP in Resolution No. XIX-2011-370[11] dated June 26, 2011.

The Court sustains the findings and conclusions of the Board of Governors of the IBP that respondent is guilty of gross negligence, gross incompetence and gross ignorance of the law for failing to appeal the Decision of the trial court in the *quo warranto* case before the COMELEC within the reglementary period.

It appears that respondent failed to appeal from the Decision of the trial court, because he was waiting for a notice of the promulgation of the said decision, as Sections 12 & 14, Rule 36 of the COMELEC Rules of Procedure state:

> Sec. 12. *Promulgation and Finality of the Decision.* — The decision of the court shall be promulgated on a date set by it of which due notice must be given the parties. It shall become final five (5) days after its promulgation.
>
> No motion for reconsideration shall be entertained.
>
> Sec. 14. *Appeal.* — From any decision rendered by the court, the aggrieved party may appeal to the Commission on Elections, within five (5) days after the promulgation of the decision.

In his Position Paper,[12] respondent stated that the furnishing of the trial court's Decision through the post office/mail could not be considered as promulgation under Section 12 above, which requires that the court must set the date when the decision shall be promulgated with due notice to the parties. Respondent contended that, in view of the absence of the promulgation of

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[11] *Id.* at 143.

[12] *Id.* at 89-105.

the trial court's decision, he did not file an appeal because the five-day period within which to file a notice of appeal has not commenced up to the present.

The Court notes that respondent cited *Lindo v. COMELEC*,[13] in his Position Paper. *Lindo v. COMELEC* should have enlightened respondent about his confusion regarding when the trial court's Decision in an election case is promulgated, and when he should have filed an appeal from the trial court's Decision with the COMELEC. As *Lindo v. COMELEC* stated:

It is the contention of petitioner Lindo that the act of merely furnishing the parties with a copy of the decision, as was done in the trial court, violated COMELEC rules and did not constitute a valid promulgation. Since there was no valid promulgation, the five (5) day period within which the decision should be appealed to the COMELEC did not commence to run.

This contention is untenable. **Promulgation is the process by which a decision is published, officially announced, made known to the public or delivered to the clerk of court for filing, coupled with notice to the parties or their counsel.** (*Neria v. Commissioner of Immigration*, L-24800, May 27, 1968, 23 SCRA 812). It is the delivery of a court decision to the clerk of court for filing and publication (*Araneta v. Dinglasan*, 84 Phil. 433). It is the filing of the signed decision with the clerk of court (*Sumbing v. Davide,* G.R. Nos. 86850-51, July 20, 1989, En Banc Minute Resolution). The additional requirement imposed by the COMELEC rules of notice in advance of promulgation is not part of the process of promulgation. Hence, We do not agree with petitioner's contention that there was no promulgation of the trial court's decision. The trial court did not deny that it had officially made the decision public. From the recital of facts of both parties, copies of the decision were sent to petitioner's counsel of record and petitioner himself. Another copy was sent to private respondent.

What was wanting and what the petitioner apparently objected to was not the promulgation of the decision but the failure of the trial court to serve notice in advance of the promulgation of its decision as required by the COMELEC rules. The failure to serve

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[13] G.R. No. 95016, February 11, 1991, 194 SCRA 25; 271 Phil. 844 (1991).

such notice in advance of the promulgation may be considered a procedural lapse on the part of the trial court which did not prejudice the rights of the parties and did not vitiate the validity of the decision of the trial court nor of the promulgation of said decision.

x x x x x x x x x

Petitioner's protestations of denial of due process when his notice of appeal was denied for having been filed out of time must also fail. The records show that petitioner's counsel of record, Atty. Amador Montajo, received a copy of the decision on February 12, 1990. **The five-day period for petitioner to file his appeal from the decision of the trial court commenced to run from such date.** Petitioner's notice of appeal was filed with the trial court only on February 26, 1990, fourteen (14) days after his counsel was served a copy of the decision. Clearly, his notice was filed out of time. x x x[14]

From the foregoing, herein respondent should have filed an appeal from the Decision of the trial court within five days from receipt of a copy of the decision on May 19, 2005.[15]

As regards the filing of the motion to dismiss after filing an Answer, *Panganiban v. Pilipinas Shell Petroleum Corporation*[16] held that the requirement that a motion to dismiss should be filed within the time for filing the answer is not absolute. Even after an answer has been filed, a defendant can still file a motion to dismiss on the following grounds: (1) lack of jurisdiction, (2) *litis pendentia* (3) lack of cause of action, and (4) discovery during trial of evidence that would constitute a ground for dismissal.[17] In this case, respondent sought the dismissal of the *quo warranto* case on the ground of lack of jurisdiction. Even if the trial court denied the motion to dismiss, respondent could still have raised the alleged lack of jurisdiction of the trial court in the appeal of the trial court's decision to the COMELEC; however, no such appeal was filed.

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[14] *Id.* at 31-33. (Emphasis supplied.)

[15] Complaint, *rollo*, p. 2.

[16] G.R. No. 131471, January 22, 2003, 395 SCRA 624; 443 Phil. 753 (2003).

[17] *Id.* at 633.

Hence, respondent's negligence in protecting the interest of his client was the failure to appeal the trial court's decision in the *quo warranto* case before the COMELEC. The circumstances of this case show violation of Canon 18: Rules 18.01, 18.02 and 18.03 of the Code of Professional Responsibility which state:

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE

Rule 18.01 — A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.

Rule 18.02 — A lawyer shall not handle any legal matter without adequate preparation.

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Once a lawyer agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him.[18] He owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. A lawyer who performs his duty with diligence and candor not only protects the interest of his client, he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.

The Court notes that this is the first case respondent handled after he passed the bar examinations in September 2003, took

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[18] *Aranda v. Elayda*, A.C. No. 7907, December 15, 2010, 638 SCRA 336, citing *Santiago v. Fojas*, A.C. No. 4103, September 7, 1995, 248 SCRA 68; 318 Phil. 79 (1995).

his oath and signed the roll of attorneys. Respondent prays for compassionate justice as he is the only breadwinner in the family. In *Tolentino v. Mangapit*,[19] the Court took into consideration the fact that the omission committed by respondent counsel therein to inform her client and the latter's other lawyers of the adverse decision may be traced to her inexperience, as the case and decision was the first she handled after passing the bar, and she acted under an honest mistake in the exercise of her duty as a lawyer. Thus, in *Tolentino*, the Court merely admonished the respondent instead of suspending her from the practice of law for at least a month, as recommended by the Solicitor General. In this case, suspending respondent from the practice of law for three months is proper.

WHEREFORE, the Resolution of the IBP Board of Governors, approving and adopting the Decision of the Investigating Commissioner, is hereby **AFFIRMED with MODIFICATION**. Respondent **ATTY. AQUILINO A. MEJICA** is hereby **SUSPENDED** from the practice of law for a period of **THREE (3) MONTHS,** with a warning that a repetition of the same or a similar act will be dealt with more severely.

Let a copy of this Decision be attached to Atty. Aquilino A. Mejica's personal record with the Office of the Bar Confidant and be furnished to all chapters of the Integrated Bar of the Philippines and to all the courts in the country for their information and guidance.

SO ORDERED.

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

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[19] A.C. No. 2251, September 29, 1983, 124 SCRA 741; 209 Phil. 607 (1983).

SECOND DIVISION

[A.M. No. RTJ-10-2235. March 11, 2013]
(Formerly A.M. No. 10-3-94-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JESUS L. GRAGEDA,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE CHARGES; CESSATION FROM OFFICE BY REASON OF RESIGNATION, DEATH OR RETIREMENT IS NOT A GROUND TO DISMISS THE CASE AGAINST THE PUBLIC OFFICER OR EMPLOYEE FILED AT THE TIME HE WAS STILL IN THE PUBLIC SERVICE, OR RENDER IT MOOT AND ACADEMIC.—** Jurisprudence is replete with rulings that in order for the Court to acquire jurisdiction over an administrative proceeding, the complaint must be filed during the incumbency of the respondent public official or employee. This is because the filing of an administrative case is predicated on the holding of a position or office in the government service. However, once jurisdiction has attached, the same is not lost by the mere fact that the public official or employee was no longer in office during the pendency of the case. In fine, cessation from office by reason of resignation, death or retirement is not a ground to dismiss the case filed against the said officer or employee at the time that he was still in the public service or render it moot and academic.

2. **ID.; ID.; ID.; THE COURT IS BARRED FROM PURSUING THE ADMINISTRATIVE PROCEEDING AGAINST A RETIRED JUDGE INSTITUTED AFTER HIS TENURE IN OFFICE, AND THE COURT AND THE OFFICE OF THE COURT ADMINISTRATOR, IS DIVESTED OF ANY JURISDICTION TO STILL SUBJECT HIM TO THE RULES AND REGULATIONS OF THE JUDICIARY AND/ OR PENALIZE HIM FOR THE INFRACTIONS COMMITTED WHILE HE WAS STILL IN THE SERVICE.—** In the case of *Office of the Ombudsman v. Andutan, Jr.,* the Court ruled that while the Ombudsman is

not precluded from conducting an investigation against the errant employee, it can no longer institute an administrative case against Andutan who had already resigned, more so since his resignation or severance of employment from the service was not availed of to prevent the continuation of the pending administrative case or to pre-empt the imminent filing of one. x x x *[I]n Re: Missing Exhibits and Court Properties in Regional Trial Court, Branch 4, Panabo City, Davao del Norte,* the Court absolved herein respondent, Judge Grageda, from any administrative liability since the complaint against him was filed after his retirement from the judiciary. Applying the foregoing principles to the case at bar, the Court is constrained to similarly dismiss the complaint against Judge Grageda. Records show that Judge Grageda compulsorily retired on November 25, 2009 while the judicial audit was conducted at RTC, Br. 4, Panabo City from November 17 to November 26, 2009. The OCA then submitted its report only on March 24, 2010, which was re-docketed as a regular administrative matter on April 28, 2010, or months after Judge Grageda retired from the judiciary. Consequently, his retirement effectively barred the Court from pursuing the instant administrative proceeding that was instituted after his tenure in office, and divested the Court, much less the OCA , of any jurisdiction to still subject him to the rules and regulations of the judiciary and/or to penalize him for the infractions committed while he was still in the service. As held in the case of *OCA v. Judge Celso L. Mantua*: 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.

R E S O L U T I ON

PERLAS-BERNABE, *J.*:

The Facts

In view of the compulsory retirement of Judge Jesus L. Grageda on November 25, 2009, the Office of the Court Administrator

(OCA) conducted a judicial audit at the Regional Trial Court, Branch 4, Panabo City presided by Judge Grageda on November 17 to 26, 2009. The audit team of the OCA then submitted its report[1] on March 24, 2010. Acting thereon, the First Division issued a Resolution[2] dated April 28, 2010 resolving, among others, to:

(A) ***DIRECT*** Judge Grageda to ***EXPLAIN*** within sixty (60) days from notice why he should not be cited for:

(1) gross inefficiency and undue delay in rendering a decision or order for his:

(1.1) failure to decide sixteen (16) civil cases and one (1) criminal case within the prescribed period;

(1.2) failure to resolve pending motions/incidents in eighteen (18) civil and ten (10) criminal cases, within the prescribed period;

(1.3) delay in deciding seven (7) civil cases;

(1.4) delay in resolving motions/incidents in fourteen (14) civil cases; and

(1.5) failure to act on the nineteen (19) civil and thirty-four (34) criminal cases despite the lapse of considerable length of time;

(2) gross ignorance of procedural law and unreasonable delay in the issuance of an order for the execution of the judgment in four (4) civil cases;

(3) gross misconduct and unreasonable delay in resolving motions for reconsideration of decisions/final orders in nineteen (19) civil and five (5) criminal cases within the prescribed period thereby effectively freezing the judgments for two (2) to seven (7) years and depriving the parties of the final disposition of their cases; and

(4) dishonesty for declaring in his Certificate of Service for January to November 2009 that he has decided all

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

[2] *Id.* at 119-132.

cases and resolved all incidents within three (3) months from the date of submission for decision/resolution even when there were several cases/incidents which remained undecided/unresolved beyond the reglementary period;

(B) ***DIRECT*** Judge Grageda to ***EXPLAIN*** within sixty (60) days from notice why he should not be held administratively liable for rendering decisions/orders beyond his last working day, which was on November 24, 2009, the day prior to his 70th birthday;

(C) ***DIRECT*** Ms. Belen V. Basa, Court Interpreter III and then Officer-in-Charge, RTC, Br. 4, Panabo City to ***EXPLAIN*** within fifteen (15) days from notice why she should not be cited for usurpation of authority for issuing Commitment Order dated January 16, 2008 in Crim. Case No. 01-2008 entitled "*People v. A. Ammad*";

(D) ***DIRECT*** Mr. Boyd James B. Bacaltos, Legal Researcher II and then Officer-in-Charge, RTC, Br. 4, Panabo City to ***EXPLAIN*** within fifteen (15) days from notice why he should not be cited for usurpation of authority for issuing the Commitment Order in Criminal Case No. 99-53 entitled "*People v. J. Boston*";

(E) ***DIRECT*** Ms. Arlene C. Sison, Clerk in-Charge of civil cases, RTC, Br. 4, Panabo City to comply with her duty to regularly update and maintain the docket book for civil cases and ***SUBMIT*** certification from the Acting Presiding Judge and/or Clerk of Court of such compliance;

(F) ***DIRECT*** Ms. Marianne G. Baylon, Clerk in-Charge of criminal cases, RTC, Br. 4, Panabo City to comply with her duty to regularly update and maintain the docket book for criminal cases and submit certification from the Acting Presiding Judge and/or the Clerk of Court of such compliance; and

(G) ***ORDER*** the Fiscal Management Office, Office of the Court Administrator to retain from the retirement benefits of Judge Grageda the sum of ₱200,000.00, to answer for any administrative liability that may be imposed upon him in connection with the instant administrative matter.

In compliance with the said Resolution, Ms. Belen V. Basa[3] and Mr. Boyd James B. Bacaltos[4] separately explained that they signed the subject Commitment Orders based on their office practice, without any malice nor intent to usurp the functions of the Branch Clerk of Court. On June 22, 2010, Ms. Arlene C. Sison submitted a Certification[5] from Acting Presiding Judge Virginia Hofileña-Europa of the same court, showing compliance with her mandated duty of updating the docket book for civil cases. A similar Certification[6] was also submitted by Marianne G. Baylon to show her compliance with the above directive to update the docket book for criminal cases.

In his letter-explanation,[7] Judge Grageda denied the charges of gross inefficiency, ignorance of the law and misconduct, alleging that he had efficiently discharged his duties during his fourteen (14) years of service as Presiding Judge of RTC, Br. 4, Panabo City. While he admitted that there were delays in the resolution of cases in his *sala*, he put the blame on his heavy case load; lack of support personnel; inadequate facilities; and lack of time to act expeditiously on the various case-related incidents.[8] Nonetheless, he pleaded for mercy and indulgence from the Court and manifested his willingness to take full responsibility for his infractions. Judge Grageda also enumerated purported inaccuracies[9] in eleven (11) of the cases referred to in the OCA Audit Report, which he alleged to have been either already decided/disposed of or not yet due for decision/resolution as of the date of his retirement on November 25, 2009. Moreover, he denied[10] committing any act of dishonesty in the submission

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[3] *Id.* at 140.

[4] *Id.* at 134.

[5] *Id.* at 145-146.

[6] *Id.* at 153.

[7] *Id.* at 191-201.

[8] *Id.* at 192-195.

[9] *Id.* at 197-198.

[10] *Id.* at 198.

of his Certificate of Service for the period January to November 2009, claiming to have relied on the assurance of his staff that there were no unresolved or pending matters in his court.

On the matter of his administrative liability for rendering decisions/resolutions beyond November 24, 2009 or his last day in office prior to his 70th birthday, Judge Grageda averred that his last working day should be on his retirement day or on November 25, 2009, hence, his actions were justified.[11] Finally, he begged for fairness, equity and mercy from the Court and requested that his fourteen (14) years of service be considered as a mitigating circumstance in the resolution of this case.[12]

On November 24, 2010, the instant case was referred to the OCA for evaluation, report and recommendation.[13] On October 8, 2012, the OCA submitted its report[14] recommending the following for the Court's consideration:

1. the respective compliances of Mr. Boyd James B. Bacaltos, OIC/Acting Clerk of Court; Ms. Belen Basa, Court Interpreter III; Ms. Arlene Sison, Clerk III; and Ms. Marianne G. Baylon, Clerk III, all of the Regional Trial Court, Branch 4, Panabo City, be **ACCEPTED** as full compliance with the directive of this Court in its Resolution dated 28 April 2010 in the instant administrative matter but with a **STERN WARNING** that a repetition of the same or similar infraction shall be dealt with more severely; and

2. respondent Judge Jesus L. Grageda (ret.) be found **GUILTY** of Gross Ignorance of the Law for rendering orders/resolution on his retirement day and Gross Inefficiency for undue delay in rendering decisions or orders and be **FINED** in the amount of Two Hundred Thousand Pesos (₱200,000.00) to be taken from the ₱200,000.00 withheld from his retirement benefits.[15]

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[11] *Id.* at 198-199.

[12] *Id.* at 201.

[13] *Id.* at 353.

[14] *Id.* at 355-392.

[15] *Id.* at 392.

The OCA recommendations are well-taken but not with respect to the administrative liability of Judge Grageda.

Jurisprudence is replete with rulings that in order for the Court to acquire jurisdiction over an administrative proceeding, the complaint must be filed during the incumbency of the respondent public official or employee.[16] This is because the filing of an administrative case is predicated on the holding of a position or office in the government service.[17] However, once jurisdiction has attached, the same is not lost by the mere fact that the public official or employee was no longer in office during the pendency of the case. In fine, cessation from office by reason of resignation, death or retirement is not a ground to dismiss the case filed against the said officer or employee at the time that he was still in the public service or render it moot and academic.[18]

In the case of *Office of the Ombudsman v. Andutan, Jr.,* the Court ruled that while the Ombudsman is not precluded from conducting an investigation against the errant employee, it can no longer institute an administrative case against Andutan who had already resigned,[19] more so since his resignation or severance of employment from the service was not availed of to prevent the continuation of the pending administrative case or to pre-empt the imminent filing of one.[20] The Court also dismissed an administrative case filed against a retired court stenographer for having been initiated over a month after her retirement from the service.[21] Moreover, in *Re: Missing Exhibits and Court*

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[16] *Re: Missing Exhibits and Court Properties in Regional Trial Court, Branch 4, Panabo City, Davao del Norte,* A.M. No. 10-2-41-RTC, February 27, 2013.

[17] Minute Resolution in *OCA v. Villanueva*, A.M. No. P-01-1509, June 13, 2007; *Diamalon v. Quintillan*, 139 Phil. 654, 657 (1969).

[18] *Largo v. Court of Appeals*, G.R. No. 177244, November 20, 2007, 537 SCRA 721, 728-729.

[19] G.R. No. 164679, July 27, 2011, 654 SCRA 539, 549-550.

[20] *Id.* at 551-552.

[21] *OCA v. Villanueva*, *supra* note 17.

Properties in Regional Trial Court, Branch 4, Panabo City, Davao del Norte,[22] the Court absolved herein respondent, Judge Grageda, from any administrative liability since the complaint against him was filed after his retirement from the judiciary.

Applying the foregoing principles to the case at bar, the Court is constrained to similarly dismiss the complaint against Judge Grageda.

Records show that Judge Grageda compulsorily retired on November 25, 2009 while the judicial audit was conducted at RTC, Br. 4, Panabo City from November 17 to November 26, 2009. The OCA then submitted its report only on March 24, 2010, which was re-docketed as a regular administrative matter on April 28, 2010,[23] or months after Judge Grageda retired from the judiciary. Consequently, his retirement effectively barred the Court from pursuing the instant administrative proceeding that was instituted after his tenure in office,[24] and divested the Court, much less the OCA, of any jurisdiction to still subject him to the rules and regulations of the judiciary and/or to penalize him for the infractions committed while he was still in the service.[25] As held in the case of *OCA v. Judge Celso L. Mantua*:[26]

> 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.[27]

With respect to the administrative liability of Mr. Boyd James B. Bacaltos, OIC/Acting Clerk of Court; Ms. Belen Basa, Court

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[22] *Supra* note 16.

[23] *Rollo,* p. 119.

[24] *Re: Missing Exhibits and Court Properties in Regional Trial Court, Branch 4, Panabo City, Davao del Norte, supra* note 16.

[25] *Id.*

[26] A.M. No. RTJ-11-2291, February 8, 2012, 664 SCRA 253.

[27] *Id.* at 265.

Interpreter III; Ms. Arlene Sison, Clerk III; and Ms. Marianne G. Baylon, Clerk III, all of the Regional Trial Court, Branch 4, Panabo City, however, the Court concurs with the recommendation of the OCA that their respective compliance with the directives contained in the Resolution dated April 28, 2010 be accepted with stern warning that a repetition of the same or similar offense shall be dealt with more severely.

WHEREFORE, premises considered, the complaint against retired Judge Jesus L. Grageda of the Regional Trial Court, Branch 4, Panabo City, is **DISMISSED**. The Fiscal Management Office of the Office of the Court Administrator is directed to immediately release the ₱200,000.00 withheld from his retirement benefits, unless its continued retention is warranted under any other lawful ground.

The respective explanations and/or compliance of Mr. Boyd James B. Bacaltos, OIC/Acting Clerk of Court; Ms. Belen Basa, Court Interpreter III; Ms. Arlene Sison, Clerk III; and Ms. Marianne G. Baylon, Clerk III, all of the Regional Trial Court, Branch 4, Panabo City, are hereby **ACCEPTED** as full compliance with the directives of the Court in the Resolution dated April 28, 2010 but with a **STERN WARNING** that a repetition of the same or similar infraction shall be dealt with more severely.

SO ORDERED.

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

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[*] Designated Acting Member per Raffle dated March 11, 2013.

SECOND DIVISION

[G.R. No. 173622. March 11, 2013]

ROBERN DEVELOPMENT CORPORATION and RODOLFO M. BERNARDO, JR., *petitioners, vs.* **PEOPLE'S LANDLESS ASSOCIATION represented by FLORIDA RAMOS and NARDO LABORA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI*; FAILURE TO ATTACH THE MATERIAL PORTIONS OF THE RECORD THAT WOULD SUPPORT THE ALLEGATIONS IN THE PETITION DOES NOT MERIT THE OUTRIGHT DISMISSAL OF THE PETITION.—** Petitioners' failure to attach the material portions of the record that would support the allegations in the Petition is not fatal. We ruled in *F.A.T. Kee Computer Systems, Inc. v. Online Networks International, Inc.*, thus: x x x However, such a requirement [failure to attach material portions of the record] was not meant to be an ironclad rule such that the failure to follow the same would merit the outright dismissal of the petition. In accordance with Section 7 of Rule 45, 'the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate.' More importantly, Section 8 of Rule 45 declares that '[i]f the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice.' x x x.

2. **CIVIL LAW; SPECIAL CONTRACTS; CONTRACT OF SALE; ELEMENTS TO BE VALID; EXPOUNDED.—** A contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. Thus, for a contract of sale to be valid, all of the following essential elements must concur: "a) consent or meeting of the minds; b) determinate subject matter; and c) price certain in money or its equivalent." In the case at bench, there is no

controversy anent the determinate subject matter, *i.e.*, the 2,000-square meter lot. This leaves us to resolve whether there was a concurrence of the remaining elements. As for the price, fixing it can never be left to the decision of only one of the contracting parties. "But a price fixed by one of the contracting parties, if accepted by the other, gives rise to a perfected sale." As regards consent, "[w]hen there is merely an offer by one party without acceptance of the other, there is no contract." The decision to accept a bidder's proposal must be communicated to the bidder. However, a binding contract may exist between the parties whose minds have met, although they did not affix their signatures to any written document, as acceptance may be expressed or implied. It "can be inferred from the contemporaneous and subsequent acts of the contracting parties." Thus, we held: x x x The rule is that except where a formal acceptance is so required, although the acceptance must be affirmatively and clearly made and must be evidenced by some acts or conduct communicated to the offeror, it may be made either in a formal or an informal manner, and may be shown by acts, conduct, or words of the accepting party that clearly manifest a present intention or determination to accept the offer to buy or sell. Thus, acceptance may be shown by the acts, conduct, or words of a party recognizing the existence of the contract of sale.

3. **ID.; ID.; ID.; NO PERFECTED CONTRACT OF SALE WHERE THE PARTIES DID NOT AGREE ON THE PRICE AND NO CONSENT WAS GIVEN, WHETHER EXPRESS OR IMPLIED; CASE AT BAR.—** After scrutinizing the testimonial and documentary evidence in the records of the case, we find no proof of a perfected contract of sale between A1-Amanah and PELA. The parties did not agree on the price and no consent was given, whether express or implied. When PELA Secretary Florida Ramos (Ramos) testified, she referred to the March 18, 1993 letter which PELA sent to A1-Amanah as the document supposedly embodying the perfected contract of sale. However, we find that the March 18, 1993 letter referred to was merely an offer to buy x x x. Neither can the note written by the bank that "[s]ubject offer has been acknowledged/received but processing to take effect upon putting up of the partial amount of ₱150,000.00 on or before April 15, 1993" be construed as acceptance of PELA's offer to buy. Taken at face value, the annotation simply means that the

bank merely acknowledged receipt of PELA's letter-offer. Furthermore, by 'processing,' A1-Amanah only meant that it will 'act on the offer', *i.e.,* it still has to evaluate whether PELA's offer is acceptable. Until and unless A1-Amanah accepts, there is as yet no perfected contract of sale. Notably here, the bank never signified its 'approval' or 'acceptance' of the offer. We cannot agree with the CA's ratiocination that receipt of the amount, coupled with the phrase written on the four receipts as "deposit on sale of TCT No. 138914," signified a tacit acceptance by A1-Amanah of PELA's offer. For sure, the money PELA gave was not in the concept of an earnest money. Besides, as testified to by then OIC Dalig, it is the usual practice of A1-Amanah to require submission of a bid deposit which is acknowledged by way of bank receipts before it entertains offers.

4. **ID.; ID.; ID.; THREE STAGES; ABSENT ORAL OR DOCUMENTARY EVIDENCE PROVING THE ACCEPTANCE OF THE OFFERED PURCHASE PRICE, THE TRANSACTION BETWEEN THE PARTIES REMAINED IN THE NEGOTIATION STAGE AND NEVER MATERIALIZED INTO A PERFECTED SALE.—** Contracts undergo three stages: "[a) n]egotiation [which] begins from the time the prospective contracting parties indicate interest in the contract and ends at the moment of their agreement[; b) p]erfection or birth[,] x x x which takes place when the parties agree upon all the essential elements of the contract x x x; [and c) c]onsummation[, which] occurs when the parties fulfill or perform the terms agreed upon, culminating in the extinguishment thereof." In the case at bench, the transaction between A1-Amanah and PELA remained in the negotiation stage. The offer never materialized into a perfected sale, for no oral or documentary evidence categorically proves that A1-Amanah expressed amenability to the offered ₱300,000.00 purchase price. Before the lapse of the 1-year period PELA had set to pay the remaining 'balance,' A1-Amanah expressly rejected its offered purchase price, although it took the latter around seven months to inform the former and this entitled PELA to award of damages. A1-Amanah's act of selling the lot to another buyer is the final nail in the coffin of the negotiation with PELA. Clearly, there is no double sale, thus, we find no reason to disturb the consummated sale between A1-Amanah and Robern.

APPEARANCES OF COUNSEL

Alabastro & Olaguer Law Offices for petitioners.
Rodolfo Ta-asan, Jr. for respondent.

D E C I S I O N

DEL CASTILLO, *J*.:

"This Court cannot presume the existence of a sale of land, absent any direct proof of it."[1]

Challenged in this Petition for Review on *Certiorari* are the August 16, 2005 Decision[2] and May 30, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 66071, which ordered petitioner Robern Development Corporation (Robern) to reconvey the 2,000-square meter lot it bought from Al-Amanah Islamic Development Bank of the Philippines (Al-Amanah) to respondent People's Landless Association (PELA).

Factual Antecedents

Al-Amanah owned a 2000-square meter lot located in Magtu-od, Davao City and covered by Transfer Certificate of Title (TCT) No. 138914.[4] On December 12, 1992, Al-Amanah Davao Branch, thru its officer-in-charge Febe O. Dalig (OIC Dalig), asked[5] some of the members of PELA[6] to desist from building their houses on the lot and to vacate the same, unless they are interested to buy it. The informal settlers thus expressed their

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[1] *Amado v. Salvador*, G.R. No. 171401, December 13, 2007, 540 SCRA 161, 176.

[2] CA *rollo*, pp. 137-173; penned by Associate Justice Teresita Dy-Liacco Flores and concurred in by Associate Justices Edgardo A. Camello and Myrna Dimaranan-Vidal.

[3] *Id.* at 214.

[4] Records, Vol. 2, p. 594.

[5] *Id.* at 589.

[6] Namely Alejandro Padilla Boy Bartiana, Leonardo Labora, Francisco Paig, and Asterio Aki.

interest to buy the lot at ₱100.00 per square meter, which Al-Amanah turned down for being far below its asking price.[7] Consequently, Al-Amanah reiterated its demand to the informal settlers to vacate the lot.[8]

In a letter[9] dated March 18, 1993, the informal settlers together with other members comprising PELA offered to purchase the lot for ₱300,000.00, half of which shall be paid as down payment and the remaining half to be paid within one year. In the lower portion of the said letter, Al-Amanah made the following annotation:

> Note:
>
> Subject offer has been acknowledged/received but processing to take effect upon putting up of the partial amt. of ₱150,000.00 on or before April 15, 1993.

By May 3, 1993, PELA had deposited ₱150,000.00 as evidenced by four bank receipts.[10] For the first three receipts, the bank labelled the payments as "Partial deposit on sale of TCT No. 138914," while it noted the 4th receipt as "Partial/ Full payment on deposit on sale of A/asset TCT No. 138914."

In the meantime, the PELA members remained in the property and introduced further improvements.

On November 29, 1993, Al-Amanah, thru Davao Branch Manager Abraham D. Ututalum-Al Haj, wrote then PELA President Bonifacio Cuizon, Sr. informing him of the Head Office's disapproval of PELA's offer to buy the said 2,000-square meter lot, *viz.*:

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[7] Records, Vol. 2, p. 636.

[8] *Id.* at 653-656. No letter was sent to Asterio Aki.

[9] Records, Vol. 1, p. 52.

[10] *Id.* at 53. The receipts are as follows:

Receipt No. 139497 issued on April 15, 1993 — ₱106,000.00
Receipt No. 139515 issued on April 27, 1993 — ₱18,500.00
Receipt No. 139520 issued on April 30, 1993 — ₱24,000.00
Receipt No. 139522 issued on May 3, 1993 — ₱1,500.00

Dear Mr. Cuizon[,] Sr.,

Please be inform[ed] that your offer to purchase the lot covered by TCT No. T-138914, containing an area of 2,000 square meters, located at Bakingan, Barangay Magtuod, Davao City for ₱300,000.00 has been turned down by the top management, due to the reason that your offered price is way below the selling price of the Bank which is ₱500.00 per square meter, or negotiate but on Cash basis only.

You had been told regarding this matter, but you failed to counter offer since you have [conferred] with the Bank's local management. Despite . . . the time given to you to counter offer or to vacate the lot presently and illegally occupied by you and the members of the association, still you refrain to hear our previous notices. You even deliberately construct more residential structures without our permission. As such, you are finally instructed to vacate the lot and remove all the house structures erected on the said lot within 15 days upon receipt of this letter. Failure on your part including that of the members, the Bank will be constrained to take legal action against you.

Furthermore, you can withdraw the amount deposited in the name of your association anytime during banking hours.[11]

Subsequently, Al-Amanah sent similarly worded letters,[12] all dated December 14, 1993, to 19 PELA members demanding that they vacate the lot.

In a letter[13] dated December 20, 1993, PELA, through Atty. Pedro S. Castillo, replied that it had already reached an agreement with Al-Amanah regarding the sale of the subject lot based on their offered price:

Dear Mr. Ututalum-Al-Haj,

The People's Landless Association, Inc., through Mr. Bonifacio Cuizon, Sr. has requested us to assist them in communicating with you anent your letter of 29 November 1993. According to Mr. Cuizon

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[11] Records, Vol. 2, p. 639.

[12] *Id.* at 657-675.

[13] *Id.* at 638.

the present occupants of the lot covered by T.C.T. No. T-138914 with an area of 2,000 square meters, had a definite agreement with the Islamic Bank through its previous Manager or Officer[-]in[-]Charge to buy this foreclosed property at ₱300,000.00. As a matter of fact their deposit of ₱150,000.00 was on that basis. For this reason, the occupants, who are members of the association, have already made lot allocations among themselves and have improved their respective houses.

It would be most unfair if the Bank would now renege on its [commitment] and eject these occupants. In line with the national policy of granting landless members of our society the opportunity of owning [land] and providing shelter to their families, it would be equitable and socially justifiable to grant these occupants their occupied areas pursuant to the earlier agreement with the Bank.

For the foregoing reasons we hope that the Islamic Bank, for legal, moral and social grounds would reconsider.

Meanwhile, acting on Robern's undated written offer,[14] Al-Amanah issued a Recommendation Sheet[15] dated December 27, 1993 addressed to its Board Operations Committee, indicating therein that Robern is interested to buy the lot for ₱400,000.00; that it has already deposited 20% of the offered purchase price; that it is buying the lot on "as is" basis; and, that it is willing to shoulder the relocation of all informal settlers therein. On December 29, 1993, the Head Office informed the Davao Branch Manager that the Board Operations Committee had accepted Robern's offer.[16]

Eight days later, Robern was informed of the acceptance. Al-Amanah stressed that it is Robern's responsibility to eject the occupants in the subject lot, if any, as well as the payment of the remaining amount within 15 days; otherwise, the ₱80,000.00 deposit shall be forfeited.[17]

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[14] *Id.* at 637.

[15] *Id.* at 640 and 642.

[16] *Id.* at 641.

[17] *Id.* at 643.

In a letter[18] dated January 13, 1994, Robern expressed to Al-Amanah its uncertainty on the status of the subject lot, *viz.*:

This is in connection with TCT No. 138914 which your bank offered to sell to us and which we committed to buy.

A group calling itself PEOPLE[']S LANDLESS ASSOCIATION, INC. made representation with our office bringing with them copies of official receipts totalling ₱150,000.00 issued by your bank which stated — "PARTIAL PAYMENT/DEPOSIT on sale of TCT #138914".

While condition no. 6 in the sale of property to us states that the buyer shall be responsible for ejecting the squatters of the property, the occupants of the said lot could hardly be categorized as squatters considering the supposed transaction previously entered by your bank with them. We were greatly appalled that we should learn about this not from the bank but from outside sources.

My company is ready to finalize our transaction provided, however, that the problem with this group is cleared. In this connection, we are requesting for a definite statement from your bank on whether the official receipts being brandished by this group are genuine or not, and if they were, were they ever invalidated by virtue of the return of their deposit and whether there was a cancellation of your agreement with them.

In the meantime, please consider the 15-day period for us to pay the amount of ₱320,000.00 imposed by your bank suspended until such time that the legal problem with the lot occupants is settled.

To convince Robern that it has no existing contract with PELA, Al-Amanah furnished it with copies of the Head Office's rejection letter of PELA's bid, the demand letters to vacate, and the proof of consignment of PELA's ₱150,000.00 deposit to the Regional Trial Court (RTC) of Davao City that PELA refused to withdraw.[19] Thereafter, on February 2, 1994, it informed Robern that should the latter fail to pay the balance by February 9, 1994, its ₱80,000.00 deposit will be forfeited and the lot shall be up for sale to other prospective buyers.[20] Meanwhile, Al-

[18] *Id.* at 644.

[19] Records, Vol. 1, pp. 191-192.

[20] Records, Vol. 2, p. 646.

Amanah requested for assistance for the removal of the houses not only from the Office of the City Engineer of Davao City[21] but also from Mayor Rodrigo Duterte. Gaining a favorable legal opinion from the City Legal Officer, the matter was indorsed to the Chief of Demolition Consensus of the Department of Public Services for action.[22]

On March 4, 1994, Robern paid the balance of the purchase price.[23] The Deed of Sale[24] over the realty was executed on April 6, 1994 and TCT No. T-212983[25] was issued in Robern's name the following day.

A week later, PELA consigned ₱150,000.00 in the RTC of Davao City.[26] Then on April 14, 1994, it wrote[27] Al-Amanah asking the latter to withdraw the amount consigned. Part of the letter states:

x x x x x x x x x

On March 21, 1994 (almost one month before the April 15, 1994 deadline) we came to your bank to remit the balance and full payment [for] the abovementioned lot. [Inasmuch] as you refuse[d] to accept the payment, we have decided to deposit the amount consigned to your bank.

In our dialogue at your office in 1993, we have agreed that documents will be processed as soon as we pay the ₱150,000.00 initial deposit. [Inasmuch] as we have not only paid the deposit but have also made full payment of the account, kindly facilitate processing of the documents to finalize transaction.

We have not been remiss in doing our part of the transaction; please do your share.

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[21] *Id.* at 648.

[22] Records, Vol. 1, pp. 192-193.

[23] *Id.* at 192.

[24] Records, Vol. 2, pp. 595-596.

[25] *Id.* at 597.

[26] *Id.* at 592.

[27] *Id.* at 593.

Thank you.

Very truly yours,

For the occupants/claimants
T.C.T. No. T-138914[28]

Three months later, as its members were already facing eviction and possible demolition of their houses, and in order to protect their rights as vendees, PELA filed a suit for Annulment and Cancellation of Void Deed of Sale[29] against Al-Amanah, its Director Engr. Farouk Carpizo (Engr. Carpizo), OIC Dalig, Robern, and Robern's President and General Manager, petitioner Rodolfo Bernardo (Bernardo) before the RTC of Davao City. It insisted that as early as March 1993 it has a perfected contract of sale with Al-Amanah. However, in an apparent act of bad faith and in cahoots with Robern, Al-Amanah proceeded with the sale of the lot despite the prior sale to PELA.

Incidentally, the trial court granted PELA's prayer for a temporary restraining order.[30] Subsequently, it issued on August 12, 1994 an Order[31] finding merit in the issuance of the writ of preliminary injunction, *inter alia*. The RTC's grant of injunctive relief was affirmed by the CA in CA-G.R. SP No. 35238[32] when the factual and legal bases for its issuance were questioned before the appellate court.

The respondents in the annulment case filed their respective Answers.[33] Al-Amanah and Engr. Carpizo claimed that the bank

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[28] *Id.*

[29] Records, Vol. 1, pp. 1-6. The Complaint filed on July 14, 1994 and docketed as Civil Case No. 23,037-94 was amended on July 18, 1994, pp. 19-25 to additionally pray for a temporary restraining order and for injunction.

[30] *Id.* at 36.

[31] *Id.* at 76-83. The writ itself was issued on November 9, 1994, *id*. at 174-175.

[32] *Id.* at 189-196; penned by Associate Justice Fidel F. Purisima and concurred in by Associate Justices Jainal D. Rasul and Eubulo G. Verzola.

[33] *Id.* at 55-60, 84-88, and 220-224.

has every right to sell its lot to any interested buyer with the best offer and thus they chose Robern. They clarified that the ₱150,000.00 PELA handed to them is not part of the payment but merely a deposit in connection with its offer. They asserted that PELA was properly apprised that its offer to buy was subject to the approval of Al-Amanah's Head Office. They stressed that Al-Amanah never entered into a sale with PELA for there was no perfected agreement as to the price since the Head Office rejected PELA's offer.

For their part, Robern and Bernardo asserted the corporation's standing as a purchaser in good faith and for value in the sale of the property, having relied on the clean title of Al-Amanah. They also alleged that the purported sale to PELA is violative of the Statute of Frauds[34] as there is no written agreement covering the same.

Ruling of the Regional Trial Court

In its August 10, 1999 Decision,[35] the RTC dismissed PELA's Complaint. It opined that the March 18, 1993 letter PELA has been relying upon as proof of a perfected contract of sale was a mere offer which was already rejected. Furthermore, the annotation appearing in the bottom part of the said letter could not be construed as an acceptance because the same is a mere acknowledgment of receipt of the letter (not the offer) which will still be subject to processing. The RTC likewise ruled that

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[34] CIVIL CODE, Art. 1403. The following contracts are unenforceable, unless they are ratified:

x x x x x x x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

x x x x x x x x x

(e) An agreement x x x for the sale of real property or of an interest therein;

[35] Records, Vol. 3, pp. 724-732; penned by Judge Paul T. Arcangel.

being a corporation, only Al-Amanah's board of directors can bind the bank with third persons involving the sale of its property. Thus, the purported offer made by Al-Amanah's OIC, who was never conferred authority by the board of directors to sell the lot, cannot bind the bank. In contrast, when the Head Office accepted Robern's offered price, it was duly approved by the board of directors, giving birth to a perfected contract of sale between Al-Amanah and Robern.

Refusing to accept the Decision, PELA elevated its case to the CA.[36]

Ruling of the Court of Appeals

Reversing the RTC in its assailed Decision[37] of August 16, 2005, the CA ruled that there was already a perfected contract of sale between PELA and Al-Amanah. It held that the annotation on the lower portion of the March 18, 1993 letter could be construed to mean that for Al-Amanah to accept PELA's offer, the sum of ₱150,000.00 must be first put up. The CA also observed that the subsequent receipt by Al-Amanah of the amounts totalling ₱150,000.00, and the annotation of "deposit on sale of TCT No. 138914," on the receipts it issued explicitly indicated an acceptance of the association's offer to buy. Consequently, the CA invalidated the sale between Robern and Al-Amanah.

The CA also concluded that Al-Amanah is guilty of bad faith in dealing with PELA because it took Al-Amanah almost seven months to reject PELA's offer while holding on to the ₱150,000.00 deposit. The CA thus adjudged PELA entitled to moral and exemplary damages as well as attorney's fees.

The dispositive portion of the CA Decision reads:

> **WHEREFORE,** premises considered, the assailed Decision is **SET ASIDE**. Judgment is hereby rendered:
>
> 1. **DECLARING** the contract of sale between PELA and defendant Bank valid and subsisting.

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[36] *Id.* at 733.

[37] *Supra* note 2.

2. **ORDERING** the defendant Bank to receive the balance of ₱150,000.00 of the purchase price from PELA as consigned in court.

3. **DECLARING** the deed of sale executed by defendant Bank in favor or Robern Development Corporation as invalid and, therefore, void.

4. **ORDERING** defendant Bank to return to Robern the full amount of ₱400,000.00 which Robern paid as the purchase price of the subject property within ten (10) days from finality of this decision. It shall earn a legal interest of twelve percent (12%) per annum from the tenth (10th) day aforementioned if there is delay in payment.

5. **ORDERING** Robern Development Corporation to reconvey the land covered by T.C.T. No. 212983 in favor of People's Landless Association within a similar period of ten (10) days from finality of this decision.

6. **ORDERING** defendant Bank to pay plaintiffs-appellants the following:

   a. The sum of ₱100,000.00 as moral damages;

   b. The sum of ₱30,000.00 as exemplary damages;

   c. The sum of ₱30,000.00 as attorney's fees;

   d. A legal interest of SIX PERCENT (6%) per annum on the sums awarded in (a), (b), and (c) from the date of this Decision up to the time of full payment thereof.

SO ORDERED.[38]

Robern and Bernardo filed a Motion for Reconsideration[39] which Al-Amanah adopted. The CA, however, was firm in its disposition and thus denied[40] the same. Aggrieved, Robern and Al-Amanah separately filed Petitions for Review on *Certiorari* before us. However, Al-Amanah's Petition docketed as G.R. No. 173437, was denied on September 27, 2006 on procedural

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[38] CA *rollo*, pp. 172-173.

[39] *Id.* at 178-196.

[40] *Supra* note 3.

grounds.[41] Al-Amanah's Motion for Reconsideration of the said Resolution of dismissal was denied with finality on December 4, 2006.[42]

Hence, only the Petition of Robern and Bernardo subsists.

Petitioners' Arguments

Petitioners stress that there was no sale between PELA and Al-Amanah, for neither a deed nor any written agreement was executed. They aver that Dalig was a mere OIC of Al-Amanah's Davao Branch, who was never vested with authority by the board of directors of Al-Amanah to sell the lot. With regard to the notation on the March 18, 1993 letter and the four bank receipts, Robern contends that these are only in connection with PELA's offer.

Petitioners likewise contend that Robern is a purchaser in good faith. The PELA members are mere informal settlers. The title to the lot was clean on its face, and at the time Al-Amanah accepted Robern's offer, the latter was unaware of the alleged transaction with PELA. And when PELA later represented to Robern that it entered into a transaction with Al-Amanah regarding the subject lot, Robern even wrote Al-Amanah to inquire about PELA's claim over the property. And when informed by Al-Amanah that it rejected the offer of PELA and of its action of requesting assistance from the local government to remove the occupants from the subject property, only then did Robern push through with the sale.

Respondent's Arguments

PELA, on the other hand, claims that petitioners are not the proper parties who can assail the contract of sale between it and the bank. It likewise argues that the Petition should be dismissed because the petitioners failed to attach the material portions of the records that would support its

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[41] CA *rollo*, p. 542. The said Petition was denied due to Al-Amanah's failure to take the appeal within the reglementary period as well as to submit registry receipts as proof of service.

[42] *Id.* at 554.

allegations, as required by Section 4, Rule 45 of the Rules of Court.[43]

Aside from echoing the finding of the CA that Al-Amanah has a perfected contract of sale with PELA, the latter further invokes the reasoning of the RTC and the CA (CA-G.R. SP No. 35238) in finding merit in the issuance of the writ of preliminary injunction, that is, that there was 'an apparent perfection of contract (of sale) between the Bank and PELA.'[44] Furthermore, PELA claims that Al-Amanah accepted its offered price and the ₱150,000.00, thus barring the application of the Statute of Frauds as the contract was already partially executed. As to the non-existence of a written contract evidencing the same, PELA ascribes fault on the bank claiming that nothing happened despite its repeated follow-ups for the OIC of Al-Amanah to execute the deed after payment of the ₱150,000.00 in May 1993.

Issue

At issue before us is whether there was a perfected contract of sale between PELA and Al-Amanah, the resolution of which will decide whether the sale of the lot to Robern should be sustained or not.

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[43] Section 4. *Contents of petition*. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42.

[44] Records, Vol. 1, pp. 80-81 and 195.

Our Ruling

We shall first briefly address some matters raised by PELA.

PELA's contention that Robern cannot assail the alleged sale between PELA and Al-Amanah is untenable. Robern is one of the parties who claim title to the disputed lot. As such, it is a real party in interest since it stands to be benefited or injured by the judgment.[45]

Petitioners' failure to attach the material portions of the record that would support the allegations in the Petition is not fatal. We ruled in *F.A.T. Kee Computer Systems, Inc. v. Online Networks International, Inc.*,[46] thus:

> x x x However, such a requirement [failure to attach material portions of the record] was not meant to be an ironclad rule such that the failure to follow the same would merit the outright dismissal of the petition. In accordance with Section 7 of Rule 45, 'the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate.' More importantly, Section 8 of Rule 45 declares that '[i]f the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice.' x x x[47]

Anent the statement of the courts below that there was 'an apparent perfection of contract (of sale) between Al-Amanah and PELA,' we hold that the same is strictly confined to the resolution of whether a writ of preliminary injunction should issue since the PELA members were then about to be evicted. PELA should not rely on such statement as the same is not decisive of the rights of the parties and the merits of this case.

We shall now delve into the crucial issue of whether there was a perfected contract of sale between PELA and Al-Amanah.

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[45] 1997 RULES OF CIVIL PROCEDURE, Rule 3, Section 2.

[46] G.R. No. 171238, February 2, 2011, 641 SCRA 390.

[47] *Id.* at 407.

Essential Elements of a Contract of Sale

A contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.[48] Thus, for a contract of sale to be valid, all of the following essential elements must concur: "a) consent or meeting of the minds; b) determinate subject matter; and c) price certain in money or its equivalent."[49]

In the case at bench, there is no controversy anent the determinate subject matter, *i.e.*, the 2,000-square meter lot. This leaves us to resolve whether there was a concurrence of the remaining elements.

As for the price, fixing it can never be left to the decision of only one of the contracting parties.[50] "But a price fixed by one of the contracting parties, if accepted by the other, gives rise to a perfected sale."[51]

As regards consent, "[w]hen there is merely an offer by one party without acceptance of the other, there is no contract."[52] The decision to accept a bidder's proposal must be communicated to the bidder.[53] However, a binding contract may exist between the parties whose minds have met, although they did not affix their signatures to any written document,[54] as acceptance may be expressed or implied.[55] It "can be inferred from the

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[48] CIVIL CODE, Article 1475.

[49] *Navarra v. Planters Development Bank*, G.R. No. 172674, July 12, 2007, 527 SCRA 562, 574.

[50] *Bank of Commerce v. Manalo*, 517 Phil. 328, 347 (2006).

[51] *Id.*

[52] *Manila Metal Container Corporation v. Philippine National Bank*, 540 Phil. 451, 471 (2006).

[53] *The Insular Life Assurance Company, Ltd. v. Asset Builders Corporation*, 466 Phil. 751, 768 (2004).

[54] *Development Bank of the Philippines v. Medrano*, G.R. No. 167004, February 7, 2011, 641 SCRA 559, 567, citing *Traders Royal Bank v. Cuison Lumber Co., Inc.*, G.R. No. 174286, June 5, 2009, 588 SCRA 690, 701, 703.

[55] CIVIL CODE, Article 1320.

contemporaneous and subsequent acts of the contracting parties."[56] Thus, we held:

x x x The rule is that except where a formal acceptance is so required, although the acceptance must be affirmatively and clearly made and must be evidenced by some acts or conduct communicated to the offeror, it may be made either in a formal or an informal manner, and may be shown by acts, conduct, or words of the accepting party that clearly manifest a present intention or determination to accept the offer to buy or sell. Thus, acceptance may be shown by the acts, conduct, or words of a party recognizing the existence of the contract of sale.[57]

There is no perfected contract of sale between PELA and Al-Amanah for want of consent and agreement on the price.

After scrutinizing the testimonial and documentary evidence in the records of the case, we find no proof of a perfected contract of sale between Al-Amanah and PELA. The parties did not agree on the price and no consent was given, whether express or implied.

When PELA Secretary Florida Ramos (Ramos) testified, she referred to the March 18, 1993 letter which PELA sent to Al-Amanah as the document supposedly embodying the perfected contract of sale.[58] However, we find that the March 18, 1993 letter referred to was merely an offer to buy, *viz.*:

March 18, 1993

The Manager
Islamic Bank
Davao Branch
Davao City

Sir/Madam:

This has reference to the offer made by Messrs. Alejandro Padilla, Leonardo Labora, Boy Bartiana, Francisco Paig, and Mr.

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[56] *Jardine Davies, Inc. v. Court of Appeals*, 389 Phil. 204, 214 (2000).

[57] *Adelfa Properties, Inc. v. Court of Appeals*, 310 Phil. 623, 642 (1995).

[58] See TSN-Florida Ramos, November 19, 1998, Records, Vol. 8, pp. 262-265.

Asterio Aki for the purchase of the acquired asset of the bank with an area of 2,000 square meters and covered by T.C.T. No. T-138914, portions of which are occupied by their houses. These occupants have formed and registered [a] group of x x x landless families who have occupied shoulders of National Highways, to be able to raise an amount that would meet the approval of the Bank as the consideration for the purchase of the property. **The group which [is] known as PELA or People's Landless Association, is offering the bank the amount of THREE HUNDRED THOUSAND PESOS (₱300,000.00) for the whole 2,000 sq. meters. Of this amount the buyers will pay a down payment of ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00) and the balance payable in one (1) year.**

According to the plan of PELA, about 24 landless families can be accommodated in the property. We hope the Bank can help these families own even a small plot for their shelter. This would be in line with the government's program of housing which the present administration promised to put in high gear this year.[59] (Emphasis supplied)

Neither can the note written by the bank that "[s]ubject offer has been acknowledged/received but processing to take effect upon putting up of the partial amount of ₱150,000.00 on or before April 15, 1993" be construed as acceptance of PELA's offer to buy. Taken at face value, the annotation simply means that the bank merely acknowledged receipt of PELA's letter-offer. Furthermore, by 'processing,' Al-Amanah only meant that it will 'act on the offer,' *i.e.*, it still has to evaluate whether PELA's offer is acceptable. Until and unless Al-Amanah accepts, there is as yet no perfected contract of sale. Notably here, the bank never signified its 'approval' or 'acceptance' of the offer.

We cannot agree with the CA's ratiocination that receipt of the amount, coupled with the phrase written on the four receipts as "deposit on sale of TCT No. 138914," signified a tacit acceptance by Al-Amanah of PELA's offer. For sure, the money PELA gave was not in the concept of an earnest money. Besides, as testified to by then OIC Dalig, it is the usual practice of Al-

[59] *Supra* note 9.

Amanah to require submission of a bid deposit which is acknowledged by way of bank receipts before it entertains offers. Thus:

Atty. Bolcan:

Now, as far as you can remember, these receipts state that these are partial deposit[s], what do you mean by that?

WITNESS:

A: x x x, we normally request an offeror to submit or make deposit, actually the bank does not entertain any offer without any deposit and just like that, during my time x x x in buying the property for those interested the bank does not entertain any offer [unless they] make a deposit.

x x x x x x x x x

Q: Why do you issue receipts as officer-in-charge stating only partial deposits?

A: Because there was no sale, there was no consu[m]mated sale, so any amount which you will give as a deposit will be accepted by the bank for the offer and that if their offer will be disapproved we will return the deposit because their offer was very low and this might be disapproved by the head office in Manila.[60]

x x x x x x x x x

Atty. Taasan:

Do you confirm that based on the interest of the plaintiff to acquire the property they made a deposit with said bank, as evidence[d] by the receipts that were shown to you by your counsel, correct?

A: Yes, sir.

Q: And according to you, the bank do[es] not entertain any offer to buy the property without deposits?

A: Yes, sir.

Q: In this case since the plaintiffs made a deposit . . . they were properly entertained, correct?

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[60] TSN-Febe Dalig, March 11, 1999, Records, Vol. 8, pp. 441-442, 448.

A: Yes because it is under negotiation, now while their offer price is below the selling price of the bank.[61]

The absence of a perfected contract of sale was further buttressed by the testimony of PELA Secretary Ramos on cross examination, *viz.*:

Atty. Rabor:

Since it was x x x hard earned money you did not require the Amanah Bank when you gave that ₱150,000.00 to reduce your agreement into writing regarding the sale of this property?

A: I insisted but she will not issue that.[62]

x x x x x x x x x

Atty. Bolcan:

Now, on April 15, 1993 when the deposit was made, you were present?

A: Yes, sir.

Q: Now, after making the deposit of One Hundred Fifty Thousand (₱150,000.00) Pesos [o]n April 15, 1993 did you not request for the bank to execute a document to prove that actually you are buying the property?

A: I even said to the OIC or the manager that ma'am, now that you have received our money, where is our paper that we were the ones to buy that property, sir.

Q: To whom are you referring to?

A: Febe Dalig, the OIC, sir.

Q: And this OIC Febe Dalig informed you that the Offer on your part to buy the property is subject for approval by the head office in Manila, is that correct?

A: Yes she told me that it would be subject [to] approval in Manila. x x x

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[61] *Id.* at 459-460.

[62] TSN-Florida Ramos, August 2, 1994, Records, Vol. 7, pp. 27-28.

Q: And later on you were informed by the bank that you[r] offer was not [accepted] by the head office in Manila, is that correct?

A: She did not inform us but we [kept] on following it up with their office and she told us that it did not arrive yet, sir.[63] (Emphasis supplied)

PELA Secretary Ramos' testimony thus corroborated OIC Dalig's consistent stand that it is the Head Office which will decide whether Al-Amanah would accept PELA's offer:

Atty. Bolcan:

And now, if there are interested persons making offer x x x what [would] you do?

A: Well, we have to screen the offer before we [forward] the offer to Manila for approval because x x x

Court:

What [would] you do before you [forward] that to Manila?

A: We will be screening the offer x x x

Atty. Bolcan:

And you said that it [is] referred to Manila?

A: Yes, sir.

Q: Who will eventually approve the offer made by the interested persons to buy the property?

A: We have a committee in Manila to approve the sale of the property.

Q: Do you have any idea who will approve the offer of the property?

A: I have no idea but the president, rather it consist[s] of the president I think and then signed also by the vice-president and some officers in the office, sir.

x x x x x x x x x

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[63] TSN-Florida Ramos, November 19, 1998, Records, Vol. 8, pp. 259-261.

Q: Now, in case of offers of the property of the bank, x x x the officer-in-charge of the bank, Al-Amanah Bank branch, usually refers this matter to the head office in Manila?

A: Yes, sir.

Q: And it is the head office that will decide whether the offer will be approved or not?

A: Yes as head of the branch, we have to forward the offer whether it was acceptable or not.[64]

It is thus undisputed, and PELA even acknowledges, that OIC Dalig made it clear that the acceptance of the offer, notwithstanding the deposit, is subject to the approval of the Head Office. Recognizing the corporate nature of the bank and that the power to sell its real properties is lodged in the higher authorities,[65] she never falsely represented to the bidders that she has authority to sell the bank's property. And regardless of PELA's insistence that she execute a written agreement of the sale, she refused and told PELA to wait for the decision of the Head Office, making it clear that she has no authority to execute any deed of sale.

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[64] *Id.* at 443-446.

[65] CORPORATION CODE, Sec. 23. *The board of directors or trustees.* — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stock, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified. x x x

Sec. 36. *Corporate powers and capacity.*— Every corporation incorporated under this Code has the power and capacity:

x x x x x x x x x

7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution;

Contracts undergo three stages: "[a) n]egotiation [which] begins from the time the prospective contracting parties indicate interest in the contract and ends at the moment of their agreement[; b) p]erfection or birth[,] x x x which takes place when the parties agree upon all the essential elements of the contract x x x; [and c) c]onsummation[, which] occurs when the parties fulfill or perform the terms agreed upon, culminating in the extinguishment thereof."[66]

In the case at bench, the transaction between Al-Amanah and PELA remained in the negotiation stage. The offer never materialized into a perfected sale, for no oral or documentary evidence categorically proves that Al-Amanah expressed amenability to the offered ₱300,000.00 purchase price. Before the lapse of the 1-year period PELA had set to pay the remaining 'balance,' Al-Amanah expressly rejected its offered purchase price, although it took the latter around seven months to inform the former and this entitled PELA to award of damages.[67] Al-Amanah's act of selling the lot to another buyer is the final nail in the coffin of the negotiation with PELA. Clearly, there is no double sale, thus, we find no reason to disturb the consummated sale between Al-Amanah and Robern.

At this juncture, it is well to stress that Al-Amanah's Petition before this Court docketed as G.R. No. 173437 was already denied with finality on December 4, 2006. Hence, we see no reason to disturb paragraph 6 of the CA's Decision ordering Al-Amanah to pay damages to PELA.

WHEREFORE, we **PARTIALLY GRANT** the Petition. Except for paragraph 6 of the Court of Appeals Decision which had already been long settled,[68] the rest of the judgment in the assailed August 16, 2005 Decision and May 30, 2006 Resolution of the Court of Appeals in CA-G.R. No. CV No. 66071 are hereby **ANNULLED and SET ASIDE**. The August 10, 1999

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[66] *Navarra v. Planters Development Bank, supra* note 49 at 571-572.

[67] The CA's finding of bad faith entitled PELA to the award of damages, the judgment of which became final and executory. See notes 42 and 43.

[68] See notes 42 and 43.

Decision of the Regional Trial Court of Davao City, Branch 12, dismissing the Complaint for Annulment and Cancellation of Void Deed of Sale filed by respondent People's Landless Association is **REINSTATED and AFFIRMED**. The amount of Pesos: Three Hundred Thousand (₱300,000.00) consigned with the Regional Trial Court of Davao City may now be withdrawn by People's Landless Association.

SO ORDERED.

Carpio (Chairperson), Brion, Villarama, Jr.,[*] and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 193301. March 11, 2013]

MINDANAO II GEOTHERMAL PARTNERSHIP, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. No. 194637. March 11, 2013]

MINDANAO I GEOTHERMAL PARTNERSHIP, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent*.

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX (VAT); REFUNDS OR TAX CREDITS OF INPUT TAX; ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES; THE PRESCRIPTIVE PERIOD FOR THE FILING OF

[*] Per Special Order No. 1426 dated March 8, 2013.

ADMINISTRATIVE CLAIMS IS WITHIN TWO (2) YEARS AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN THE SALES ARE MADE UNDER SECTION 112(A) OF THE CODE.— In determining whether the administrative claims of Mindanao I and Mindanao II for 2003 have prescribed, we see no need to rely on either *Atlas* or *Mirant*. Section 112(A) of the 1997 Tax Code is clear: "[A]ny VAT- registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made,** apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales x x x."

2. **ID.; ID.; ID.; ID.; PRESCRIPTIVE PERIOD FOR THE FILING OF JUDICIAL CLAIMS IS WITHIN THIRTY (30) DAYS FROM THE RECEIPT OF THE DECISION DENYING THE CLAIM OR AFTER THE EXPIRATION OF THE ONE HUNDRED TWENTY DAY-PERIOD, APPEAL THE DECISION OR THE UNACTED CLAIM WITH THE COURT OF TAX APPEALS (CTA).—** In determining whether the claims for the second, third and fourth quarters of 2003 have been properly appealed, we still see no need to refer to either *Atlas* or *Mirant*, or even to Section 229 of the 1997 Tax Code. The second paragraph of Section 112(C) of the 1997 Tax Code is clear: "In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

3. **ID.; ID.; ID.; ID.; ID.; BUREAU OF INTERNAL REVENUE (BIR) RULING NO. DA-489-03 EXPRESSLY STATES THAT THE TAXPAYER-CLAIMANT NEED NOT WAIT FOR THE LAPSE OF THE 120-DAY PERIOD BEFORE IT COULD SEEK JUDICIAL RELIEF WITH THE CTA BY WAY OF PETITION FOR REVIEW.—** In the consolidated cases of *San Roque*, the Court *En Banc* examined and ruled on the different claims for tax refund or credit of three different companies. In *San Roque*, we reiterated that

"[f]ollowing the *verba legis* doctrine, [Section 112(C)] must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no 'decision' or 'deemed a denial decision' of the Commissioner for the CTA to review." Notwithstanding a strict construction of any claim for tax exemption or refund, the Court in *San Roque* recognized that BIR Ruling No. DA-489-03 constitutes equitable estoppel in favor of taxpayers. **BIR Ruling No. DA-489-03 expressly states that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review."**

4. **ID.; ID.; ID.; ID.; ID.; SUMMARY OF RULES ON PRESCRIPTIVE PERIOD INVOLVING VAT.—** We summarize the rules on the determination of **the prescriptive period for filing a tax refund or credit of *unutilized input VAT* as provided in Section 112 of the 1997 Tax Code,** as follows: (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. (2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction. (3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR. (4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.

5. **ID.; ID.; ID.; ID.; ID.; THE SALE OF THE NISSAN PATROL IS AN INCIDENTAL TRANSACTION MADE IN THE**

COURSE OF PETITIONER'S BUSINESS WHICH SHOULD BE LIABLE FOR VAT; SECTION 105 OF THE 1997 TAX CODE PROVIDES THAT A TRANSACTION "IN THE COURSE OF TRADE OR BUSINESS" INCLUDES "TRANSACTIONS INCIDENTAL THERETO."— Mindanao II's sale of the Nissan Patrol is said to be an isolated transaction. However, it does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability. Indeed, a reading of Section 105 of the 1997 Tax Code would show that a transaction "in the course of trade or business" includes "transactions incidental thereto." Mindanao II's business is to convert the steam supplied to it by PNOC-EDC into electricity and to deliver the electricity to NPC. In the course of its business, Mindanao II bought and eventually sold a Nissan Patrol. Prior to the sale, the Nissan Patrol was part of Mindanao II's property, plant, and equipment. Therefore, the sale of the Nissan Patrol is an incidental transaction made in the course of Mindanao II's business which should be liable for VAT.

6. **ID.; ID.; ID.; ID.; ID.; CTA'S FINDING THAT PETITIONERS FAILED TO COMPLY WITH THE SUBSTANTIATION REQUIREMENTS IS A FINDING OF FACT AND THE COURT FOUND NO REASON TO OVERTURN SAID FINDING.—** Mindanao II claims that the CTA's disallowance of a total amount of ₱492,198.09 is improper as it has substantially complied with the substantiation requirements of Section 113(A) in relation to Section 237 of the 1997 Tax Code, as implemented by Section 4.104-1, 4.104-5 and 4.108-1 of Revenue Regulation No. 7-95. We are constrained to state that Mindanao II's compliance with the substantiation requirements is a finding of fact. The CTA *En Banc* evaluated the records of the case and found that the transactions in question are purchases for services and that Mindanao II failed to comply with the substantiation requirements. We affirm the CTA *En Banc's* finding of fact, which in turn affirmed the finding of the CTA First Division. We see no reason to overturn their findings.

APPEARANCES OF COUNSEL

Villanueva Caña & Associates Law Offices for petitioner.
Claro B. Ortiz and *Felix Paul R. Velasco III* for respondent.

DECISION

CARPIO, *J*.:

The Cases

G.R. No. 193301 is a petition for review[1] assailing the Decision[2] promulgated on 10 March 2010 as well as the Resolution[3] promulgated on 28 July 2010 by the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA EB No. 513. The CTA *En Banc* affirmed the 22 September 2008 Decision[4] as well as the 26 June 2009 Amended Decision [5] of the First Division of the Court of Tax Appeals (CTA First Division) in CTA Case Nos. 7227, 7287, and 7317. The CTA First Division denied Mindanao II Geothermal Partnership's (Mindanao II) claims for refund or tax credit for the first and second quarters of taxable year 2003 for being filed out of time (CTA Case Nos. 7227 and 7287). The CTA First Division, however, ordered the Commissioner of Internal Revenue (CIR) to refund or credit

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

[2] *Rollo* (G.R. No. 193301), pp. 11-32. Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Erlinda P. Uy, Olga Palanca Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas, concurring. Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista penned Separate Concurring and Dissenting Opinions. Associate Justice Caesar A. Casanova concurred with Associate Justice Bautista's Opinion.

[3] *Id.* at 47-54. Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring. Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista penned Separate Concurring and Dissenting Opinions. Associate Justice Caesar A. Casanova concurred with Associate Justice Bautista's Opinion. Associate Justice Amelia R. Cotangco-Manalastas was on leave.

[4] *Id.* at 179-198. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista, concurring.

[5] *Id.* at 209-218. Penned by Associate Justice Caesar A. Casanova, with Associate Justice Lovell R. Bautista, concurring. Presiding Justice Ernesto D. Acosta penned a Separate Concurring and Dissenting Opinion.

to Mindanao II unutilized input value-added tax (VAT) for the third and fourth quarters of taxable year 2003 (CTA Case No. 7317).

G.R. No. 194637 is a petition for review[6] assailing the Decision[7] promulgated on 31 May 2010 as well as the Amended Decision[8] promulgated on 24 November 2010 by the CTA *En Banc* in CTA EB Nos. 476 and 483. In its Amended Decision, the CTA *En Banc* reversed its 31 May 2010 Decision and granted the CIR's petition for review in CTA Case No. 476. The CTA *En Banc* denied Mindanao I Geothermal Partnership's (Mindanao I) claims for refund or tax credit for the first (CTA Case No. 7228), second (CTA Case No. 7286), third, and fourth quarters (CTA Case No. 7318) of 2003.

Both Mindanao I and II are partnerships registered with the Securities and Exchange Commission, value added taxpayers registered with the Bureau of Internal Revenue (BIR), and Block Power Production Facilities accredited by the Department of Energy. Republic Act No. 9136, or the Electric Power Industry Reform Act of 2000 (EPIRA), effectively amended Republic Act No. 8424, or the Tax Reform Act of 1997 (1997 Tax Code),[9]

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

[7] *Rollo* (G.R. No. 194637), pp. 14-26. Penned by Associate Justice Caesar A. Casanova, with Associate Justices Lovell R. Bautista, Cielito N. Mindaro-Grulla and Amelia C. Cotangco-Manalastas, concurring. Associate Justice Olga Palanca-Enriquez penned a Separate Concurring and Dissenting Opinion, with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, concurring. Associate Justice Esperanza R. Fabon-Victorino penned a Dissenting Opinion. Presiding Justice Ernesto D. Acosta was on leave.

[8] *Id.* at 41-51. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia C. Cotangco-Manalastas, concurring. Associate Justice Lovell R. Bautista penned a Separate Concurring and Dissenting Opinion.

[9] The short title of Republic Act No. 8424 is Tax Reform Act of 1997. It is also sometimes referred to as the National Internal Revenue Code (NIRC) of 1997. In this *ponencia*, we refer to RA 8424 as 1997 Tax Code.

when it decreed that sales of power by generation companies shall be subjected to a zero rate of VAT.[10] Pursuant to EPIRA, Mindanao I and II filed with the CIR claims for refund or tax credit of accumulated unutilized and/or excess input taxes due to VAT zero-rated sales in 2003. Mindanao I and II filed their claims in 2005.

G.R. No. 193301
Mindanao II v. CIR

The Facts

G.R. No. 193301 covers three CTA First Division cases, CTA Case Nos. 7227, 7287, and 7317, which were consolidated as CTA EB No. 513. CTA Case Nos. 7227, 7287, and 7317 claim a tax refund or credit of Mindanao II's alleged excess or unutilized input taxes due to VAT zero-rated sales. In CTA Case No. 7227, Mindanao II claims a tax refund or credit of ₱3,160,984.69 for the first quarter of 2003. In CTA Case No.

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[10] Section 6 of EPIRA provides:

Generation Sector. — Generation of electric power, a business affected with public interest shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

Upon the implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements. (Emphasis supplied)

7287, Mindanao II claims a tax refund or credit of ₱1,562,085.33 for the second quarter of 2003. In CTA Case No. 7317, Mindanao II claims a tax refund or credit of ₱3,521,129.50 for the third and fourth quarters of 2003.

The CTA First Division's narration of the pertinent facts is as follows:

x x x x x x x x x

On March 11, 1997, [Mindanao II] allegedly entered into a Built (sic)-Operate-Transfer (BOT) contract with the Philippine National Oil Corporation — Energy Development Company (PNOC-EDC) for finance, engineering, supply, installation, testing, commissioning, operation, and maintenance of a 48.25 megawatt geothermal power plant, provided that PNOC-EDC shall supply and deliver steam to [Mindanao II] at no cost. In turn, [Mindanao II] shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the National Power Corporation (NPC) for and in behalf of PNOC-EDC.

[Mindanao II] alleges that its sale of generated power and delivery of electric capacity and energy of [Mindanao II] to NPC for and in behalf of PNOC-EDC is its only revenue-generating activity which is in the ambit of VAT zero-rated sales under the EPIRA Law, x x x.

x x x x x x x x x

Hence, the amendment of the NIRC of 1997 modified the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero (0%) percent.

In the course of its operation, Mindanao II makes domestic purchases of goods and services and accumulates therefrom creditable input taxes. Pursuant to the provisions of the National Internal Revenue Code (NIRC), [Mindanao II] alleges that it can use its accumulated input tax credits to offset its output tax liability. Considering, however that its only revenue-generating activity is VAT zero-rated under RA No. 9136, [Mindanao II's] input tax credits remain unutilized.

Thus, on the belief that its sales qualify for VAT zero-rating, [Mindanao II] adopted the VAT zero-rating of the EPIRA in computing for its VAT payable when it filed its Quarterly VAT Returns on the following dates:

CTA Case No.	Period Covered (2003)	Date of Filing	
		Original Return	Amended Return
7227	1st Quarter	April 23, 2003	July 3, 2002 (sic), April 1, 2004 October 22, 2004
7287	2nd Quarter	July 22, 2003	April 1, 2004
7317	3rd Quarter	Oct. 27, 2003	April 1, 2004
7317	4th Quarter	Jan. 26, 2004	April 1, 2004

Considering that it has accumulated unutilized creditable input taxes from its only income-generating activity, [Mindanao II] filed an application for refund and/or issuance of tax credit certificate with the BIR's Revenue District Office at Kidapawan City on April 13, 2005 for the four quarters of 2003.

To date [(September 22, 2008)], the application for refund by [Mindanao II] remains unacted upon by the [CIR]. Hence, these three petitions filed on April 22, 2005 covering the 1st quarter of 2003; July 7, 2005 for the 2nd quarter of 2003; and September 9, 2005 for the 3rd and 4th quarters of 2003. At the instance of [Mindanao II], these petitions were consolidated on March 15, 2006 as they involve the same parties and the same subject matter. The only difference lies with the taxable periods involved in each petition.[11]

The Court of Tax Appeals' Ruling: Division

In its 22 September 2008 Decision,[12] the CTA First Division found that Mindanao II satisfied the twin requirements for VAT zero rating under EPIRA: (1) it is a generation company, and (2) it derived sales from power generation. The CTA First Division also stated that Mindanao II complied with five requirements to be entitled to a refund:

1. There must be zero-rated or effectively zero-rated sales;
2. That input taxes were incurred or paid;

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[11] *Rollo* (G.R. No. 193301), pp. 180-183.

[12] *Id.* at 179-198.

3. That such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;
4. That the input VAT payments were not applied against any output VAT liability; and
5. That the claim for refund was filed within the two-year prescriptive period.[13]

With respect to the fifth requirement, the CTA First Division tabulated the dates of filing of Mindanao II's return as well as its administrative and judicial claims, and concluded that Mindanao II's administrative and judicial claims were timely filed in compliance with this Court's ruling in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue (Atlas).*[14] The CTA First Division declared that the two-year prescriptive period for filing a VAT refund claim should not be counted from the close of the quarter but from the date of the filing of the VAT return. As ruled in Atlas, VAT liability or entitlement to a refund can only be determined upon the filing of the quarterly VAT return.

CTA Case No.	Period Covered (2003)	Date of Filing			
		Original Return	Amended Return	Administrative Claim	Judicial Claim
7227	1st Quarter	23 April 2003	1 April 2004	13 April 2005	22 April 2005
7287	2nd Quarter	22 July 2003	1 April 2004	13 April 2005	7 July 2005
7317	3rd Quarter	25 Oct. 2003	1 April 2004	13 April 2005	9 Sept. 2005
7317	4th Quarter	26 Jan. 2004	1 April 2004	13 April 2005	9 Sept. 2005[15]

Thus, counting from 23 April 2003, 22 July 2003, 25 October 2003, and 26 January 2004, when Mindanao II filed its VAT returns, its administrative claim filed on 13 April 2005 and judicial claims filed on 22 April 2005, 7 July 2005, and 9 September 2005 were timely filed in accordance with *Atlas*.

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[13] *Id.* at 191.

[14] G.R. Nos. 141104 and 148763, 8 June 2007, 524 SCRA 73.

[15] See *rollo* (G.R. No. 193301), pp. 192-193.

The CTA First Division found that Mindanao II is entitled to a refund in the modified amount of ₱7,703,957.79, after disallowing ₱522,059.91 from input VAT[16] and deducting ₱18,181.82 from Mindanao II's sale of a fully depreciated ₱200,000.00 Nissan Patrol. The input taxes amounting to ₱522,059.91 were disallowed for failure to meet invoicing requirements, while the input VAT on the sale of the Nissan Patrol was reduced by ₱18,181.82 because the output VAT for the sale was not included in the VAT declarations.

The dispositive portion of the CTA First Division's 22 September 2008 Decision reads:

> WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, [the CIR] is hereby ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE in the modified amount of SEVEN MILLION SEVEN HUNDRED THREE THOUSAND NINE HUNDRED FIFTY SEVEN AND 79/100 PESOS (₱7,703,957.79) representing its unutilized input VAT for the four (4) quarters of the taxable year 2003.
>
> SO ORDERED.[17]

Mindanao II filed a motion for partial reconsideration.[18] It stated that the sale of the fully depreciated Nissan Patrol is a one-time transaction and is not incidental to its VAT zero-rated

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[16] The commissioned independent Certified Public Accountant found the following:

Annex D.1: ₱2,090.16, discrepancy between the input VAT paid to and acknowledged by the Government Service Insurance System and the amount claimed by Mindanao II;

Annex D.2: ₱29,861.82, input VAT claims from Tokio Marine Malayan and Citibank NA Manila which were supported by billing statements but not by official receipts;

Annex D.3: ₱2,752.00, out-of-pocket expenses reimbursed to SGV & Company not supported by valid invoices or official receipts; and

Annex D.4: ₱487,355.93, input VAT claims from purchases of services supported by valid 2003 invoices but are paid in 2004.

[17] *Rollo* (G.R. No. 193301), p. 198.

[18] *Id.* at 199-207.

operations. Moreover, the disallowed input taxes substantially complied with the requirements for refund or tax credit.

The CIR also filed a motion for partial reconsideration. It argued that the judicial claims for the first and second quarters of 2003 were filed beyond the period allowed by law, as stated in Section 112 (A) of the 1997 Tax Code. The CIR further stated that Section 229 is a general provision, and governs cases not covered by Section 112 (A). The CIR countered the CTA First Division's 22 September 2008 decision by citing this Court's ruling in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Mirant)*,[19] which stated that unutilized input VAT payments must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made regardless of whether said tax was paid.

The CTA First Division denied Mindanao II's motion for partial reconsideration, found the CIR's motion for partial reconsideration partly meritorious, and rendered an Amended Decision[20] on 26 June 2009. The CTA First Division stated that the claim for refund or credit with the BIR and the subsequent appeal to the CTA must be filed within the two-year period prescribed under Section 229. The two-year prescriptive period in Section 229 was denominated as a mandatory statute of limitations. Therefore, Mindanao II's claims for refund for the first and second quarters of 2003 had already prescribed.

The CTA First Division found that the records of Mindanao II's case are bereft of evidence that the sale of the Nissan Patrol is not incidental to Mindanao II's VAT zero-rated operations. Moreover, Mindanao II's submitted documents failed to substantiate the requisites for the refund or credit claims.

The CTA First Division modified its 22 September 2008 Decision to read as follows:

WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, [the CIR] is hereby ORDERED to REFUND

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[19] G.R. No. 172129, 12 September 2008, 565 SCRA 154.

[20] *Rollo* (G.R. No. 193301), pp. 209-218.

or to ISSUE A TAX CREDIT CERTIFICATE [to Mindanao II Geothermal Partnership] in the modified amount of TWO MILLION NINE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED EIGHTY SEVEN AND 77/100 PESOS (₱2,980,887.77) representing its unutilized input VAT for the third and fourth quarters of the taxable year 2003.

SO ORDERED.[21]

Mindanao II filed a Petition for Review,[22] docketed as CTA EB No. 513, before the CTA *En Banc*.

The Court of Tax Appeals' Ruling: *En Banc*

On 10 March 2010, the CTA *En Banc* rendered its Decision[23] in CTA EB No. 513 and denied Mindanao II's petition. The CTA *En Banc* ruled that (1) Section 112 (A) clearly provides that the reckoning of the two-year prescriptive period for filing the application for refund or credit of input VAT attributable to zero-rated sales or effectively zero-rated sales shall be counted from the close of the taxable quarter when the sales were made; (2) the *Atlas* and *Mirant* cases applied different tax codes: *Atlas* applied the 1977 Tax Code while *Mirant* applied the 1997 Tax Code; (3) the sale of the fully-depreciated Nissan Patrol is incidental to Mindanao II's VAT zero-rated transactions pursuant to Section 105; (4) Mindanao II failed to comply with the substantiation requirements provided under Section 113 (A) in relation to Section 237 of the 1997 Tax Code as implemented by Section 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulation No. 7-95; and (5) the doctrine of *strictissimi juris* on tax exemptions cannot be relaxed in the present case.

The dispositive portion of the CTA *En Banc's* 10 March 2010 Decision reads:

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *en banc* is DISMISSED for lack of merit.

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[21] *Id.* at 218.

[22] *Id.* at 231-256. Pursuant to Section 4 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals.

[23] *Id.* at 11-32.

Accordingly, the Decision dated September 22, 2008 and the Amended Decision dated June 26, 2009 issued by the First Division are AFFIRMED.

SO ORDERED.[24]

The CTA *En Banc* issued a Resolution[25] on 28 July 2010 denying for lack of merit Mindanao II's Motion for Reconsideration.[26] The CTA *En Banc* highlighted the following bases of their previous ruling:

1. The Supreme Court has long decided that the claim for refund of unutilized input VAT must be filed within two (2) years after the close of the taxable quarter when such sales were made.

2. The Supreme Court is the ultimate arbiter whose decisions all other courts should take bearings.

3. The words of the law are clear, plain, and free from ambiguity; hence, it must be given its literal meaning and applied without any interpretation.[27]

G.R. No. 194637
Mindanao I v. CIR

The Facts

G.R. No. 194637 covers two cases consolidated by the CTA EB: CTA EB Case Nos. 476 and 483. Both CTA EB cases consolidate three cases from the CTA Second Division: CTA Case Nos. 7228, 7286, and 7318. CTA Case Nos. 7228, 7286, and 7318 claim a tax refund or credit of Mindanao I's accumulated unutilized and/or excess input taxes due to VAT zero-rated sales. In CTA Case No. 7228, Mindanao I claims a tax refund or credit of ₱3,893,566.14 for the first quarter of 2003. In CTA Case No. 7286, Mindanao I claims a tax refund or credit of ₱2,351,000.83 for the second quarter of 2003. In CTA Case

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[24] *Id.* at 31.

[25] *Id.* at 47-54.

[26] *Id.* at 285-307.

[27] *Id.* at 50.

No. 7318, Mindanao I claims a tax refund or credit of ₱7,940,727.83 for the third and fourth quarters of 2003.

Mindanao I is similarly situated as Mindanao II. The CTA Second Division's narration of the pertinent facts is as follows:

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In December 1994, [Mindanao I] entered into a contract of Build-Operate-Transfer (BOT) with the Philippine National Oil Corporation — Energy Development Corporation (PNOC-EDC) for the finance, design, construction, testing, commissioning, operation, maintenance and repair of a 47-megawatt geothermal power plant. Under the said BOT contract, PNOC-EDC shall supply and deliver steam to [Mindanao I] at no cost. In turn, [Mindanao I] will convert the steam into electric capacity and energy for PNOC-EDC and shall subsequently supply and deliver the same to the National Power Corporation (NPC), for and in behalf of PNOC-EDC.

[Mindanao I's] 47-megawatt geothermal power plant project has been accredited by the Department of Energy (DOE) as a Private Sector Generation Facility, pursuant to the provision of Executive Order No. 215, wherein Certificate of Accreditation No. 95-037 was issued.

On June 26, 2001, Republic Act (R.A.) No. 9136 took effect, and the relevant provisions of the National Internal Revenue Code (NIRC) of 1997 were deemed modified. R.A. No. 9136, also known as the "Electric Power Industry Reform Act of 2001 (EPIRA), was enacted by Congress to ordain reforms in the electric power industry, highlighting, among others, the importance of ensuring the reliability, security and affordability of the supply of electric power to end users. Under the provisions of this Republic Act and its implementing rules and regulations, the delivery and supply of electric energy by generation companies became VAT zero-rated, which previously were subject to ten percent (10%) VAT.

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The amendment of the NIRC of 1997 modified the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero percent (0%). Thus, [Mindanao I] adopted the VAT zero-rating of the EPIRA in computing for its VAT payable when it filed its VAT Returns, on the belief that its sales qualify for VAT zero-rating.

[Mindanao I] reported its unutilized or excess creditable input taxes in its Quarterly VAT Returns for the first, second, third, and fourth quarters of taxable year 2003, which were subsequently amended and filed with the BIR.

On April 4, 2005, [Mindanao I] filed with the BIR separate administrative claims for the issuance of tax credit certificate on its alleged unutilized or excess input taxes for taxable year 2003, in the accumulated amount of ₱14,185,294.80.

Alleging inaction on the part of [CIR], [Mindanao I] elevated its claims before this Court on April 22, 2005, July 7, 2005, and September 9, 2005 docketed as CTA Case Nos. 7228, 7286, and 7318, respectively. However, on October 10, 2005, [Mindanao I] received a copy of the letter dated September 30, 2003 (sic) of the BIR denying its application for tax credit/refund.[28]

The Court of Tax Appeals' Ruling: Division

On 24 October 2008, the CTA Second Division rendered its Decision[29] in CTA Case Nos. 7228, 7286, and 7318. The CTA Second Division found that (1) pursuant to Section 112 (A), Mindanao I can only claim 90.27% of the amount of substantiated excess input VAT because a portion was not reported in its quarterly VAT returns; (2) out of the ₱14,185,294.80 excess input VAT applied for refund, only ₱11,657,447.14 can be considered substantiated excess input VAT due to disallowances by the Independent Certified Public Accountant, adjustment on the disallowances per the CTA Second Division's further verification, and additional disallowances per the CTA Second Division's further verification; (3) Mindanao I's accumulated excess input VAT for the second quarter of 2003 that was carried over to the third quarter of 2003 is net of the claimed input VAT for the first quarter of 2003, and the same procedure was done for the second, third, and fourth quarters of 2003; and (4) Mindanao I's administrative claims were filed within

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[28] *Rollo* (G.R. No. 194637), pp. 231-235.

[29] *Id.* at 230-245. Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez, concurring.

the two-year prescriptive period reckoned from the respective dates of filing of the quarterly VAT returns.

The dispositive portion of the CTA Second Division's 24 October 2008 Decision reads:

WHEREFORE, premises considered, the consolidated Petitions for Review are hereby PARTIALLY GRANTED. Accordingly, [the CIR] is hereby ORDERED TO ISSUE A TAX CREDIT CERTIFICATE in favor of [Mindanao I] in the reduced amount of TEN MILLION FIVE HUNDRED TWENTY THREE THOUSAND ONE HUNDRED SEVENTY SEVEN PESOS AND 53/100 (₱10,523,177.53) representing [Mindanao I's] unutilized input VAT for the four quarters of the taxable year 2003.

SO ORDERED.[30]

Mindanao I filed a motion for partial reconsideration with motion for clarification[31] on 11 November 2008. It claimed that the CTA Second Division should not have allocated proportionately Mindanao I's unutilized creditable input taxes for the taxable year 2003, because the proportionate allocation of the amount of creditable taxes in Section 112 (A) applies only when the creditable input taxes due cannot be directly and entirely attributed to any of the zero-rated or effectively zero-rated sales. Mindanao I claims that its unreported collection is directly attributable to its VAT zero-rated sales. The CTA Second Division denied Mindanao I's motion and maintained the proportionate allocation because there was a portion of the gross receipts that was undeclared in Mindanao I's gross receipts.

The CIR also filed a motion for partial reconsideration[32] on 11 November 2008. It claimed that Mindanao I failed to exhaust administrative remedies before it filed its petition for review. The CTA Second Division denied the CIR's motion, and cited *Atlas*[33] as the basis for ruling that it is more practical and

[30] *Id.* at 244.

[31] *Id.* at 246-254.

[32] *Id.* at 256-269.

[33] *Supra* note 14.

reasonable to count the two-year prescriptive period for filing a claim for refund or credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due.

The dispositive portion of the CTA Second Division's 10 March 2009 Resolution reads:

> WHEREFORE, premises considered, [the CIR's] *Motion for Partial Reconsideration and [Mindanao I's] Motion for Partial Reconsideration with Motion for Clarification* are hereby DENIED for lack of merit.
>
> SO ORDERED.[34]

<u>The Ruling of the Court of Tax Appeals: *En Banc*</u>

On 31 May 2010, the CTA *En Banc* rendered its Decision[35] in CTA EB Case Nos. 476 and 483 and denied the petitions filed by the CIR and Mindanao I. The CTA *En Banc* found no new matters which have not yet been considered and passed upon by the CTA Second Division in its assailed decision and resolution.

The dispositive portion of the CTA *En Banc's* 31 May 2010 Decision reads:

> WHEREFORE, premises considered, the Petitions for Review are hereby DISMISSED for lack of merit. Accordingly, the October 24, 2008 Decision and March 10, 2009 Resolution of the *CTA Former Second Division* in CTA Case Nos. 7228, 7286, and 7318, entitled "*Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue*" are hereby AFFIRMED *in toto*.
>
> SO ORDERED.[36]

Both the CIR and Mindanao I filed Motions for Reconsideration of the CTA *En Banc's* 31 May 2010 Decision.

In an Amended Decision promulgated on 24 November 2010, the CTA *En Banc* agreed with the CIR's claim that Section

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[34] *Rollo* (G.R. No. 194637), p. 278.

[35] *Id.* at 14-26.

[36] *Id.* at 25.

229 of the NIRC of 1997 is inapplicable in light of this Court's ruling in *Mirant*. The CTA *En Banc* also ruled that the procedure prescribed under Section 112 (D) [now 112 (C)][37] of the 1997 Tax Code should be followed first before the CTA *En Banc* can act on Mindanao I's claim. The CTA *En Banc* reconsidered its 31 May 2010 Decision in light of this Court's ruling in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)*.[38]

The pertinent portions of the CTA *En Banc's* 24 November 2010 Amended Decision read:

C.T.A. Case No. 7228:

(1) For calendar year 2003, [Mindanao I] filed with the BIR its Quarterly VAT Returns for the First Quarter of 2003. Pursuant to *Section 112(A) of the NIRC of 1997, as amended*, [Mindanao I] has two years from March 31, 2003 or until March 31, 2005 within which to file its administrative claim for refund;

(2) On April 4, 2005, [Mindanao I] applied [for] an administrative claim for refund of unutilized input VAT for the first quarter of taxable year 2003 with the BIR, which is beyond the two-year prescriptive period mentioned above.

C.T.A. Case No. 7286:

(1) For calendar year 2003, [Mindanao I] filed with the BIR its Quarterly VAT Returns for the second quarter of 2003. Pursuant to *Section 112(A) of the NIRC of 1997, as amended*, [Mindanao I] has two years from June 30, 2003, within which to file its administrative claim for refund for the second quarter of 2003, or until June 30, 2005;

(2) On April 4, 2005, [Mindanao I] applied an administrative claim for refund of unutilized input VAT for the second quarter of taxable year 2003 with the BIR, which is within the two-year prescriptive period, provided under *Section 112 (A) of the NIRC of 1997, as amended*;

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[37] RA 9337 renumbered Section 112 (D) of the 1997 Tax Code to 112 (C). In this Decision, we refer to Section 112 (D) under the 1997 Tax Code as it is currently numbered, 112 (C).

[38] G.R. No. 184823, 6 October 2010, 632 SCRA 422.

(3) The CIR has 120 days from April 4, 2005 (presumably the date [Mindanao I] submitted the supporting documents together with the application for refund) or until August 2, 2005, to decide the administrative claim for refund;

(4) Within 30 days from the lapse of the 120-day period or from August 3, 2005 to September 1, 2005, [Mindanao I] should have elevated its claim for refund to the CTA in Division;

(5) However, on July 7, 2005, [Mindanao I] filed its Petition for Review with this Court, docketed as CTA Case No. 7286, even before the 120-day period for the CIR to decide the claim for refund had lapsed on August 2, 2005. The Petition for Review was, therefore, prematurely filed and there was failure to exhaust administrative remedies;

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C.T.A. Case No. 7318:

(1) For calendar year 2003, [Mindanao I] filed with the BIR its Quarterly VAT Returns for the third and fourth quarters of 2003. Pursuant to *Section 112(A) of the NIRC of 1997, as amended*, [Mindanao I] therefore, has two years from September 30, 2003 and December 31, 2003, or until September 30, 2005 and December 31, 2005, respectively, within which to file its administrative claim for the third and fourth quarters of 2003;

(2) On April 4, 2005, [Mindanao I] applied an administrative claim for refund of unutilized input VAT for the third and fourth quarters of taxable year 2003 with the BIR, which is well within the two-year prescriptive period, provided under *Section 112(A) of the NIRC of 1997, as amended*;

(3) From April 4, 2005, which is also presumably the date [Mindanao I] submitted supporting documents, together with the aforesaid application for refund, the CIR has 120 days or until August 2, 2005, to decide the claim;

(4) Within thirty (30) days from the lapse of the 120-day period or from August 3, 2005 until September 1, 2005 [Mindanao I] should have elevated its claim for refund to the CTA;

(5) However, [Mindanao I] filed its Petition for Review with the CTA in Division only on September 9, 2005, which is 8 days beyond the 30-day period to appeal to the CTA.

Evidently, the Petition for Review was filed way beyond the 30-day prescribed period. Thus, the Petition for Review should have been dismissed for being filed late.

In recapitulation:

(1) **C.T.A. Case No. 7228**

Claim for the first quarter of 2003 had already prescribed for having been filed beyond the two-year prescriptive period;

(2) **C.T.A. Case No. 7286**

Claim for the second quarter of 2003 should be dismissed for [Mindanao I's] failure to comply with a condition precedent when it failed to exhaust administrative remedies by filing its Petition for Review even before the lapse of the 120-day period for the CIR to decide the administrative claim;

(3) **C.T.A. Case No. 7318**

Petition for Review was filed beyond the 30-day prescribed period to appeal to the CTA.

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IN VIEW OF THE FOREGOING, the Commissioner of Internal Revenue's Motion for Reconsideration is hereby GRANTED; [Mindanao I's] Motion for Partial Reconsideration is hereby DENIED for lack of merit.

The May 31, 2010 Decision of this Court *En Banc* is hereby REVERSED.

Accordingly, the Petition for Review of the Commissioner of Internal Revenue in CTA EB No. 476 is hereby GRANTED and the entire claim of Mindanao I Geothermal Partnership for the first, second, third and fourth quarters of 2003 is hereby DENIED.

SO ORDERED.[39]

The Issues

G.R. No. 193301
Mindanao II v. CIR

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[39] *Rollo* (G.R. No. 194637), pp. 47-50.

Mindanao II raised the following grounds in its Petition for Review:

I. The Honorable Court of Tax Appeals erred in holding that the claim of [Mindanao II] for the 1st and 2nd quarters of year 2003 has already prescribed pursuant to the Mirant case.

A. The Atlas case and Mirant case have conflicting interpretations of the law as to the reckoning date of the two year prescriptive period for filing claims for VAT refund.

B. The Atlas case was not and cannot be superseded by the Mirant case in light of Section 4(3), Article VIII of the 1987 Constitution.

C. The ruling of the Mirant case, which uses the close of the taxable quarter when the sales were made as the reckoning date in counting the two-year prescriptive period cannot be applied retroactively in the case of [Mindanao II].

II. The Honorable Court of Tax Appeals erred in interpreting Section 105 of the [1997 Tax Code], as amended in that the sale of the fully depreciated Nissan Patrol is a one-time transaction and is not incidental to the VAT zero-rated operation of [Mindanao II].

III. The Honorable Court of Tax Appeals erred in denying the amount disallowed by the Independent Certified Public Accountant as [Mindanao II] substantially complied with the requisites of the [1997 Tax Code], as amended, for refund/tax credit.

A. The amount of ₱2,090.16 was brought about by the timing difference in the recording of the foreign currency deposit transaction.

B. The amount of ₱2,752.00 arose from the out-of-pocket expenses reimbursed to SGV & Company which is substantially suppoerted [sic] by an official receipt.

C. The amount of ₱487,355.93 was unapplied and/or was not included in [Mindanao II's] claim for refund or tax credit for the year 2004 subject matter of CTA Case No. 7507.

IV. The doctrine of *strictissimi juris* on tax exemptions should be relaxed in the present case.[40]

G.R. No. 194637
Mindanao I v. CIR

Mindanao I raised the following grounds in its Petition for Review:

I. The administrative claim and judicial claim in CTA Case No. 7228 were timely filed pursuant to the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, which was then the controlling ruling at the time of filing.

A. The recent ruling in the *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*, which uses the end of the taxable quarter when the sales were made as the reckoning date in counting the two-year prescriptive period, cannot be applied retroactively in the case of [Mindanao I].

B. The *Atlas* case promulgated by the Third Division of this Honorable Court on June 8, 2007 was not and cannot be superseded by the *Mirant Pagbilao* case promulgated by the Second Division of this Honorable Court on September 12, 2008 in light of the explicit provision of Section 4(3), Article VIII of the 1987 Constitution.

II. Likewise, the recent ruling of this Honorable Court in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, cannot be applied retroactively to [Mindanao I] in the present case.[41]

In a Resolution dated 14 December 2011,[42] this Court resolved to consolidate G.R. Nos. 193301 and 194637 to avoid conflicting rulings in related cases.

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[40] *Rollo* (G.R. No. 193301), pp. 83-84.

[41] *Rollo* (G.R. No. 194637), pp. 70-71.

[42] *Rollo* (G.R. No. 193301), p. 738; *id*. at 704.

The Court's Ruling

Determination of Prescriptive Period

G.R. Nos. 193301 and 194637 both raise the question of the determination of the prescriptive period, or the interpretation of Section 112 of the 1997 Tax Code, in light of our rulings in *Atlas* and *Mirant*.

Mindanao II's unutilized input VAT tax credit for the first and second quarters of 2003, in the amounts of ₱3,160,984.69 and ₱1,562,085.33, respectively, are covered by G.R. No. 193301, while Mindanao I's unutilized input VAT tax credit for the first, second, third, and fourth quarters of 2003, in the amounts of ₱3,893,566.14, ₱2,351,000.83, and ₱7,940,727.83, respectively, are covered by G.R. No. 194637.

Section 112 of the 1997 Tax Code

The pertinent sections of the 1997 Tax Code, the law applicable at the time of Mindanao II's and Mindanao I's administrative and judicial claims, provide:

SEC. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

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(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

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The relevant dates for G.R. No. 193301 (Mindanao II) are:

CTA Case No.	Period covered by VAT Sales in 2003 and amount	Close of quarter when sales were made	Last day for filing application of tax refund/ tax credit certificate with the CIR	Actual date of filing application for tax refund/ credit with the CIR (administrative claim)[44]	Last day for filing case with CTA[45]	Actual Date of filing case with CTA (judicial claim)
7227	1st Quarter ₱3,160,984.69	31 March 2003	31 March 2005	13 April 2005	12 September 2005	22 April 2005

[43] See note 37.

[44] The CIR had 120 days, or until 11 August 2005, to act on Mindanao II's claim. At the time of filing of Mindanao II's appeal with the CTA, Mindanao II's application for refund remained unacted upon. *Rollo* (G.R. No. 193301), p. 183.

[45] Mindanao II had 30 days from the receipt of the CIR's denial of its claim or after the expiration of the 120-day period to appeal the decision or the unacted claim before the CTA. The 30th day after 11 August 2005, 10 September 2005, fell on a Saturday. Thus, Mindanao II had until 12 September 2005 to file its judicial claim. See Section 1, Rule 22, The 1997 Rules of Civil Procedure.

<table>
<tr><td>7287</td><td>2nd Quarter ₱1,562,085.33</td><td>30 June 2003</td><td>30 June 2005</td><td>13 April 2005</td><td>12 September 2005</td><td>7 July 2005</td></tr>
<tr><td rowspan="2">7317</td><td rowspan="2">3rd and 4th Quarters, ₱3,521,129.50</td><td>30 September 2003</td><td>30 September 2005</td><td rowspan="2">13 April 2005</td><td rowspan="2">12 September 2005</td><td rowspan="2">9 September 2005</td></tr>
<tr><td>31 December 2003</td><td>2 January 2006 (31 Dec. 2005 being a Saturday)</td></tr>
</table>

The relevant dates for G.R. No. 194637 (Mindanao I) are:

CTA Case No.	Period covered by VAT Sales in 2003 and amount	Close of quarter when sales were made	Last day for filing application of tax refund/ tax credit certificate with the CIR	Actual date of filing application for tax refund/ credit with the CIR (administrative claim)[46]	Last day for filing case with CTA[47]	Actual Date of filing case with CTA (judicial claim)
7228	1st Quarter ₱3,893,566.14	31 March 2003	31 March 2005	4 April 2005	1 September 2005	22 April 2005
7286	2nd Quarter ₱2,351,000.83	30 June 2003	30 June 2005	4 April 2005	1 September 2005	7 July 2005

[46] The CIR had 120 days, or until 2 August 2005, to act on Mindanao I's claim. At the time of filing of Mindanao I's appeal with the CTA, Mindanao I's application for refund remained unacted upon. *Rollo* (G.R. No. 194637), p. 234.

[47] Mindanao I had 30 days from the receipt of the CIR's denial of its claim or after the expiration of the 120-day period to appeal the decision or the unacted claim before the CTA. Thus, Mindanao II had until 1 September 2005 to file its judicial claim.

7318	3rd and 4th Quarters, ₱7,940,727.83	30 September 2003	30 September 2005	4 April 2005	1 September 2005	9 September 2005
		31 December 2003	2 January 2006 (31 December 2005 being a Saturday)			

When Mindanao II and Mindanao I filed their respective administrative and judicial claims in 2005, neither *Atlas* nor *Mirant* has been promulgated. ***Atlas* was promulgated on 8 June 2007, while *Mirant* was promulgated on 12 September 2008. It is therefore misleading to state that *Atlas* was the controlling doctrine at the time of filing of the claims.** The 1997 Tax Code, which took effect on 1 January 1998, was the applicable law at the time of filing of the claims in issue. As this Court explained in the recent consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue,* and *Philex Mining Corporation v. Commissioner of Internal Revenue (San Roque)*:[48]

Clearly, San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**

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[48] G.R. Nos. 187485, 196113, and 197156, 12 February 2013.

Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.

The charter of the CTA expressly provides that its jurisdiction is to review on appeal "**decisions** of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes." When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review.

San Roque's failure to comply with the 120-day **mandatory** period renders its petition for review with the CTA void. Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity.

It is hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act. This doctrine is repeated in Article 2254 of the Civil Code, which states, "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others." For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim

any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper.

This Court cannot brush aside the grave issue of the mandatory and jurisdictional nature of the 120-day period just because the Commissioner merely asserts that the case was prematurely filed with the CTA and does not question the entitlement of San Roque to the refund. The mere fact that a taxpayer has undisputed excess input VAT, or that the tax was admittedly illegally, erroneously or excessively collected from him, does not entitle him as a matter of right to a tax refund or credit. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. **Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.** The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.

This Court cannot disregard mandatory and jurisdictional conditions mandated by law simply because the Commissioner chose not to contest the numerical correctness of the claim for tax refund or credit of the taxpayer. Non-compliance with mandatory periods, non-observance of prescriptive periods, and non-adherence to exhaustion of administrative remedies **bar** a taxpayer's claim for tax refund or credit, whether or not the Commissioner questions the numerical correctness of the claim of the taxpayer. This Court should not establish the precedent that non-compliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements, for then every tax refund case will have to be decided on the numerical correctness of the amounts claimed, regardless of non-compliance with mandatory and jurisdictional conditions.

San Roque cannot also claim being misled, misguided or confused by the *Atlas* doctrine because **San Roque filed its petition for review with the CTA more than four years before *Atlas* was promulgated.** The *Atlas* doctrine did not exist at the time San Roque failed to comply with the 120-day period. Thus, San Roque cannot invoke the *Atlas* doctrine as an excuse for its failure to wait for the 120-day period to lapse. In any event, the *Atlas* doctrine merely stated that the two-year prescriptive period should be counted from the

date of payment of the output VAT, not from the close of the taxable quarter when the sales involving the input VAT were made. **The *Atlas* doctrine does not interpret, expressly or impliedly, the 120+30 day periods.**[49] (Emphases in the original; citations omitted)

Prescriptive Period for the Filing of Administrative Claims

In determining whether the administrative claims of Mindanao I and Mindanao II for 2003 have prescribed, we see no need to rely on either *Atlas* or *Mirant*. Section 112 (A) of the 1997 Tax Code is clear: "[A]ny VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made,** apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales x x x."

We rule on Mindanao I and II's administrative claims for the first, second, third, and fourth quarters of 2003 as follows:

(1) The last day for filing an application for tax refund or credit with the CIR for the first quarter of 2003 was on 31 March 2005. Mindanao II filed its administrative claim before the CIR on 13 April 2005, while Mindanao I filed its administrative claim before the CIR on 4 April 2005. **Both claims have prescribed, pursuant to Section 112 (A) of the 1997 Tax Code.**

(2) The last day for filing an application for tax refund or credit with the CIR for the second quarter of 2003 was on 30 June 2005. Mindanao II filed its administrative claim before the CIR on 13 April 2005, while Mindanao I filed its administrative claim before the CIR on 4 April 2005. **Both claims were filed on time, pursuant to Section 112 (A) of the 1997 Tax Code.**

(3) The last day for filing an application for tax refund or credit with the CIR for the third quarter of 2003 was on 30 September 2005. Mindanao II filed its administrative claim before

[49] *Id.*

the CIR on 13 April 2005, while Mindanao I filed its administrative claim before the CIR on 4 April 2005. **Both claims were filed on time, pursuant to Section 112 (A) of the 1997 Tax Code.**

(4) The last day for filing an application for tax refund or credit with the CIR for the fourth quarter of 2003 was on 2 January 2006. Mindanao II filed its administrative claim before the CIR on 13 April 2005, while Mindanao I filed its administrative claim before the CIR on 4 April 2005. **Both claims were filed on time, pursuant to Section 112 (A) of the 1997 Tax Code.**

Prescriptive Period for the Filing of Judicial Claims

In determining whether the claims for the second, third and fourth quarters of 2003 have been properly appealed, we still see no need to refer to either *Atlas* or *Mirant*, or even to Section 229 of the 1997 Tax Code. The second paragraph of Section 112 (C) of the 1997 Tax Code is clear: "In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

The mandatory and jurisdictional nature of the 120+30 day periods was explained in *San Roque*:

> At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. Section 112(C) expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain, and unequivocal: "x x x the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents." Following the *verba legis* doctrine, this law must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply

file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no "decision" or "deemed a denial" decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.

Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:

> x x x the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period,** appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

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There are three compelling reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period.

First, Section 112(A) clearly, plainly, and unequivocally provides that the taxpayer "may, **within two (2) years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of the creditable input tax due or paid to such sales." In short, the law states that the taxpayer may apply with the Commissioner for a refund or credit **"within two (2) years," which means at anytime within two years.** Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period

and it will still strictly comply with the law. The two-year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription.

Second, Section 112(C) provides that the Commissioner shall decide the application for refund or credit "within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A)." The reference in Section 112(C) of the submission of documents "in support of the application filed in accordance with Subsection A" means that the application in Section 112(A) is the administrative claim that the Commissioner must decide within the 120-day period. In short, the two-year prescriptive period in Section 112(A) refers to the period within which the taxpayer can file an administrative claim for tax refund or credit. **Stated otherwise, the two-year prescriptive period does not refer to the filing of the judicial claim with the CTA but to the filing of the administrative claim with the Commissioner.** As held in Aichi, the "phrase 'within two years x x x apply for the issuance of a tax credit or refund' **refers to applications for refund/credit with the CIR and not to appeals made to the CTA."**

Third, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days), then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. **Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive period.** Thus, if the taxpayer files his administrative claim on the 611th day, the Commissioner, with his 120-day period, will have until the 731st day to decide the claim. If the Commissioner decides only on the 731st day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period.

The theory that the 30-day period must fall within the two-year prescriptive period adds a condition that is not found in the law. It results in truncating 120 days from the 730 days that the law grants

the taxpayer for filing his administrative claim with the Commissioner. This Court cannot interpret a law to defeat, wholly or even partly, a remedy that the law expressly grants in clear, plain, and unequivocal language.

Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C).[50] (Emphases in the original; citations omitted)

In *San Roque*, this Court ruled that **"all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal in *Aichi on* 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional."**[51] We shall discuss later the effect of *San Roque's* recognition of BIR Ruling No. DA-489-03 on claims filed between 10 December 2003 and 6 October 2010. Mindanao I and II filed their claims within this period.

We rule on Mindanao I and II's judicial claims for the second, third, and fourth quarters of 2003 as follows:

G.R. No. 193301
Mindanao II v. CIR

Mindanao II filed its administrative claims for the second, third, and fourth quarters of 2003 on 13 April 2005. Counting 120 days after filing of the administrative claim with the CIR (11 August 2005) and 30 days after the CIR's denial by inaction, **the last day for filing a judicial claim with the CTA for the second, third, and fourth quarters of 2003 was on 12 September 2005.** However, the judicial claim cannot be filed

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[50] *Id.*

[51] *Id.*

earlier than 11 August 2005, which is the expiration of the 120-day period for the Commissioner to act on the claim.

(1) Mindanao II filed its judicial claim for the second quarter of 2003 before the CTA on 7 July 2005, before the expiration of the 120-day period. Pursuant to Section 112 (C) of the 1997 Tax Code, Mindanao II's judicial claim for the second quarter of 2003 was prematurely filed. **However, pursuant to *San Roque's* recognition of the effect of BIR Ruling No. DA-489-03, we rule that Mindanao II's judicial claim for the second quarter of 2003 qualifies under the exception to the strict application of the 120+30 day periods.**

(2) Mindanao II filed its judicial claim for the third quarter of 2003 before the CTA on 9 September 2005. **Mindanao II's judicial claim for the third quarter of 2003 was thus filed on time, pursuant to Section 112 (C) of the 1997 Tax Code.**

(3) Mindanao II filed its judicial claim for the fourth quarter of 2003 before the CTA on 9 September 2005. **Mindanao II's judicial claim for the fourth quarter of 2003 was thus filed on time, pursuant to Section 112 (C) of the 1997 Tax Code.**

G.R. No. 194637
Mindanao I v. CIR

Mindanao I filed its administrative claims for the second, third, and fourth quarters of 2003 on 4 April 2005. Counting 120 days after filing of the administrative claim with the CIR (2 August 2005) and 30 days after the CIR's denial by inaction,[52] **the last day for filing a judicial claim with the CTA for the second, third, and fourth quarters of 2003 was on 1 September 2005.** However, the judicial claim cannot be filed earlier than 2 August 2005, which is the expiration of the 120-day period for the Commissioner to act on the claim.

(1) Mindanao I filed its judicial claim for the second quarter of 2003 before the CTA on 7 July 2005, before the expiration

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[52] On 10 October 2005, Mindanao I received a copy of the letter dated 30 September 2005 from the CIR denying its application for tax refund or credit. *Rollo* (G.R. No. 194637), p. 235.

of the 120-day period. Pursuant to Section 112 (C) of the 1997 Tax Code, Mindanao I's judicial claim for the second quarter of 2003 was prematurely filed. **However, pursuant to *San Roque's* recognition of the effect of BIR Ruling No. DA-489-03, we rule that Mindanao I's judicial claim for the second quarter of 2003 qualifies under the exception to the strict application of the 120+30 day periods.**

(2) Mindanao I filed its judicial claim for the third quarter of 2003 before the CTA on 9 September 2005. **Mindanao I's judicial claim for the third quarter of 2003 was thus filed after the prescriptive period, pursuant to Section 112 (C) of the 1997 Tax Code.**

(3) Mindanao I filed its judicial claim for the fourth quarter of 2003 before the CTA on 9 September 2005. **Mindanao I's judicial claim for the fourth quarter of 2003 was thus filed after the prescriptive period, pursuant to Section 112 (C) of the 1997 Tax Code.**

San Roque: Recognition of BIR Ruling No. DA-489-03

In the consolidated cases of *San Roque*, the Court *En Banc*[53] examined and ruled on the different claims for tax refund or credit of three different companies. In *San Roque*, we reiterated that "[f]ollowing the *verba legis* doctrine, [Section 112 (C)] must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no 'decision' or 'deemed a denial decision' of the Commissioner for the CTA to review."

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[53] The Court *En Banc* voted in San Roque, thus: Associate Justice Antonio T. Carpio penned the Decision, with Associate Justices Teresita J. Leonardo-de Castro, Arturo D. Brion, Diosdado M. Peralta, Lucas P. Bersamin, Roberto A. Abad, Martin S. Villarama, Jr., Jose P. Perez, and Bienvenido L. Reyes, concurring. Chief Justice Maria Lourdes P.A. Sereno penned a Dissenting Opinion. Associate Justice Presbitero J. Velasco, Jr., penned a Dissenting Opinion, and is joined by Associate Justices Jose C. Mendoza and Estela M. Perlas-Bernabe. Associate Justice Marvic Mario Victor F. Leonen penned a Separate Opinion, and is joined by Associate Justice Mariano C. del Castillo.

Notwithstanding a strict construction of any claim for tax exemption or refund, the Court in *San Roque* recognized that BIR Ruling No. DA-489-03 constitutes equitable estoppel[54] in favor of taxpayers. **BIR Ruling No. DA-489-03 expressly states that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review."** This Court discussed BIR Ruling No. DA-489-03 and its effect on taxpayers, thus:

> Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the *Atlas* doctrine did not result in *Atlas*, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively x x x.
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> x x x x x x x x x
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> Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.

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[54] See Section 246 of the 1997 Tax Code, which states:

Non-Retroactivity of Rulings. — Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.

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Taganito, however, filed its judicial claim with the CTA on 14 February 2007, ***after*** the issuance of BIR Ruling No. DA-489-03 on 10 December 2003. Truly, Taganito can claim that in filing its judicial claim prematurely without waiting for the 120-day period to expire, it was misled by BIR Ruling No. DA-489-03. Thus, Taganito can claim the benefit of BIR Ruling No. DA-489-03, which shields the filing of its judicial claim from the vice of prematurity. (Emphasis in the original)

Summary of Administrative and Judicial Claims

G.R. No. 193301
Mindanao II v. CIR

	Administrative Claim	**Judicial Claim**	**Action on Claim**
1st Quarter, 2003	Filed late	--	Deny, pursuant to Section 112 (A) of 1997 Tax Code
2nd Quarter, 2003	Filed on time	Prematurely filed	Grant, pursuant to BIR Ruling No. DA-489-03

3rd Quarter, 2003	Filed on time	Filed on time	Grant, pursuant to Section 112 (C) of the 1997 Tax Code
4th Quarter, 2003	Filed on time	Filed on time	Grant, pursuant to Section 112 (C) of the 1997 Tax Code

G.R. No. 194637
Mindanao I v. CIR

	Administrative Claim	**Judicial Claim**	**Action on Claim**
1st Quarter, 2003	Filed late	--	Deny, pursuant to Section 112 (A) of the 1997 Tax Code
2nd Quarter, 2003	Filed on time	Prematurely filed	Grant, pursuant to BIR Ruling No. DA-489-03
3rd Quarter, 2003	Filed on time	Filed late	Deny, pursuant to Section 112 (C) of the 1997 Tax Code
4th Quarter, 2003	Filed on time	Filed late	Deny, pursuant to Section 112 (C) of the 1997 Tax Code

Summary of Rules on Prescriptive Periods Involving VAT

We summarize the rules on the determination of **the prescriptive period for filing a tax refund or credit of *unutilized input VAT* as provided in Section 112 of the 1997 Tax Code,** as follows:

(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within

which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.

"Incidental" Transaction

Mindanao II asserts that the sale of a fully depreciated Nissan Patrol is not an incidental transaction in the course of its business; hence, it is an isolated transaction that should not have been subject to 10% VAT.

Section 105 of the 1997 Tax Code does not support Mindanao II's position:

SEC. 105. *Persons Liable*. — Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, **including**

transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business. (Emphasis supplied)

Mindanao II relies on *Commissioner of Internal Revenue v. Magsaysay Lines, Inc. (Magsaysay)*[55] and *Imperial v. Collector of Internal Revenue (Imperial)*[56] to justify its position. *Magsaysay*, decided under the NIRC of 1986, involved the sale of vessels of the National Development Company (NDC) to Magsaysay Lines, Inc. We ruled that the sale of vessels was not in the course of NDC's trade or business as it was involuntary and made pursuant to the Government's policy for privatization. *Magsaysay,* in quoting from the CTA's decision, imputed upon *Imperial* the definition of "carrying on business." *Imperial,* however, is an unreported case that merely stated that "'to engage' is to embark in a business or to employ oneself therein."[57]

Mindanao II's sale of the Nissan Patrol is said to be an isolated transaction. However, it does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability. Indeed, a reading of Section 105 of the 1997 Tax Code would show that a transaction "in the course of trade or business" includes "transactions incidental thereto." Mindanao II's business is to convert the steam supplied to it by PNOC-EDC into electricity and to deliver the electricity to NPC. In the course of its business, Mindanao II bought and eventually sold a Nissan Patrol. Prior to the sale, the Nissan Patrol was part of Mindanao II's property, plant, and equipment. Therefore, the sale of the Nissan Patrol is an incidental transaction made

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[55] 529 Phil. 64 (2006).

[56] 97 Phil. 992 (1955).

[57] *Id.*

in the course of Mindanao II's business which should be liable for VAT.

Substantiation Requirements

Mindanao II claims that the CTA's disallowance of a total amount of ₱492,198.09 is improper as it has substantially complied with the substantiation requirements of Section 113 (A)[58] in relation to Section 237[59] of the 1997 Tax Code, as

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[58] Section 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —

(A) *Invoicing Requirements.* — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

[59] Section 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That in the case of sales, receipts or transfers in the amount of One hundred pesos (₱100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

implemented by Section 4.104-1, 4.104-5 and 4.108-1 of Revenue Regulation No. 7-95.[60]

The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section

[60] Section 4.104-1. *Credits for input tax.* — Any input tax evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Section 108 of the Code, on the following transactions, shall be creditable against the output tax:

(a) Purchase or importation of goods

1. For sale; or

2. For conversion into or intended to form part of a finished product for sale, including packaging materials; or

3. For use as supplies in the course of business; or

4. For use as raw materials supplied in the sale of services; or

5. For use in trade or business for which deduction for depreciation or amortization is allowed under the Code, except automobiles, aircraft and yachts.

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

(d) Transactions "deemed sale" under Section 100 (b) of the Code;

(e) Presumptive input tax allowed to be carried over as provided for in Section 4.105-1 of these Regulations;

(f) A VAT-registered person who is also engaged in transactions not subject to VAT shall be allowed input tax credit as follows:

1. Total input which can be directly attributed to transactions subject to VAT; and

2. A ratable portion of any input tax which cannot be directly attributed to either activity.

Section 4.104-5. *Substantiation of claims for input tax credit.* — (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Sections 108 (a) and 238 of the Code. Input tax on purchases of real property should be supported by a copy of the public instrument *i.e.,* deed of absolute sale, deed of conditional sale, contract/agreement to sell, *etc.,* together with the VAT receipt issued by the seller.

A cash-register machine tape issued to a VAT-registered buyer by a VAT-registered seller from a machine duly registered with the BIR in lieu of the regular sales invoice, shall constitute valid proof of substantiation

We are constrained to state that Mindanao II's compliance with the substantiation requirements is a finding of fact. The

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of tax credit only if the name and TIN of the purchaser is indicated in the receipt and authenticated by a duly authorized representative of the seller.

(b) Input tax on importation shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods.

(c) Presumptive input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(d) Input tax on "deemed sale" transactions shall be substantiated with the required invoices.

(e) Input tax from payments made to non-readers shall be supported by a copy of the VAT declaration/return filed by the resident licensee/lessee in behalf of the non-resident licensor/lessor evidencing remittance of the VAT due.

Section 4.108-1. *Invoicing Requirements.* — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;

2. date of transaction;

3. quantity, unit cost and description of merchandise or nature of service;

4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;

5. the word "zero rated" imprinted on the invoice covering zero-rated sales; and

6. the invoice value or consideration.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or receipts and this shall be considered as a "VAT Invoice." All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

CTA *En Banc* evaluated the records of the case and found that the transactions in question are purchases for services and that Mindanao II failed to comply with the substantiation requirements. We affirm the CTA *En Banc's* finding of fact, which in turn affirmed the finding of the CTA First Division. We see no reason to overturn their findings.

WHEREFORE, we **PARTIALLY GRANT** the petitions. The Decision of the Court of Tax Appeals *En Banc* in CTA EB No. 513 promulgated on 10 March 2010, as well as the Resolution promulgated on 28 July 2010, and the Decision of the Court of Tax Appeals *En Banc* in CTA EB Nos. 476 and 483 promulgated on 31 May 2010, as well as the Amended Decision promulgated on 24 November 2010, are **AFFIRMED with MODIFICATION.**

For G.R. No. 193301, the claim of Mindanao II Geothermal Partnership for the first quarter of 2003 is **DENIED** while its claims for the second, third, and fourth quarters of 2003 are **GRANTED.** For G.R. No. 194637, the claims of Mindanao I Geothermal Partnership for the first, third, and fourth quarters of 2003 are **DENIED** while its claim for the second quarter of 2003 is **GRANTED.**

SO ORDERED.

Brion, del Castillo, Villarama, Jr.,[*] and *Perlas-Bernabe, JJ.,* concur.

[*] Designated acting member per Special Order No. 1426 dated 8 March 2013.

THIRD DIVISION

[G.R. No. 194336. March 11, 2013]

PILAR DEVELOPMENT CORPORATION, *petitioner, vs.* **RAMON DUMADAG, EMMA BACABAC, RONALDO NAVARRO, JIMMY PAGDALIAN, PAY DELOS SANTOS, ARMANDO TRILLOS, FELICISIMO TRILLOS, ARCANGEL FLORES, EDDIE MARTIN, PRESILLA LAYOG, CONRADO CAGUYONG, GINA GONZALES, ARLENE PEDROSA, JOCELYN ABELINO, ROQUE VILLARAZA, ROLANDO VILLARAZA, CAMILO GENOVE, NILDA ROAYANA, SUSAN ROAYANA, JUANCHO PANGANIBAN, BONG DE GUZMAN, ARNOLD ENVERSO, DONNA DELA RAZA, EMELYN HAGNAYA, FREDDIE DE LEON, RONILLO DE LEON, MARIO MARTINEZ, and PRECY LOPEZ,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; PROPERTY; EASEMENT OF SERVITUDES; NATURE; KINDS OF EASEMENTS; EXPOUNDED.— An easement or servitude is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his or her property, for the benefit of another person or tenement; it is *jus in re aliena,* inseparable from the estate to which it actively or passively belongs, indivisible, perpetual, and a continuing property right, unless extinguished by causes provided by law. The Code defines easement as an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner or for the benefit of a community, or of one or more persons to whom the encumbered estate does not belong. There are two kinds of easement according to source: by law or by will of the owners–the former are called legal and the latter voluntary easement. A legal easement or

compulsory easement, or an easement by necessity constituted by law has for its object either public use or the interest of private persons.

2. ID.; ID.; ID.; ID.; GOVERNING LAW; CASE AT BAR.— While Article 630 of the Code provides for the general rule that "[t]he owner of the servient estate retains the ownership of the portion on which the easement is established, and may use the same in such a manner as not to affect the exercise of the easement," Article 635 thereof is specific in saying that "**[a]ll matters concerning easements established for public or communal use shall be governed by the special laws and regulations relating thereto,** and, in the absence thereof, by the provisions of this Title [Title VII on Easements or Servitudes]." In the case at bar, the applicability of DENR A.O. No. 99-21 dated June 11, 1999, which superseded DENR A.O. No. 97-05 dated March 6, 1997 and prescribed the revised guidelines in the implementation of the pertinent provisions of Republic Act (R.A.) No. 1273 and Presidential Decree (P.D.) Nos. 705 and 1067, cannot be doubted. *Inter alia,* it was issued to further the government's program of biodiversity preservation. Certainly, in the case of residential subdivisions, the allocation of the 3-meter strip along the banks of a stream, like the Mahabang Ilog Creek in this case, is required and shall be considered as forming part of the open space requirement pursuant to P.D. 1216 dated October 14, 1977. Said law is explicit: open spaces are "for public use and are, therefore, beyond the commerce of men" and that "[the] areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable." Running in same vein is P.D. 1067 or *The Water Code of the Philippines* which provides: Art. 51. *The banks* of rivers and *streams* and the shores of the seas and lakes *throughout their entire length and within a zone of three (3) meters in urban areas,* twenty (20) meters in agricultural areas and forty (40) meters in forest areas, along their margins, are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, floatage, fishing or salvage or to build structures of any kind. Thus, the above prove that petitioner's right of ownership and possession has been limited by law with respect

to the 3-meter strip/zone along the banks of Mahabang Ilog Creek. Despite this, the Court cannot agree with the trial court's opinion, as to which the CA did not pass upon, that respondents have a better right to possess the subject portion of the land because they are occupying an area reserved for public easement purposes.

3. **ID.; ID.; ID.; ID.; PROPER PARTY TO INSTITUTE A CASE WITH RESPECT TO THE 3-METER STRIP/ZONE.—** As to the issue of who is the proper party entitled to institute a case with respect to the 3-meter strip/zone, We find and so hold that both the Republic of the Philippines, through the OSG and the local government of Las Piñas City, may file an action depending on the purpose sought to be achieved. The former shall be responsible in case of action for reversion under C.A. 141, while the latter may also bring an action to enforce the relevant provisions of Republic Act No. 7279 (otherwise known as the *Urban Development and Housing Act of 1992*). Under R.A. 7279, which was enacted to uplift the living conditions in the poorer sections of the communities in urban areas and was envisioned to be the antidote to the pernicious problem of squatting in the metropolis, all local government units (LGUs) are mandated to evict and demolish persons or entities occupying danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds. Moreover, under pain of administrative and criminal liability in case of non-compliance, it obliges LGUs to strictly observe the law.

APPEARANCES OF COUNSEL

Edgar A. Pacis for petitioner.
Hector A. Villacorta for respondents.

DECISION

PERALTA, *J.*:

Challenged in this petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure are the March 5, 2010 Decision[1] and October 29, 2010 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 90254, which affirmed the May 30, 2007 Decision[3] of the Las Piñas Regional Trial Court, Branch 197 (*trial court*) dismissing the complaint filed by petitioner.

On July 1, 2002, petitioner filed a Complaint[4] for *accion publiciana* with damages against respondents for allegedly building their shanties, without its knowledge and consent, in its 5,613-square-meter property located at Daisy Road, Phase V, Pilar Village Subdivision, Almanza, Las Piñas City. It claims that said parcel of land, which is duly registered in its name under Transfer Certificate of Title No. 481436 of the Register of Deeds for the Province of Rizal, was designated as an open space of Pilar Village Subdivision intended for village recreational facilities and amenities for subdivision residents.[5] In their Answer with Counterclaim,[6] respondents denied the material allegations of the Complaint and briefly asserted that it is the local government, not petitioner, which has jurisdiction and authority over them.

Trial ensued. Both parties presented their respective witnesses and the trial court additionally conducted an ocular inspection of the subject property.

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[1] Penned by Associate Justice Michael P. Elbinias, with Associate Justices Rebecca de Guia-Salvador and Estela M. Perlas-Bernabe (now Supreme Court Associate Justice) concurring; *rollo*, pp. 21-28.

[2] *Id.* at 30-35.

[3] *Id.* at 46-52.

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

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

[6] *Id.* at 40-44.

On May 30, 2007, the trial court dismissed petitioner's complaint, finding that the land being occupied by respondents are situated on the sloping area going down and leading towards the Mahabang Ilog Creek, and within the three-meter legal easement; thus, considered as public property and part of public dominion under Article 502[7] of the New Civil Code (Code), which could not be owned by petitioner. The court held:

x x x The land title of [petitioner] only proves that it is the owner in fee simple of the respective real properties described therein, free from all liens and encumbrances, except such as may be expressly noted thereon or otherwise reserved by law x x x. And in the present case, what is expressly reserved is what is written in TCT No. T-481436, to wit "that the 3.00 meter strip of the lot described herein along the Mahabang Ilog Creek is reserved for public easement purposes. (From OCT 1873/A-50) and to the limitations imposed by Republic Act No. 440. x x x"[8]

The trial court opined that respondents have a better right to possess the occupied lot, since they are in an area reserved for public easement purposes and that only the local government

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[7] Art. 502 of the New Civil Code provides:

Art. 502. The following are of public dominion:

(1) Rivers and their natural beds;

(2) Continuous or intermittent waters of springs and brooks running in their natural beds and the beds themselves;

(3) Waters rising continuously or intermittently on lands of public dominion;

(4) Lakes and lagoons formed by Nature on public lands, and their beds;

(5) Rain waters running through ravines or sand beds, which are also of public dominion;

(6) Subterranean waters on public lands;

(7) Waters found within the zone of operation of public works, even if constructed by a contractor;

(8) Waters rising continuously or intermittently on lands belonging to private persons, to the State, to a province, or to a city or a municipality from the moment they leave such lands;

(9) The waste waters of fountains, sewers and public establishments.

[8] *Rollo,* p. 51.

of Las Piñas City could institute an action for recovery of possession or ownership.

Petitioner filed a motion for reconsideration, but the same was denied by the trial court in its Order dated August 21, 2007.[9] Consequently, petitioner elevated the matter to the Court of Appeals which, on March 5, 2010, sustained the dismissal of the case.

Referring to Section 2[10] of Administrative Order (A.O.) No. 99-21 of the Department of Environment and Natural Resources (DENR), the appellate court ruled that the 3-meter area being disputed is located along the creek which, in turn, is a form of a stream; therefore, belonging to the public dominion. It said that petitioner could not close its eyes or ignore the fact, which is glaring in its own title, that the 3-meter strip was indeed reserved for public easement. By relying on the TCT, it is then estopped from claiming ownership and enforcing its supposed right. Unlike the trial court, however, the CA noted that the proper party entitled to seek recovery of possession of the contested portion is not the City of Las Piñas, but the Republic of the Philippines, through

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[9] *Id.* at 13.

[10] Sec. 2 of DENR A.O. No. 99-21 states as follows:

2.1 Original Surveys:

2.1.a Public Lands:

All alienable and disposable (A and D) lands of the public domain shall be surveyed pursuant to Section 1 Par. (1) of R.A. 1273 [C.A. No. 141, Section 90 (i)] whereby a strip of forty (40) meters wide starting from the banks on each side of any river or stream that may be found on the land shall be demarcated and preserved as permanent timberland.

Likewise, to be demarcated are public lands along the banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest area, along their margins which are subject to the easement for public use in the interest of recreation, navigation, floatage, fishing and salvage.

the Office of the Solicitor General (OSG), pursuant to Section 101[11] of Commonwealth Act (C.A.) No. 141 (otherwise known as *The Public Land Act*).

The motion for reconsideration filed by petitioner was denied by the CA per Resolution dated October 29, 2010, hence, this petition.

Anchoring its pleadings on Article 630[12] of the Code, petitioner argues that although the portion of the subject property occupied by respondents is within the 3-meter strip reserved for public easement, it still retains ownership thereof since the strip does not form part of the public dominion. As the owner of the subject parcel of land, it is entitled to its lawful possession, hence, the proper party to file an action for recovery of possession against respondents conformably with Articles 428[13] and 539[14] of the Code.

We deny.

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[11] Sec. 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor-General or the officer acting in his stead, in the proper courts, in the name of the [Republic] of the Philippines.

[12] Art. 630. The owner of the servient estate retains the ownership of the portion on which the easement is established, and may use the same in such a manner as not to affect the exercise of the easement.

[13] Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

[14] Art. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

A possessor deprived of his possession through forcible entry may within ten days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof.

An easement or servitude is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his or her property, for the benefit of another person or tenement; it is *jus in re aliena,* inseparable from the estate to which it actively or passively belongs, indivisible, perpetual, and a continuing property right, unless extinguished by causes provided by law.[15] The Code defines easement as an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner or for the benefit of a community, or of one or more persons to whom the encumbered estate does not belong.[16] There are two kinds of easement according to source: by law or by will of the owners — the former are called legal and the latter voluntary easement.[17] A legal easement or compulsory easement, or an easement by necessity constituted by law has for its object either public use or the interest of private persons.[18]

While Article 630 of the Code provides for the general rule that "[t]he owner of the servient estate retains the ownership of the portion on which the easement is established, and may use the same in such a manner as not to affect the exercise of the easement," Article 635 thereof is specific in saying that **"[a]ll matters concerning easements established for public or communal use shall be governed by the special laws and regulations relating thereto,** and, in the absence thereof, by

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[15] *Villanueva v. Velasco,* 399 Phil. 664, 672 (2000) and *Quimen v. Court of Appeals,* 326 Phil. 969, 976-977 (1996).

[16] CIVIL CODE, Arts. 613 and 614.

[17] CIVIL CODE, Art. 619. See also *Castro v. Monsod,* G.R. No. 183719, February 2, 2011, 641 SCRA 486, 493-494.

[18] CIVIL CODE, Art. 634, NCC. See also *Woodridge School, Inc. v. ARB Construction Co., Inc.,* G.R. No. 157285, February 16, 2007, 516 SCRA 176, 183; *Villanueva v. Velasco, supra* note 15; *La Vista Association, Inc. v. Court of Appeals,* 311 Phil. 30, 46 (1997) and *Quimen v. Court of Appeals, supra* note 15, at 977.

the provisions of this Title [Title VII on Easements or Servitudes]."

In the case at bar, the applicability of DENR A.O. No. 99-21 dated June 11, 1999, which superseded DENR A.O. No. 97-05[19] dated March 6, 1997 and prescribed the revised guidelines in the implementation of the pertinent provisions of Republic Act (R.A.) No. 1273 and Presidential Decree (P.D.) Nos. 705 and 1067, cannot be doubted. *Inter alia*, it was issued to further the government's program of biodiversity preservation. Aside from Section 2.1 above-quoted, Section 2.3 of which further mandates:

2.3 Survey of Titled Lands:

2.3.1 Administratively Titled Lands:

The provisions of item 2.1.a and 2.1.b shall be observed as the above. However, when these lands are to be subdivided, consolidated or consolidated-subdivided, the strip of three (3) meters which falls within urban areas shall be demarcated and marked on the plan for easement and bank protection.

The purpose of these strips of land shall be noted in the technical description and annotated in the title.

x x x x x x x x x

2.3.3 Complex Subdivision or Consolidation Subdivision Surveys for Housing/Residential, Commercial or Industrial Purposes:

When titled lands are subdivided or consolidated-subdivided into lots for residential, commercial or industrial purposes the segregation of the three (3) meter wide strip along the banks of rivers or streams shall be observed and be made part of the open space requirement pursuant to P.D. 1216.

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[19] Entitled *Procedures in the Retention of Areas Within Certain Distances Along the Banks of Rivers, Streams, and Shores of Seas, Lakes and Oceans for Environmental Protection.*

The strip shall be preserved and shall not be subject to subsequent subdivision. (Underscoring supplied)

Certainly, in the case of residential subdivisions, the allocation of the 3-meter strip along the banks of a stream, like the Mahabang Ilog Creek in this case, is required and shall be considered as forming part of the open space requirement pursuant to P.D. 1216 dated October 14, 1977.[20] Said law is explicit: open spaces are "for public use and are, therefore, beyond the commerce of men" and that "[the] areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable."

Running in same vein is P.D. 1067 or *The Water Code of the Philippines*[21] which provides:

Art. 51. The banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest areas, along their margins, are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, floatage, fishing or salvage or to build structures of any kind. (Underscoring supplied)

Thus, the above proves that petitioner's right of ownership and possession has been limited by law with respect to the 3-meter strip/zone along the banks of Mahabang Ilog Creek. Despite this, the Court cannot agree with the trial court's opinion, as to which the CA did not pass upon, that respondents have a better right to possess the subject portion of the land because

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[20] P.D. 1216 is entitled Defining *"Open Space" in Residential Subdivisions and Amending Section 31 of Presidential Decree No. 957 Requiring Subdivision Owners to Provide Roads, Alleys, Sidewalks and Reserve Open Space for Parks or Recreational Use.*

[21] Entitled *A Decree Instituting a Water Code, thereby Revising and Consolidating the Laws Governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources, dated December 31, 1976.*

they are occupying an area reserved for public easement purposes. Similar to petitioner, respondents have no right or title over it precisely because it is public land. Likewise, we repeatedly held that squatters have no possessory rights over the land intruded upon.[22] The length of time that they may have physically occupied the land is immaterial; they are deemed to have entered the same in bad faith, such that the nature of their possession is presumed to have retained the same character throughout their occupancy.[23]

As to the issue of who is the proper party entitled to institute a case with respect to the 3-meter strip/zone, We find and so hold that both the Republic of the Philippines, through the OSG and the local government of Las Piñas City, may file an action depending on the purpose sought to be achieved. The former shall be responsible in case of action for reversion under C.A. 141, while the latter may also bring an action to enforce the relevant provisions of Republic Act No. 7279 (otherwise known as the *Urban Development and Housing Act of 1992*).[24] Under R.A. 7279, which was enacted to uplift the living conditions in the poorer sections of the communities in urban areas and was envisioned to be the antidote to the pernicious problem of squatting in the metropolis,[25] all local government units (LGUs) are mandated to evict and demolish persons or entities occupying danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds.[26] Moreover,

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[22] *D'Oro Land Realty and Development Corporation v. Claunan,* 545 Phil. 573, 583-584 (2007); *De Vera-Cruz v. Miguel,* 505 Phil. 591, 607 (2005); and *Pendot v. Court of Appeals,* 254 Phil. 19, 28 (1989).

[23] *D'Oro Land Realty and Development Corporation v. Claunan, supra* note 22, at 584.

[24] Approved on March 24, 1992 and published in the May 4, 1992 issue of the Official Gazette. (*Macasiano v. National Housing Authority,* G.R. No. 107921, July 1, 1993, 224 SCRA 236, 239).

[25] *Galay v. Court of Appeals,* 321 Phil. 224, 226 (1995).

[26] R.A. 7279, Sec. 28 (a).

under pain of administrative and criminal liability in case of non-compliance,[27] it obliges LGUs to strictly observe the following:

> Section 29. Resettlement. — Within two (2) years from the effectivity of this Act, the local government units, in coordination with the National Housing Authority, shall implement the relocation and resettlement of persons living in danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and in other public places such as sidewalks, roads, parks and playgrounds. The local government unit, in coordination with the National Housing Authority, shall provide relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of the affected families.
>
> Section 30. Prohibition Against New Illegal Structures. — It shall be unlawful for any person to construct any structure in areas mentioned in the preceding section.
>
> After the effectivity of this Act, the *barangay,* municipal or city government units shall prevent the construction of any kind or illegal dwelling units or structures within their respective localities. The head of any local government unit concerned who allows, abets or otherwise tolerates the construction of any structure in violation of this section shall be liable to administrative sanctions under existing laws and to penal sanctions provided for in this Act.

Yet all is not lost for petitioner. It may properly file an action for *mandamus* to compel the local government of Las Piñas City to enforce with reasonable dispatch the eviction, demolition,

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[27] Sec. 45 of R.A. No. 7279 provides:

Section 45. *Penalty Cause.* — Any person who violates any provision of this Act shall be imposed the penalty of not more than six (6) years of imprisonment or a fine of not less than Five thousand pesos (₱5,000) but not more than One hundred thousand pesos (₱100,000), or both, at the discretion of the court: Provided, That, if the offender is a corporation, partnership, association or other juridical entity, the penalty shall be imposed on the officer or officers of said corporation, partnership, association or juridical entity who caused the violation.

and relocation of respondents and any other persons similarly situated in order to give flesh to one of the avowed policies of R.A. 7279, which is to reduce urban dysfunctions, particularly those that adversely affect public health, safety, and ecology.[28] Indeed, as one of the basic human needs, housing is a matter of state concern as it directly and significantly affects the general welfare.[29]

WHEREFORE, the petition is **DENIED.** The March 5, 2010 Decision and October 29, 2010 Resolution of the Court of Appeals in CA-G.R. CV No. 90254, which affirmed the May 30, 2007 Decision of the Las Piñas RTC, Branch 197, dismissing petitioner's complaint, is hereby **AFFIRMED.**

SO ORDERED.

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

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[28] R.A. No. 7279, Sec. 2 (b) (4).

[29] *Sumulong v. Guerrero,* 238 Phil. 462, 467 (1987).

SECOND DIVISION

[G.R. No. 200667. March 11, 2013]

RURAL BANK OF STA. BARBARA (ILOILO), INC., *petitioner, vs.* **GERRY CENTENO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; DEED AND POSSESSION TO BE GIVEN AT EXPIRATION OR REDEMPTION PERIOD; THE ISSUANCE OF THE WRIT OF POSSESSION, UPON PROPER APPLICATION AND PROOF OF TITLE, TO A PURCHASER IN AN EXTRAJUDICIAL FORECLOSURE SALE BECOMES MERELY A MINISTERIAL FUNCTION, UNLESS IT APPEARS THAT THE PROPERTY IS IN POSSESSION OF A THIRD PARTY CLAIMING A RIGHT ADVERSE TO THAT OF THE MORTGAGOR.—** It is well-established that after consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function, unless it appears that the property is in possession of a third party claiming a right adverse to that of the mortgagor. The foregoing rule is contained in Section 33, Rule 39 of the Rules of Court which partly provides. Sec. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* — x x x Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. **The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.**

2. **ID.; ID.; ID.; ID.; SINCE RESPONDENT IS A MERE SUCCESSOR-IN-INTEREST OF HIS PARENTS, THE**

OWNER OF THE FORECLOSED PROPERTY, HE CANNOT BE DEEMED A "THIRD PARTY WHO IS ACTUALLY HOLDING THE PROPERTY ADVERSELY TO THE JUDGMENT OBLIGOR" UNDER LEGAL CONTEMPLATION.— In *China Banking Corporation v. Lozada,* the Court held that the phrase "a third party who is actually holding the property adversely to the judgment obligor" contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are **[not merely the successor or transferee of the right of possession]** of another co-owner or the owner of the property. Notably, the property should not only be possessed by a third party, but also held by the third party *adversely to the judgment obligor*. In this case, respondent acquired the subject lots from his parents, Sps. Centeno, on March 14, 1988 after they were purchased by petitioner and its Certificate of Sale at Public Auction was registered with the Register of Deeds of Iloilo City in 1971. It cannot therefore be disputed that respondent is a mere successor-in-interest of Sps. Centeno. Consequently, he cannot be deemed as a "third party who is actually holding the property adversely to the judgment obligor" under legal contemplation. Hence, the RTC had the ministerial duty to issue – as it did issue – the said writ in petitioner's favor.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner.
Roberto Cal Catolico for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] is the January 31, 2012 Decision[2] of the Cebu City Court of Appeals (CA) in CA-G.R. CV No. 78398 which set aside the October

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[1] *Rollo,* pp. 9-29.

[2] *Id.* at 35-43. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Ingles, concurring.

8, 2002 Decision of the Regional Trial Court of Barotac Viejo, Iloilo City, Branch 66 (RTC) in Cadastral Case No. 98-069[3] and denied the issuance of a writ of possession for Cadastral Lot Nos. 964, 958 and 959 of the Ajuy, Iloilo Cadastre (subject lots) in petitioner's favor.

The Facts

Spouses Gregorio and Rosario Centeno (Sps. Centeno) were the previous owners of the subject lots. During that time, they mortgaged the foregoing properties in favor of petitioner Rural Bank of Sta. Barbara (Iloilo), Inc. as security for a ₱1,753.65 loan. Sps. Centeno, however, defaulted on the loan, prompting petitioner to cause the extrajudicial foreclosure of the said mortgage. Consequently, the subject lots were sold to petitioner being the highest bidder at the auction sale. On October 10, 1969, it obtained a Certificate of Sale at Public Auction[4] which was later registered with the Register of Deeds of Iloilo City on December 13, 1971.[5]

Sps. Centeno failed to redeem the subject lots within the one (1) year redemption period pursuant to Section 6[6] of Act No. 3135.[7] Nonetheless, they still continued with the possession and

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[3] *Id.* at 116-119. Penned by Judge Rogelio J. Amador.

[4] *Id.* at 36.

[5] *Id.* at 12.

[6] Section 6 of Act No. 3135 provides:

Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, **may redeem the same at any time within the term of one year from and after the date of the sale**; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act. (Emphasis supplied)

[7] "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES."

cultivation of the aforesaid properties. Sometime in 1983, respondent Gerry Centeno, son of Sps. Centeno, took over the cultivation of the same. On March 14, 1988, he purchased the said lots from his parents. Accordingly, Rosario Centeno paid the capital gains taxes on the sale transaction and tax declarations were eventually issued in the name of respondent.[8] While the latter was in possession of the subject lots, petitioner secured on November 25, 1997 a Final Deed of Sale thereof and in 1998, was able to obtain the corresponding tax declarations in its name.[9]

On March 19, 1998, petitioner filed a petition for the issuance of a writ of possession before the RTC, claiming entitlement to the said writ by virtue of the Final Deed of Sale covering the subject lots.[10] Respondent opposed the petition, asserting that he purchased and has, in fact, been in actual, open and exclusive possession of the same properties for at least fifteen (15) years.[11] He further averred that the foreclosure sale was null and void owing to the forged signatures in the real estate mortgage. Moreover, he claims that petitioner's rights over the subject lots had already prescribed.[12]

Ruling of the RTC

On October 8, 2002, the RTC rendered its Decision[13] in Cadastral Case No. 98-069, finding petitioner to be the lawful owner of the subject lots whose rights became absolute due to respondent's failure to redeem the same. Consequently, it found the issuance of a writ of possession ministerial on its part.[14] Dissatisfied, respondent appealed to the CA.

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[8] *Rollo,* p. 36.

[9] *Id.*

[10] *Id.* at 13.

[11] *Id.* at 37.

[12] *Id.*

[13] *Id.* at 116-119.

[14] *Id.* at 117.

Ruling of the CA

The CA, through its January 31, 2012 Decision,[15] reversed the RTC and ruled against the issuance of a writ of possession. It considered respondent as a third party who is actually holding the property adverse to the judgment obligor and as such, has the right to ventilate his claims in a proper judicial proceeding *i.e.*, an ejectment suit or reinvindicatory action.[16] Aggrieved, petitioner filed the instant petition.

Issue Before The Court

The sole issue in this case is whether or not petitioner is entitled to a writ of possession over the subject lots.

The Court's Ruling

The petition is meritorious.

It is well-established that after consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function,[17] unless it appears that the property is in possession of a third party claiming a right adverse to that of the mortgagor.[18] The foregoing rule is contained in Section 33, Rule 39 of the Rules of Court which partly provides:

Sec. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* —

x x x x x x x x x

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[15] *Id.* at 35-43.

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

[17] *Sagarbarria v. Philippine Business Bank,* G.R. No. 178330, July 23, 2009, 593, SCRA 645, 653.

[18] *Bank of the Philippine Islands v. Icot,* G.R. No. 168601, October 12, 2009, 603 SCRA 322, 331-332.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. **The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor**. (Emphasis and underscoring supplied)

In *China Banking Corporation v. Lozada,*[19] the Court held that the phrase "a third party who is actually holding the property adversely to the judgment obligor" contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are **not merely the successor or transferee of the right of possession** of another co-owner or the owner of the property.[20] Notably, the property should not only be possessed by a third party, but also held by the third party *adversely to the judgment obligor.*[21]

In this case, respondent acquired the subject lots from his parents, Sps. Centeno, on March 14, 1988 after they were purchased by petitioner and its Certificate of Sale at Public Auction was registered with the Register of Deeds of Iloilo City in 1971. It cannot therefore be disputed that respondent is a mere successor-in-interest of Sps. Centeno. Consequently, he cannot be deemed as a "third party who is actually holding the property adversely to the judgment obligor" under legal contemplation. Hence, the RTC had the ministerial duty to issue — as it did issue — the said writ in petitioner's favor.

On the issue regarding the identity of the lots as raised by respondent in his Comment,[22] records show that the RTC had already passed upon petitioner's title over the subject lots during

[19] G.R. No. 164919, July 4, 2008, 557 SCRA 177.

[20] *Id.* at 202-204. Citations omitted; emphasis supplied.

[21] *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.,* G.R. No. 176019, January 12, 2011, 639 SCRA 405, 416.

[22] *Rollo,* pp. 157-160.

the course of the proceedings. Accordingly, the identity of the said lots had already been established for the purpose of issuing a writ of possession. It is hornbook principle that absent any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its findings of facts are binding and conclusive upon the Court,[23] as in this case.

Finally, anent the issue of laches, it must be maintained that the instant case only revolves around the issuance of a writ of possession which is merely ministerial on the RTC's part as above-explained. As such, all defenses which respondent may raise including that of laches should be ventilated through a proper proceeding.

WHEREFORE, the petition is **GRANTED**. The January 31, 2012 Decision of the Cebu City Court of Appeals in CA-G.R. CV No. 78398 is **REVERSED** and **SET ASIDE**. Accordingly, the October 8, 2002 Decision of the Regional Trial Court of Barotac Viejo, Iloilo City, Branch 66 in Cadastral Case No. 98-069 is hereby **REINSTATED**.

SO ORDERED.

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

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[23]See *Castillo v. CA,* G.R. No. 106472, August 7, 1996, 260 SCRA 374, 382.

[*] Designated Acting Member per Special Order No. 1426 dated March 8, 2013.

EN BANC

[A.M. No. MTJ-12-1817. March 12, 2013]
(Formerly A.M. No. 09-2-30-MTCC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **HON. ROSABELLA M. TORMIS, Presiding Judge, Municipal Trial Court in Cities [MTCC], Branch 4, Cebu City and MR. REYNALDO S. TEVES, Branch Clerk of Court, same court,** *respondents.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; GROSS INEFFICIENCY; UNDUE DELAY IN THE DISPOSITION OF CASES; RESPONDENT JUDGE HAS BEEN REMISS IN HER DUTY TO DISPOSE OF CASES WITHIN THE MANDATORY PERIOD REQUIRED BY LAW.—** Section 15 (1), Article VIII of the 1987 Constitution mandates lower court judges to decide a case within the reglementary period of ninety (90) days. x x x In this case, Judge Tormis had been remiss in her duty to dispose of cases within the mandatory period to do so. Two of such cases had in fact remained undecided for ten (10) years; a total of one hundred ninety-five (195) cases had yet to be decided despite having been submitted for decision for more than ninety (90) days; ninety (90) cases had been submitted for resolution beyond the mandatory period but were yet to be resolved; two hundred twenty-three (223) cases had been filed in court, but Judge Tormis failed to make even just the initial action for a considerable period; and three thousand four hundred ninety-one (3,491) cases had no further action for a considerable length of time. When asked to explain such delay, Judge Tormis claimed that it was the consequence of the three suspension orders issued against her as she was suspended for an aggregate period of almost one year and six months. Records reveal, however, that Judge Tormis was repeatedly suspended in cases (that will be discussed below) wherein she committed a breach of her duty as a member of the Bench. She cannot, therefore, be allowed to use the same to justify another violation of her solemn oath to dispense justice. Even if we allow her

to use such an excuse, as aptly observed by the OCA, several of the cases that she failed to dispose of had been overdue for decision or resolution even prior to her suspension. Hence, she cannot be absolved from liability for her inaction. This notwithstanding her later compliance with the Court's resolution thereby making the appropriate action on said cases. The honor and integrity of the judicial system is measured not only by the fairness and correctness of decisions rendered, but also by the efficiency with which disputes are resolved. The delay in deciding a case within the reglementary period constitutes a violation of Section 5, Canon 6 of the New Code of Judicial Conduct which mandates judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with promptness. Judge Tormis is thus liable for gross inefficiency for his failure to decide cases within the reglementary period.

2. **ID.; ID.; ID.; ID.; MISMANAGEMENT OF COURT; RESPONDENT JUDGE IS GUILTY OF VIOLATION OF SUPREME COURT RULES, DIRECTIVES, AND CIRCULARS FOR HER FAILURE TO COMPLY WITH HER DUTY OF PROVIDING AN EFFICIENT COURT MANAGEMENT SYSTEM IN HER COURT WHICH INCLUDES THE PREPARATION OF AND USE OF DOCKET INVENTORY AND MONTHLY REPORT OF CASES AS TOOLS THEREOF.—** The OCA found the court's failure to maintain a general docket book. Although the duty is vested with Mr. Teves, it is the duty of Judge Tormis to make sure that the members of her staff perform their duties. This failure contributed to their inability to keep track of the number of cases assigned as well as to account for all the cases and records assigned to the court. The OCA likewise found that Mr. Teves repeatedly submitted inaccurate reports as to the actual number of cases pending with their court. This is brought about by their failure to adopt an efficient system of monitoring their cases. Again, this is the primary responsibility of Judge Tormis. Finally, the OCA noted that Judge Tormis failed to conduct an actual physical inventory of cases to keep abreast of the status of the pending cases and to be informed that every case is in proper order. If the same was conducted, she would have discovered that Mr. Teves had been committing a mistake in the inventory of cases. As

found by the OCA, Judge Tormis is guilty of violation of Supreme Court rules, directives, and circulars for her failure to comply with her duty of providing an efficient court management system in her court which includes the preparation and use of docket inventory and monthly report of cases as tools thereof.

3. **ID.; ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW; ISSUING A WARRANT OF ARREST WITHOUT APPRAISING THE ACCUSED OF THE CHARGE.—** Whenever a criminal case falls under the Summary Procedure, the general rule is that the court shall not order the arrest of the accused unless he fails to appear whenever required. In this case, Judge Tormis claimed that the issuance of the warrant of arrest against the accused in the *Librando* case was justified because of the accused's failure to appear during her arraignment despite notice. However, as clearly found by the OCA, Judge Tormis' order requiring the accused to appear and submit her counter-affidavit and those of her witnesses within ten days from receipt of the order was not yet served upon the accused when she issued the warrant. In doing so, Judge Tormis issued the warrant of arrest in violation of the Rule on Summary Procedure that the accused should first be notified of the charges against him and given the opportunity to file his counter-affidavits and other countervailing evidence. As held in *Tan v. Casuga-Tabin*: While judges may not always be subjected to disciplinary action for every erroneous order or decision they render, that relative immunity is not a license to be negligent, abusive and arbitrary in their prerogatives. If judges wantonly misuse the powers vested in them by law, there will not only be confusion in the administration of justice but also oppressive disregard of the basic requirements of due process. While there appears to be no malicious intent on the part of respondent, such lack of intent, however, cannot completely free her from liability. When the law is sufficiently basic, a judge owes it to her office to know and simply apply it. The Revised Rules on Summary Procedure has been in effect since November 15, 1991. It finds application in a substantial number of civil and criminal cases. Judge Tormis cannot claim to be unfamiliar with the same. Every judge is required to observe the law. When the law is sufficiently basic, a judge owes it to his office to simply apply it; and anything less than that

would be constitutive of gross ignorance of the law. In short, when the law is so elementary, not to be aware of it constitutes gross ignorance of the law.

4. **ID.; ID.; ID.; ID.; CONSIDERING HER PREVIOUS INFRACTIONS AND TAKING INTO ACCOUNT THE NUMBER OF IRREGULARITIES SHE COMMITTED IN THE PRESENT CASE, RESPONDENT JUDGE SHOULD BE DISMISSED FROM THE SERVICE.—** In determining the proper imposable penalty, we also consider Judge Tormis' work history which reflects how she performed her judicial functions. We find that there are several administrative cases already filed against her, most of the cases have been decided against her, the others have been dismissed and some are still pending in Court. These cases show her inability to properly discharge her judicial duties. Her suspensions had in fact been used by her as a defense in her failure to resolve and decide cases and incidents pending in her court. x x x The Court also notes that although dismissed by the Court, Judge Tormis was involved in four other administrative cases. At present, there are still two pending cases against her. Judge Tormis' conduct as a repeat offender exhibits her unworthiness to don the judicial robes and merits a sanction heavier than what is provided by our rules and jurisprudence. Considering her past infractions and taking into account the number of irregularities she committed in this present case and as held by the Court in *Inoturan v. Limsiaco, Jr., Judge Tormis* should be dismissed from the service.

5. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; SIMPLE NEGLECT OF DUTY; RESPONDENT PERSONNEL FAILED TO COMPLY WITH HIS DUTY IN THE PROMULGATION OF JUDGMENTS AS PROVIDED IN THE RULES OF COURT.—** The alleged practice of Branch 4, Cebu City of not promulgating judgments in criminal cases was not substantiated except for the *Datan* case wherein Mr. Teves, instead of scheduling the case for promulgation, just gave the accused a copy of the unpromulgated decision at the time when Judge Tormis was serving her suspension. Section 6, Rule 120 of the Rules of Court states that: Sec. 6. Promulgation of judgment. – The judgment is promulgated by reading it in

the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court x x x. Clearly, as found by the OCA, Mr. Teves is guilty of simple neglect of duty. It is his duty to calendar the case for promulgation in accordance with the Rules of Court. He did not only fail to do so. Rather, he, in fact, served copies of the decision to the accused without the judgment having been promulgated first and at the time when the judge who rendered the decision was serving her suspension. This negligence on the part of Mr. Teves, does not, however, wholly exempt Judge Tormis from administrative liability even if the same took place at the time when she was prohibited access to her court. The Court cannot fathom how she failed to find out Mr. Teves' negligence. When she resumed her position, it was incumbent upon her to check the status of the cases she left prior to her suspension. A judge cannot simply take refuge behind the inefficiency or mismanagement of her court personnel, for the latter are not the guardians of the former's responsibility. Unless the reins of control and supervision over the administrative aspect of the adjudicatory process are tightened, the swift and efficient delivery of justice will be impeded and rendered illusory.

6. **ID.; ID.; ID.; ID.; RESPONDENT PERSONNEL HAS BEEN PREVIOUSLY WARNED IN HIS PAST ADMINISTRATIVE CASES AND OBVIOUSLY HAS NOT REFORMED; PENALTY OF DISMISSAL FROM SERVICE IS PROPER.—** In the determination of the proper penalty, we look into Mr. Teves' past administrative cases. In *Ramos v. Teves,* Mr. Teves was charged with arrogance and discourtesy in refusing to receive a motion that allegedly does not conform with the requirements of the Rules of Court. In deciding the case against Mr. Teves, the Court pointed out that clerks of court have no authority to pass upon the substantive or formal correctness of pleadings and motions that parties file with the court. Thus, in refusing to receive the motion filed by complainant, the Court found Mr. Teves discourteous, and in view of his past administrative cases, he was meted the penalty of a thirty-day suspension, with warning

that a repetition of the same or similar offense will be dealt with more severely. In the same case, the Court noted Mr. Teves' past infractions: The record shows that Teves had previously been administratively charged with grave abuse of authority and gross discourtesy in OCA-IPI 08-2981-P. Although the Court dismissed the charge for lack of merit on November 18, 2009, it reminded him to be more circumspect in dealing with litigants and their counsel. In two consolidated administrative cases, one for grave misconduct and immorality and the other for insubordination, the Court meted out on Teves the penalty of suspension for six months in its resolution of October 5, 2011. x x x. Obviously, with his past infractions and having been warned that a repetition of the same or similar act will be dealt with more severely, Mr. Teves has not reformed. It seems that he has remained undeterred in disregarding the law and he appears to be unfazed by the previous penalties and warnings he received. Mr. Teves' repeated infractions seriously compromise efficiency and hamper public service which the Court can no longer tolerate. Thus, the penalty of dismissal from the service is proper.

D E C I S I O N

***PER CURIAM*:**

The administrative matter stemmed from the Report of the Office of the Court Administrator (OCA) Audit Team which conducted the judicial audit on June 16 to 28, 2008 in the Municipal Trial Court in Cities (MTCC), Branch 4, Cebu City, pursuant to Travel Order No. 45-2008 dated May 28, 2008, series of 2008.[1]

The team examined the records of 5,120 cases consisting of 4,466 criminal and 654 civil cases. The examination yielded the following results:[2]

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[1] Memorandum for Hon. Chief Justice Reynato S. Puno by then Court Administrator Jose P. Perez (now Associate Justice of this Court), *rollo*, p. 1.

[2] *Id.* at 2.

STATUS/STAGES OF PROCEEDINGS	CRIMINAL CASES	CIVIL CASES	TOTAL
For Promulgation	**12**	**0**	**12**
Submitted/Due for Decision	**120**	**89**	**209**
With Pending Incidents for Resolution	**172**	**63**	**235**
No Initial Action since Filing of Case	**220**	**3**	**223**
No Further Action for Considerable Length of Time	**3,179**	**312**	**3,491**
With Warrant of Arrest/Summons	33	70	103
For Arraignment	82	-	82
For Setting	5	-	5
For Preliminary Conference/Pre-trial	58	18	76
For Compliance	38	8	46
With Pending Motions	5	2	7
On Trial/For Initial Trial	288	23	311
Suspended Proceedings	24	3	27
Archived	131	1	132
Decided/Dismissed/Disposed	99	62	161
TOTAL	**4,466**	**654**	**5,120**

The Presiding Judge of the subject court is Judge Rosabella M. Tormis (Judge Tormis), while the Clerk of Court is Mr. Reynaldo S. Teves (Mr. Teves).[3] Judge Tormis took her oath and assumed office on June 22, 1999. Her service was, however, interrupted because of the following administrative cases wherein she was either suspended or preventively suspended, to wit:

1. Decision dated September 20, 2005 in A.M. No. MTJ-05-1609 (Abuse of Authority) wherein Judge Tormis was **suspended from service for six (6) months**. In a subsequent

[3] *Id.* at 1.

resolution dated July 12, 2006, she was directed to resume office immediately upon receipt of notice;

2. Resolution dated July 10, 2007 in A.M. No. 07-1691 (Judicial Audit on Solemnization of Marriages) wherein she was placed under **preventive suspension** effective immediately. The suspension was lifted per Resolution dated December 11, 2007; and

3. Resolution dated November 28, 2007 in A.M. No. MTJ-07-1692 (Dishonesty and Grave Misconduct) wherein she was **suspended for six (6) months.**[4]

During the absence of Judge Tormis, Judge Carlos C. Fernando (Judge Fernando) of the MTCC, Branch 2, Mandaue City was designated as Acting Presiding Judge pursuant to Administrative Order Nos. 110-2007 and 2-2008 dated July 9, 2007 and January 7, 2008, respectively.[5]

The report revealed that Branch 4 does not maintain a docket book or any similar system of record-keeping and monitoring.[6] Specifically, the Audit Team found the following irregularities committed by Branch 4:

(1) [T]here were decisions/judgments in eleven (11) criminal cases rendered by Judge Rosabella M. Tormis which have not been promulgated despite the lapse of considerable length of time;

(2) [T]here were two (2) inherited cases which remained undecided for about ten (10) years or more;

(3) [T]here were one hundred twelve (112) criminal and eighty-three (83) civil cases submitted for decision before Judge Tormis which have remained undecided beyond the reglementary period to decide the same;

(4) [T]here are six (6) criminal and six (6) civil undecided cases submitted for decision before then Acting Presiding Judge Carlos C. Fernando;

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[4] *Id.* (Emphasis in the original)

[5] *Id.* at 1-2.

[6] *Id.* at 69.

(5) [T]here are one hundred seventy-two (172) criminal and sixty-three (63) civil cases that are with pending incidents for resolution;

(6) [O]f the 172 criminal cases referred to in the immediately preceding paragraph, one hundred forty-five (145) cases involve violation of city ordinances/traffic rules with pending motions to archive. The court therefore failed to comply with Administrative Circular No. 7-A-92 dated June 21, 1993 relative to the guidelines in the Archiving of Cases;

(7) [T]here are two hundred twenty (220) criminal and three (3) civil cases that have no initial action/proceeding since their filing in court;

(8) [T]here are three thousand one hundred seventy-nine (3,179) criminal and three hundred twelve (312) civil cases without further action or proceedings for a considerable length of time;

(9) [T]here was an unreasonable delay in deciding Criminal Case No. 111373-R entitled *People vs. Roel Ricardel* [Ricardel case] for Reckless Imprudence Resulting to Double Homicide, since the trial ended on August 29, 2003 and yet it was decided only on April 18, 2008 not by Judge Tormis but by Acting Presiding Judge Fernando;

(10) [I]t has been the practice of MTCC, Branch 4, Cebu City not to promulgate judgments in criminal cases in blatant violation of Section 6 of Rule 120 of the Revised Rules of Criminal Procedure;

(11) [I]t appears that the Decision dated June 4, 2007 in Criminal Case No. 72880-R to 83-R and 85346-R to 53-R entitled *People vs. Evangeline Datan* [Datan case] for Violation of BP 22, was actually rendered by Judge Tormis at the time when she was already suspended by the Court sometime in July 2007 and said decision has not been promulgated; and

(12) [I]n Criminal Case No. 126542R to 49-R entitled *People vs. Jasmin L. Librando* [Librando case] for Violation of BP 22 which is a case falling under the Rule on Summary Procedure, Judge Tormis ordered the issuance of a warrant

> of arrest in violation of Section 16 of the Revised Rule on Summary Procedure.[7]

In a Resolution dated March 18, 2009, the Court directed Judge Tormis to promulgate the decisions/judgments that have not been promulgated; decide with dispatch the two (2) inherited cases that have remained undecided for ten years or more; decide within a non-extendible period of four (4) months criminal and civil cases which are already beyond the reglementary period to decide cases; to resolve within a non-extendible period of four (4) months the pending incidents/motions in criminal and civil cases which are beyond the reglementary period within which to resolve the incidents; to immediately take appropriate action on 145 criminal cases pursuant to Administrative Circular No. 7-92-A; to immediately take appropriate action on criminal and civil cases which have no initial action since their filing in court and those which have no further action for a considerable length of time; explain why she failed to comply with her duty to conduct actual semestral physical inventory of case records thereby submitting to the Court inaccurate reports; explain the delay in deciding the *Ricardel* case; explain why she allowed the practice of not promulgating decisions/judgments in criminal cases in violation of Section 6 of Rule 120 of the Revised Rules of Criminal Procedure and Section 17 of the Revised Rules on Summary Procedure; explain why she rendered the decision dated June 4, 2007 in the *Datan* case at the time when she was already suspended by the Court; explain why in *Librando* case, she ordered the issuance of a warrant of arrest in violation of Section 16 of the Revised Rules on Summary Procedure; and submit to the Court her compliance with the foregoing directives.[8]

In the same resolution, the Court directed Mr. Teves to explain why he failed to comply with his duty to conduct actual semestral physical inventory of case records thereby submitting inaccurate reports of cases; explain why he failed to keep a General Docket

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[7] Court's Resolution dated March 18, 2009, *id.* at 212-213.

[8] *Id.* at 213-220.

Book pursuant to Section 8, Rule 136 of the Rules of Court; to explain why he allowed the practice in their court of not promulgating decisions/judgments in criminal cases in violation of the Rules on Criminal Procedure and Revised Rules on Summary Procedure; and to submit to the Court a report of compliance of the foregoing directives.[9]

In compliance with the Court's directive, Judge Tormis explained the irregularities that she allegedly committed. She claimed that she faithfully conducted semestral physical inventory of case records except during the period comprising her three suspensions as she was then denied access to her courtroom and case records.[10] She likewise cited the foregoing suspensions as the causes of the delay in the disposition of cases then pending in her court.[11] She also alleged that the delay in the disposition of the *Ricardel* case was brought about by the parties' request for time to negotiate on the civil aspect of the case.[12] She also denied the alleged practice of her court of not promulgating judgments in criminal cases. She specifically cited the *Datan* case and explained that she rendered the decision prior to her preventive suspension and she filed it with Mr. Teves for the latter to calendar it for promulgation, but instead of following her directive, Mr. Teves sent copies of the decision to the parties of the case.[13] Insofar as the *Librando* case is concerned, while admitting having issued the warrant of arrest, she supposedly did so only because the accused failed to appear during the arraignment despite notice.[14] Finally, she claimed that she had satisfactorily complied with the directive to decide the cases submitted for decision although beyond the period to decide; she had resolved the incidents due for resolution and had archived

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[9] *Id.* at 220-221.

[10] Memorandum of the Court Administrator Midas Marquez for Justice Presbitero J. Velasco, Jr., *rollo*, pp. 446-447.

[11] *Id.* at 447.

[12] *Id.*

[13] *Id.* at 447-448.

[14] *Id.* at 448.

all the cases due for archiving; and, she had either disposed of or archived the inactive cases.[15]

For his part, Mr. Teves explained that the alleged error in his reports can be attributed to the discrepancy in procedure or appreciation in the preparation of the reports.[16] He claimed that their court indeed does not maintain a general docket book, because they have not been provided by the Court with the needed supplies.[17] Lastly, on the alleged practice of non-promulgation of judgments, he claimed that the Rules are not applicable because most of their cases were resolved based on compromise agreement, plea of guilt and dismissal by reason of affidavit of desistance, failure to prosecute, or violation of the right to speedy trial.[18]

Conclusions and Recommendation of the Office of the Court Administrator

While recognizing the suspensions of Judge Tormis as one of the reasons for the delay in the disposition of cases, the OCA observed that several of the cases had been overdue for decision or resolution even prior to her suspension. As such, she should be held liable for undue delay in rendering a decision or order, a violation of Section 9, Rule 140 of the Rules of Court. Considering that said offense is a less serious charge, and taking into account the number of unresolved cases pending in her sala, the OCA recommended that Judge Tormis be meted the penalty of fine of ₱80,000.00.[19] For failure to comply with her duty to provide efficient court management system in her court, which includes the preparation and use of docket inventory and monthly report of cases as tools thereof, the OCA also found Judge Tormis guilty of violation of Supreme Court rules, directives and circulars, another less serious charge, warranting the penalty of fine of ₱20,000.00.[20] The OCA, however, exonerated Judge

[15] *Id.* at 446.

[16] *Id.* at 449.

[17] *Id.* at 450.

[18] *Id.*

[19] *Id.* at 451-452.

[20] *Id.* at 454-455.

Tormis of the alleged practice of non-promulgation of decisions/ judgments as the same was just misunderstood.[21] Finally, in ordering the arrest of the accused even before the latter was apprised of the charges against her, the OCA found Judge Tormis liable for gross ignorance of the law, a serious charge warranting the imposition of the penalty of fine of ₱20,000.00.[22]

As to Mr. Teves, the OCA found him guilty of mismanagement of the case records leading to the court's failure to dispose of many pending cases to the prejudice of the litigants concerned. As such, he was found to be liable for simple neglect of duty.[23] Mr. Teves is likewise guilty of another simple neglect of duty in failing to set for promulgation the decision in the *Datan* case.[24] As such, the OCA recommended that he be ordered to pay a fine in the amount equivalent to two (2) months of his salary.[25]

The OCA's recommendation is quoted hereunder for easy reference:

WHEREFORE, in view of the foregoing, it is respectfully recommended that:

1. The instant matter be **RE-DOCKETED** as a regular administrative matter against **Hon. Rosabella M. Tormis**, Presiding Judge, MTCC, Branch 4, Cebu City and **Mr. Reynaldo S. Teves**, Branch Clerk of Court, same court;

2. **Judge Rosabella M. Tormis** be found **GUILTY OF (a) undue delay in rendering a decision or order; (b) violation of Supreme Court rules, directives and circulars** resulting in the mismanagement of the court; and **(c) gross ignorance of the law** for ordering the arrest of the accused in Criminal Case Nos. 126542R to 49-R entitled *People vs. Jasmin L. Librando* without the accused having been informed yet of the charge against her and

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[21] *Id.* at 456.

[22] *Id.* at 457.

[23] *Id.* at 454.

[24] *Id.* at 456.

[25] *Id.*

accordingly be **FINED** in the amounts of Eighty Thousand Pesos (₱80,000.00), Twenty Thousand Pesos (₱20,000.00) and Twenty Thousand Pesos (₱20,000.00), respectively, with the warning that a repetition of the same or similar act will be dealt with more severely;

3. **Mr. Reynaldo S. Teves** be found **GUILTY** of **simple neglect of duty** and be **FINED** in the amount equivalent to his two (2) months salary with the warning that a repetition of the same or similar act will be dealt with more severely; and

4. **Judge Rosabella M. Tormis** and **Mr. Reynaldo S. Teves** be **DIRECTED** to hereceforth (a) submit accurate monthly reports of cases and docket inventory reports; (b) strictly monitor the movement of all pending cases that are active, being tried and until decided, dismissed or archived, as may be warranted; (c) improve the system of serving court processes including the return or proof of service; and (d) maintain a general docket book pursuant to Section 8, Rule 136 of the Rules of Court.[26]

The Court's Ruling

The present administrative case refers to not just one but several acts allegedly committed by Judge Tormis and Mr. Teves said to be violative of the Rules of Court and Supreme Court rules, regulations and directives. Judge Tormis is hereby accused of committing the following irregularities: (1) undue delay in the disposition of cases; (2) mismanagement of the court and case records; (3) non-promulgation of decisions; and (4) issuing a warrant of arrest without first apprising the accused of the charge against him. For his part, Mr. Teves is here charged with (1) mismanagement of case records; and (2) failure to set case for promulgation.

Undue Delay in the Disposition of Cases

Section 15 (1), Article VIII of the 1987 Constitution mandates lower court judges to decide a case within the reglementary period of ninety (90) days.

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[26] *Id.* at 457-458. (Emphasis in the original)

The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.[27]

In this case, Judge Tormis had been remiss in her duty to dispose of cases within the mandatory period to do so. Two of such cases had in fact remained undecided for ten (10) years; a total of one hundred ninety-five (195) cases had yet to be decided despite having been submitted for decision for more than ninety (90) days; ninety (90) cases had been submitted for resolution beyond the mandatory period but were yet to be resolved; two hundred twenty-three (223) cases had been filed in court, but Judge Tormis failed to make even just the initial action for a considerable period; and three thousand four hundred ninety-one (3,491) cases had no further action for a considerable length of time. When asked to explain such delay, Judge Tormis claimed that it was the consequence of the three suspension orders issued against her as she was suspended for an aggregate period of almost one year and six months. Records reveal, however, that Judge Tormis was repeatedly suspended in cases (that will be discussed below) wherein she committed a breach of her duty as a member of the Bench. She cannot, therefore, be allowed to use the same to justify another violation of her solemn oath to dispense justice. Even if we allow her to use such an excuse, as aptly observed by the OCA, several of the cases that she failed to dispose of had been overdue for decision or resolution even prior to her suspension. Hence, she cannot be absolved from liability for her inaction. This notwithstanding

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[27] *Re: Cases Submitted for Decision before Hon. Teresito A. Andoy, former Judge, Municipal Trial Court, Cainta, Rizal,* A.M. No. 09-9-163-MTC, May 6, 2010, 620 SCRA 298, 301.

her later compliance with the Court's resolution thereby making the appropriate action on said cases.

The honor and integrity of the judicial system is measured not only by the fairness and correctness of decisions rendered, but also by the efficiency with which disputes are resolved.[28] The delay in deciding a case within the reglementary period constitutes a violation of Section 5, Canon 6 of the New Code of Judicial Conduct which mandates judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with promptness.[29] Judge Tormis is thus liable for gross inefficiency for his failure to decide cases within the reglementary period.

Mismanagement of Court

As held by the Court in *In Re: Report on the Judicial Audit Conducted in the Regional Trial Court, Br. 45, Urdaneta City, Pangasinan*:[30]

> An orderly and efficient case management system is no doubt essential in the expeditious disposition of judicial caseloads, because only thereby can the judges, branch clerks of courts, and the clerks-in-charge of the civil and criminal dockets ensure that the court records, which will be the bases for rendering the judgments and dispositions, and the review of the judgments and dispositions on appeal, if any, are intact, complete, updated, and current. Such a system necessarily includes the regular and continuing physical inventory of cases to enable the judge to keep abreast of the status of the pending cases and to be informed that everything in the court is in proper order. In contrast, mismanaged or incomplete records, and the lack of periodic inventory definitely cause unwanted delays

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[28] *Re: Report on the Judicial Audit Conducted in the Regional Trial Court-Branch 56, Mandaue City, Cebu,* A.M. No. 09-7-284-RTC, February 16, 2011, 643 SCRA 407, 414.

[29] *Inoturan v. Limsiaco, Jr.,* A.M. No. MTJ-01-1362 (Formerly A.M. No. 01-2-49-RTC) and A.M. No. MTJ-11-1785 (Formerly A.M. OCA I.P.I. No. 07-1945-MTJ), February 22, 2011, 643 SCRA 618, 627.

[30] A.M. No. 08-4-253-RTC, January 12, 2011, 639 SCRA 254.

in litigations and inflict unnecessary expenses on the parties and the State.[31]

Here, the OCA found the court's failure to maintain a general docket book. Although the duty is vested with Mr. Teves, it is the duty of Judge Tormis to make sure that the members of her staff perform their duties. This failure contributed to their inability to keep track of the number of cases assigned as well as to account for all the cases and records assigned to the court. The OCA likewise found that Mr. Teves repeatedly submitted inaccurate reports as to the actual number of cases pending with their court. This is brought about by their failure to adopt an efficient system of monitoring their cases. Again, this is the primary responsibility of Judge Tormis. Finally, the OCA noted that Judge Tormis failed to conduct an actual physical inventory of cases to keep abreast of the status of the pending cases and to be informed that every case is in proper order. If the same was conducted, she would have discovered that Mr. Teves had been committing a mistake in the inventory of cases. As found by the OCA, Judge Tormis is guilty of violation of Supreme Court rules, directives, and circulars for her failure to comply with her duty of providing an efficient court management system in her court which includes the preparation and use of docket inventory and monthly report of cases as tools thereof.

As for Mr. Teves, he admitted that:

[H]e kept the records of dormant cases inside the storage room. Most of these cases are violations of city ordinances, resisting arrest, vagrancy and collection of sum of money with replevin filed by lending institutions and covered by the Rule on Summary Procedure. If there are no returns, or the returns were not duly served as when the accused could not be found in the given address, and no party makes any follow-up, they remain in the storage room. According to him, "(they) cannot immediately act on these records unless a motion was filed either by the public prosecutor or interested complainants, confer to this court and make a follow-up on their cases." Thus, unless there is a follow up, he will not act on the

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[31] *In Re: Report on the Judicial Audit Conducted in the Regional Trial Court, Br. 45, Urdaneta City, Pangasinan, supra*, at 268.

case. Further, he admitted that "[e]xcept those with proper returns, hundreds of these returns were not attached to the records because the respective clerk-in-charge cannot cope up with over laden work."[32]

Moreover, Mr. Teves himself admitted that he failed to comply with Section 8, Rule 136 of the Rules of Court wherein he is mandated to keep a general docket, each page of which shall be numbered and prepared for receiving all the entries in a single case, and shall enter therein all cases, numbered consecutively in the order in which they were received, and, under the heading of each case and a complete title thereof, the date of each paper filed or issued, of each order or judgment entered, and of each other step taken in the case so that by reference to a single page the history of the case may be seen.

With these infractions, Mr. Teves shall be liable for simple neglect of duty.

Non-promulgation of Judgment

The alleged practice of Branch 4, Cebu City of not promulgating judgments in criminal cases was not substantiated except for the *Datan* case wherein Mr. Teves, instead of scheduling the case for promulgation, just gave the accused a copy of the unpromulgated decision at the time when Judge Tormis was serving her suspension. Section 6, Rule 120 of the Rules of Court states that:

> Sec. 6. *Promulgation of judgment*. — The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court. x x x

Clearly, as found by the OCA, Mr. Teves is guilty of simple neglect of duty. It is his duty to calendar the case for promulgation

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[32] Memorandum of Court Administrator Midas Marquez for Justice Presbitero J. Velasco, Jr., *rollo*, pp. 452-453.

in accordance with the Rules of Court. He did not only fail to do so. Rather, he, in fact, served copies of the decision to the accused without the judgment having been promulgated first and at the time when the judge who rendered the decision was serving her suspension. This negligence on the part of Mr. Teves, does not, however, wholly exempt Judge Tormis from administrative liability even if the same took place at the time when she was prohibited access to her court. The Court cannot fathom how she failed to find out Mr. Teves' negligence. When she resumed her position, it was incumbent upon her to check the status of the cases she left prior to her suspension. A judge cannot simply take refuge behind the inefficiency or mismanagement of her court personnel, for the latter are not the guardians of the former's responsibility.[33] Unless the reins of control and supervision over the administrative aspect of the adjudicatory process are tightened, the swift and efficient delivery of justice will be impeded and rendered illusory.[34]

Issuing a Warrant of Arrest Without Apprising the Accused of the Charge

Whenever a criminal case falls under the Summary Procedure,[35] the general rule is that the court shall not order the arrest of the accused unless he fails to appear whenever required.[36] In this case, Judge Tormis claimed that the issuance of the warrant of arrest against the accused in the *Librando* case was justified because of the accused's failure to appear during her arraignment despite notice. However, as clearly found by the OCA, Judge

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[33] *Office of the Court Administrator v. Legaspi,* 519 Phil. 560, 582 (2006).

[34] *Id.* at 582-583.

[35] Section 16 of the 1991 Revised Rule on Summary Procedure provides:

Sec. 16. *Arrest of accused.* — The court shall not order the arrest of the accused except for failure to appear whenever required. Release of the person arrested shall either be on bail or on recognizance by a responsible citizen acceptable to the court.

[36] *Tan v. Casuga-Tabin,* A.M. No. MTJ-09-1729 (Formerly OCA I.P.I. No. 07-1910-MTJ), January 20, 2009, 576 SCRA 382, 387.

Tormis' order requiring the accused to appear and submit her counter-affidavit and those of her witnesses within ten days from receipt of the order was not yet served upon the accused when she issued the warrant. In doing so, Judge Tormis issued the warrant of arrest in violation of the Rule on Summary Procedure that the accused should first be notified of the charges against him and given the opportunity to file his counter-affidavits and other countervailing evidence.[37]

As held in *Tan v. Casuga-Tabin*:[38]

> While judges may not always be subjected to disciplinary action for every erroneous order or decision they render, that relative immunity is not a license to be negligent, abusive and arbitrary in their prerogatives. If judges wantonly misuse the powers vested in them by law, there will not only be confusion in the administration of justice but also oppressive disregard of the basic requirements of due process. While there appears to be no malicious intent on the part of respondent, such lack of intent, however, cannot completely free her from liability. When the law is sufficiently basic, a judge owes it to her office to know and simply apply it.[39]

The Revised Rules on Summary Procedure has been in effect since November 15, 1991. It finds application in a substantial number of civil and criminal cases. Judge Tormis cannot claim to be unfamiliar with the same. Every judge is required to observe the law. When the law is sufficiently basic, a judge owes it to his office to simply apply it; and anything less than that would be constitutive of gross ignorance of the law. In short, when the law is so elementary, not to be aware of it constitutes gross ignorance of the law.[40]

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[37] *Id.* at 390.

[38] *Id.*

[39] *Id.* at 390-391.

[40] *Gerlie M. Uy and Ma. Consolacion T. Bascug v. Judge Erwin B. Javellana,* Municipal Trial Court, La Castellana, Negros Occidental, A.M. No. MTJ-07-1666 (Formerly A.M. OCA I.P.I. No. 05-1761-MTJ), September 5, 2012.

Proper Penalty on Judge Tormis

Under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC dated September 11, 2001, violation of Supreme Court rules, directives and circulars, and gross inefficiency are categorized as less serious charges with the following sanctions: (a) suspension from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[41] Moreover, gross ignorance of the law is classified as serious charge under Section 8, Rule 140 of the Revised Rules of Court, and penalized under Section 11 (a), Rule 140 of the same Rules by: (1) Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided,* however, that the forfeiture of benefits shall, in no case, include accrued leave credits; (2) Suspension from office without salary and other benefits for more than three (3), but not exceeding six (6) months; or (3) a fine of more than ₱20,000.00, but not exceeding ₱40,000.00.

In determining the proper imposable penalty, we also consider Judge Tormis' work history which reflects how she performed her judicial functions.[42] We find that there are several administrative cases already filed against her, most of the cases have been decided against her, the others have been dismissed and some are still pending in Court. These cases show her inability to properly discharge her judicial duties.[43] Her suspensions had in fact been used by her as a defense in her failure to resolve and decide cases and incidents pending in her court.

In *Judge Navarro v. Judge Tormis*,[44] Judge Tormis was found guilty of improper conduct for trying to influence the course of

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[41] *Inoturan v. Limsiaco, Jr., supra* note 29, at 627-628.

[42] *Id.* at 628.

[43] *Id.*

[44] 471 Phil. 876 (2004).

litigation in Criminal case No. 99796-12 pending with another court and was thus reprimanded for the same with a warning that a repetition thereof shall be dealt with more severely. She was, likewise, admonished for conduct unbecoming of a judge.

In *Re: Report on the Judicial Audit Conducted in the RTC, Branch 60, Barili, Cebu,*[45] Judge Tormis was found guilty of gross violation of Section 17, Rule 114 for having approved the bail posted by the accused in Criminal Cases No. CEB-BRL-783 and 922 pending before RTC Branch 60, Barili, Cebu, considering that there was no showing of the unavailability of all twenty-two RTC judges in Cebu City. With this infraction, she was fined in the amount of ₱5,000.00, with a stern warning that a repetition of the same act shall be dealt with more severely.

In *Lachica v. Judge Tormis*,[46] Judge Tormis was found guilty of gross misconduct for (1) having abused her judicial authority when she personally accepted the cash bail bond of the accused; and (2) for deliberately making untruthful statements in her comment and during the investigation of the instant administrative case with intent to mislead the Court. Here, it was established that the accused was released from confinement after Judge Tormis called the police station informing the officer of the receipt of the cash bail bond but without the issuance of the Release Order. In determining the proper penalty, the Court took into account Judge Tormis' past infractions and concluded that she was not reformed despite being chastised thrice. She was thus suspended from office for six (6) months without salary and other benefits, and sternly warned that a repetition of the same and similar acts shall be dealt with more severely. On motion of Judge Tormis, the Court[47] ordered a reinvestigation of the case and to allow her to present additional evidence. Said order was later clarified in a Resolution dated July 12, 2006 wherein she was directed to resume office immediately upon receipt of the resolution and directed the Financial Management Office of the OCA to

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[45] 488 Phil. 250 (2004).

[46] 507 Phil. 211 (2005).

[47] Embodied in a Resolution dated February 28, 2006; 518 Phil. 599 (2006).

immediately release all the salaries and benefits which were withheld from her. However, after reinvestigation, on August 13, 2008, she was severely reprimanded for the unauthorized receipt of cash bond and keeping the same in her house.

In *Antonina Y. Luib v. Hon. Rosabella Tormis*,[48] Judge Tormis was admonished and reminded to be more circumspect in granting postponements.

In *Visbal v. Tormis*,[49] Judge Tormis was found liable for gross misconduct for her repeated defiance of the Court's Order to furnish complainant (in another administrative case) of her comment and/or to submit to the Court proof of such service. She was thus suspended for six (6) months without salary, with a stern warning that another repetition of a similar act will be dealt with most severely. In imposing the penalty, the Court took into consideration eight other administrative cases filed against her.

In *Office of the Court Administrator v. Judges Anatalio S. Necesario, Br. 2, et al.,*[50] Judge Tormis was one of the judges investigated, relative to the irregularities in the solemnization of marriages. For this, she was preventively suspended. Although the same was lifted in a Resolution dated December 11, 2007, she was prohibited from solemnizing marriages until further orders from the Court.

The Court also notes that although dismissed by the Court, Judge Tormis was involved in four other administrative cases. At present, there are still two pending cases against her. Judge Tormis' conduct as a repeat offender exhibits her unworthiness to don the judicial robes and merits a sanction heavier than what is provided by our rules and jurisprudence.[51] Considering

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[48] Embodied in a Resolution dated March 16, 2005 in A.M. OCA I.P.I. No. 04-1554-MTJ.

[49] A.M. No. MTJ-07-1692, November 28, 2007, 539 SCRA 9.

[50] Embodied in a Resolution dated November 27, 2007, A.M. No. MTJ-07-1691.

[51] *Inoturan v. Limsiaco, Jr., supra* note 29, at 629.

her past infractions and taking into account the number of irregularities she committed in this present case and as held by the Court in *Inoturan v. Limsiaco, Jr.,*[52] Judge Tormis should be dismissed from the service.

On Mr. Teves

As discussed above, Mr. Teves is here guilty of two counts of simple neglect of duty. Simple neglect of duty is defined as the "failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference.[53] ***Under the Revised Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense penalized with suspension for one month and one day to six months for the first offense, and dismissal for the second.***[54]

In the determination of the proper penalty, we look into Mr. Teves' past administrative cases. In *Ramos v. Teves*,[55] Mr. Teves was charged with arrogance and discourtesy in refusing to receive a motion that allegedly does not conform with the requirements of the Rules of Court. In deciding the case against Mr. Teves, the Court pointed out that clerks of court have no authority to pass upon the substantive or formal correctness of pleadings and motions that parties file with the court. Thus, in refusing to receive the motion filed by complainant, the Court found Mr. Teves discourteous, and in view of his past administrative

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[52] *Supra* note 29.

[53] *Viscal Development Corporation v. Atty. Jennifer H. dela Cruz-Buendia, in her capacity as Ex-Officio Sheriff of the Office of the Clerk of Court — Regional Trial Court of Manila; and Messrs. Nathaniel F. Abaya, Luis A. Alina, Lorelex B. Ilagan and Mario P. Villanueva, in their Capacities as Sheriffs IV of the Office of the Clerk of Court — Regional Trial Court of Manila,* A.M. No. P-12-3097 (Formerly OCA I.P.I. No. 09-3311-P), November 26, 2012.

[54] *Bangko Sentral ng Pilipinas v. Lanzanas,* A.M. No. RTJ-06-1999 (Formerly OCA I.P.I. No. 03-1903-RTJ), December 8, 2010, 637 SCRA 475, 489.

[55] A.M. No. P-12-3061 (Formerly OCA I.P.I. No. 08-3022-P), June 27, 2012, 675 SCRA 1.

cases, he was meted the penalty of a thirty-day suspension, with warning that a repetition of the same or similar offense will be dealt with more severely. In the same case, the Court noted Mr. Teves' past infractions:

> The record shows that Teves had previously been administratively charged with grave abuse of authority and gross discourtesy in OCA-IPI 08-2981-P. Although the Court dismissed the charge for lack of merit on November 18, 2009, it reminded him to be more circumspect in dealing with litigants and their counsel.
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> In two consolidated administrative cases, one for grave misconduct and immorality and the other for insubordination, the Court meted out on Teves the penalty of suspension for six months in its resolution of October 5, 2011. x x x[56]

Obviously, with his past infractions and having been warned that a repetition of the same or similar act will be dealt with more severely, Mr. Teves has not reformed. It seems that he has remained undeterred in disregarding the law and he appears to be unfazed by the previous penalties and warnings he received.[57] Mr. Teves' repeated infractions seriously compromise efficiency and hamper public service[58] which the Court can no longer tolerate. Thus, the penalty of dismissal from the service is proper.

WHEREFORE, premises considered, we find respondent Judge Rosabella M. Tormis **GUILTY** of Gross Inefficiency, Violation of Supreme Court Rules, Directives and Circulars and Gross Ignorance of the Law. She is ordered **DISMISSED** from the service, with forfeiture of all benefits and privileges, except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

Mr. Reynaldo S. Teves is likewise found **GUILTY** of two counts of Simple Neglect of Duty, and in view of his past

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[56] *Ramos v. Teves, supra,* at 5.

[57] *Corpuz v. Judge Siapno,* 452 Phil. 104, 114 (2003).

[58] *Rodrigo-Ebron v. Adolfo,* A.M. No. P-06-2231, April 27, 2007, 522 SCRA 286, 294.

infractions, he is meted the supreme penalty of **DISMISSAL** from the service with forfeiture of all benefits and privileges, except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

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

Velasco, Jr., J., no part due to relation to party.

Perez, J., on official leave.

EN BANC

[G.R. No. 161107. March 12, 2013]

HON. MA. LOURDES C. FERNANDO, in her capacity as City Mayor of Marikina City, JOSEPHINE C. EVANGELISTA, in her capacity as Chief, Permit Division, Office of the City Engineer, and ALFONSO ESPIRITU, in his capacity as City Engineer of Marikina City, *petitioners, vs.* **ST. SCHOLASTICA'S COLLEGE and ST. SCHOLASTICA'S ACADEMY-MARIKINA, INC.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; INHERENT POWERS OF THE STATE; POLICE POWER; THE PLENARY POWER VESTED IN THE LEGISLATURE TO MAKE STATUTES AND ORDINANCES TO PROMOTE THE HEALTH, MORALS, PEACE, EDUCATION, GOOD

ORDER OR SAFETY AND GENERAL WELFARE OF THE PEOPLE; THE STATE, THROUGH THE LEGISLATURE, HAS DELEGATED THE EXERCISE OF POLICE POWER TO LOCAL GOVERNMENT UNITS, AS AGENCIES OF THE STATE.— "Police power is the plenary power vested in the legislature to make statutes and ordinances to promote the health, morals, peace, education, good order or safety and general welfare of the people." The State, through the legislature, has delegated the exercise of police power to local government units, as agencies of the State. This delegation of police power is embodied in Section 16 of the Local Government Code of 1991 (R.A. No. 7160), known as the General Welfare Clause, which has two branches. "The first, known as the general legislative power, authorizes the municipal council to enact ordinances and make regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law. The second, known as the police power proper, authorizes the municipality to enact ordinances as may be necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the municipality and its inhabitants, and for the protection of their property."

2. **ID.; ID.; ID.; ID.; TEST OF A VALID ORDINANCE.—** *White Light Corporation v. City of Manila,* discusses the test of a valid ordinance: The test of a valid ordinance is well established. A long line of decisions including *City of Manila* has held that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and pass according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.

3. **ID.; ID.; ID.; ID.; ID.; RATIONAL TEST AND STRICT SCRUTINY TEST.—** Ordinance No. 192 was passed by the City Council of Marikina in the apparent exercise of its police power. To successfully invoke the exercise of police power as the rationale for the enactment of an ordinance and to free it from the imputation of constitutional infirmity, two tests have

been used by the Court – the rational relationship test and the strict scrutiny test. We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges. Using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest. Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered. Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.

4. **ID.; ID.; ID.; ID.; ID.; APPLYING THE TWO TESTS IN CASE AT BAR, ORDINANCE NO. 192, SERIES OF 1994 OF THE CITY OF MARIKINA MUST BE STRUCK DOWN FOR NOT BEING REASONABLY NECESSARY TO ACCOMPLISH THE CITY'S PURPOSE, OPPRESSIVE OF PRIVATE RIGHTS, AN ARBITRARY INTRUSION INTO PRIVATE RIGHTS AND VIOLATION OF THE DUE PROCESS CLAUSE.—** Even without going to a discussion of the strict scrutiny test, Ordinance No. 192, series of 1994 must be struck down for not being reasonably necessary to accomplish the City's purpose. More importantly, it is oppressive of private rights. Under the rational relationship test, an ordinance must pass the following requisites as discussed in *Social Justice Society (SJS) v. Atienza, Jr.*: As with the State, local governments may be considered as having properly exercised their police power only if the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require its exercise and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. In short, there must be a concurrence of a lawful subject and lawful method. Lacking a concurrence of these two requisites, the police power measure shall be struck down as an arbitrary intrusion into private rights and a violation of the due process clause.

5. **ID.; ID.; ID.; ID.; ID.; THE IMPLEMENTATION OF THE SETBACK REQUIREMENT WOULD BE TANTAMOUNT TO A TAKING OF RESPONDENT'S PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION, IN CONTRAVENTION TO THE CONSTITUTION.—** The

Court joins the CA in finding that the real intent of the setback requirement was to make the parking space free for use by the public, considering that it would no longer be for the exclusive use of the respondents as it would also be available for use by the general public. Section 9 of Article III of the 1987 Constitution, a provision on eminent domain, provides that private property shall not be taken for public use without just compensation. The petitioners cannot justify the setback by arguing that the ownership of the property will continue to remain with the respondents. It is a settled rule that neither the acquisition of title nor the total destruction of value is essential to taking. In fact, it is usually in cases where the title remains with the private owner that inquiry should be made to determine whether the impairment of a property is merely regulated or amounts to a compensable taking. The Court is of the view that the implementation of the setback requirement would be tantamount to a taking of a total of 3,762.36 square meters of the respondents' private property for public use without just compensation, in contravention to the Constitution.

6. **ID.; ID.; ID.; ID.; ID.; THE PROVISION OF A PARKING AREA FOR THE OBJECTIVE OF "UN-NEIGHBORLINESS," HAS NO LOGICAL CONCLUSION TO, AND IS NOT REASONABLY NECESSARY FOR, THE ACCOMPLISHMENT OF THE GOALS.—** Anent the objectives of prevention of concealment of unlawful acts and "un-neighborliness," it is obvious that providing for a parking area has no logical connection to, and is not reasonably necessary for, the accomplishment of these goals. Regarding the beautification purpose of the setback requirement, it has long been settled that the State may not, under the guise of police power, permanently divest owners of the beneficial use of their property solely to preserve or enhance the aesthetic appearance of the community. The Court, thus, finds Section 5 to be unreasonable and oppressive as it will substantially divest the respondents of the beneficial use of their property solely for aesthetic purposes. Accordingly, Section 5 of Ordinance No. 192 is invalid.

7. **ID.; ID.; ID.; ID.; ID.; ZONING ORDINANCE NO. 303, SERIES OF 2000 WHICH CLASSIFIED RESPONDENT'S PROPERTY TO BE WITHIN AN INSTITUTIONAL ZONE,**

UNDER WHICH A FIVE METER SETBACK HAS BEEN REQUIRED HAS NO BEARING TO THE CASE AT BAR, ORDINANCE NO. 192, SERIES OF 1994 AND ZONING ORDINANCE NO. 303, SERIES OF 2000 HAVE COMPLETELY DIFFERENT PURPOSES AND SUBJECTS.— The petitioners, however, argue that the invalidity of Section 5 was properly cured by Zoning Ordinance No. 303, Series of 2000, which classified the respondents' property to be within an institutional zone, under which a five-meter setback has been required. The petitioners are mistaken. Ordinance No. 303, Series of 2000, has no bearing to the case at hand. The Court notes with displeasure that this argument was only raised for the first time on appeal in this Court in the petitioners' Reply. Considering that Ordinance No. 303 was enacted on December 20, 2000, the petitioners could very well have raised it in their defense before the RTC in 2002. The settled rule in this jurisdiction is that a party cannot change the legal theory of this case under which the controversy was heard and decided in the trial court. It should be the same theory under which the review on appeal is conducted. Points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal. This will be offensive to the basic rules of fair play, justice, and due process. Furthermore, the two ordinances have completely different purposes and subjects. Ordinance No. 192 aims to regulate the construction of fences, while Ordinance No. 303 is a zoning ordinance which classifies the city into specific land uses. In fact, the five-meter setback required by Ordinance No. 303 does not even appear to be for the purpose of providing a parking area. By no stretch of the imagination, therefore, can Ordinance No. 303, "cure" Section 5 of Ordinance No. 192. In any case, the clear subject of the petition for prohibition filed by the respondents is Ordinance No. 192 and, as such, the precise issue to be determined is whether the petitioners can be prohibited from enforcing the said ordinance, and no other, against the respondents.

8. **ID.; ID.; ID.; ID.; ID.; 80% SEE-THRU FENCE REQUIREMENT; PETITIONERS HAVE NOT ADEQUATELY SHOWN, AND IT DOES NOT APPEAR**

OBVIOUS TO THE COURT, THAT AN 80% SEE-THRU FENCE WOULD PROVIDE BETTER PROTECTION AND A HIGHER LEVEL OF SECURITY, OR SERVE AS A MORE SATISFACTORY CRIMINAL DETERRENT, THAN A TALL SOLID CONCRETE WALL.— The petitioners argue that while Section 5 of Ordinance No. 192 may be invalid, Section 3.1 limiting the height of fences to one meter and requiring fences in excess of one meter to be at least 80% see-thru, should remain valid and enforceable against the respondents. The Court cannot accommodate the petitioner. For Section 3.1 to pass the rational relationship test, the petitioners must show the reasonable relation between the purpose of the police power measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded. The principal purpose of Section 3.1 is "to discourage, suppress or prevent the concealment of prohibited or unlawful acts." The ultimate goal of this objective is clearly the prevention of crime to ensure public safety and security. The means employed by the petitioners, however, is not reasonably necessary for the accomplishment of this purpose and is unduly oppressive to private rights. The petitioners have not adequately shown, and it does not appear obvious to this Court, that an 80% see-thru fence would provide better protection and a higher level of security, or serve as a more satisfactory criminal deterrent, than a tall solid concrete wall. It may even be argued that such exposed premises could entice and tempt would-be criminals to the property, and that a see-thru fence would be easier to bypass and breach. It also appears that the respondents' concrete wall has served as more than sufficient protection over the last 40 years. `As to the beautification purpose of the assailed ordinance, as previously discussed, the State may not, under the guise of police power, infringe on private rights solely for the sake of the aesthetic appearance of the community. Similarly, the Court cannot perceive how a see-thru fence will foster "neighborliness" between members of a community.

9. ID.; ID.; ID.; ID.; ID.; COMPELLING RESPONDENTS TO CONSTRUCT THEIR FENCE IN ACCORDANCE WITH THE ASSAILED ORDINANCE IS A CLEAR ENCROACHMENT ON THEIR RIGHT TO PROPERTY,

WHICH INCLUDES THE RIGHT TO DECIDE HOW BEST TO PROTECT THEIR PROPERTY; REQUIRING THE EXPOSURE OF THEIR PROPERTY VIA A SEE-THRU FENCE IS ALSO VIOLATIVE OF THEIR RIGHT TO PRIVACY.— Compelling the respondents to construct their fence in accordance with the assailed ordinance is, thus, a clear encroachment on their right to property, which necessarily includes their right to decide how best to protect their property. It also appears that requiring the exposure of their property via a see thru fence is violative of their right to privacy, considering that the residence of the Benedictine nuns is also located within the property. The right to privacy has long been considered a fundamental right guaranteed by the Constitution that must be protected from intrusion or constraint. The right to privacy is essentially the right to be let alone, as governmental powers should stop short of certain intrusions into the personal life of its citizens. It is inherent in the concept of liberty, enshrined in the Bill of Rights (Article III) in Sections 1, 2, 3(1), 6, 8, and 17, Article III of the 1987 Constitution. The enforcement of Section 3.1 would, therefore, result in an undue interference with the respondents' rights to property and privacy. Section 3.1 of Ordinance No. 192 is, thus, also invalid and cannot be enforced against the respondents.

10. **ID.; STATUTES; CURATIVE STATUTES; PURPOSE; THE ASSAILED ORDINANCE CANNOT QUALIFY AS A CURATIVE STATUTE AND IS RETROACTIVE IN NATURE.—** "Curative statutes are enacted to cure defects in a prior law or to validate legal proceedings which would otherwise be void for want of conformity with certain legal requirements. They are intended to supply defects, abridge superfluities and curb certain evils. They are intended to enable persons to carry into effect that which they have designed or intended, but has failed of expected legal consequence by reason of some statutory disability or irregularity in their own action. They make valid that which, before the enactment of the statute was invalid. Their purpose is to give validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with. Curative statutes, therefore, by their very essence, are retroactive." The petitioners argue that Ordinance No. 192 is a curative statute as it aims to correct or cure a defect in the

National Building Code, namely, its failure to provide for adequate guidelines for the construction of fences. They ultimately seek to remedy an insufficiency in the law. In aiming to cure this insufficiency, the petitioners attempt to add lacking provisions to the National Building Code. This is not what is contemplated by curative statutes, which intend to correct irregularities or invalidity in the law. The petitioners fail to point out any irregular or invalid provision. As such, the assailed ordinance cannot qualify as curative and retroactive in nature. At any rate, there appears to be no insufficiency in the National Building Code with respect to parking provisions in relation to the issue of the respondents. Paragraph 1.16.1, Rule XIX of the Rules and Regulations of the said code requires an educational institution to provide one parking slot for every ten classrooms. As found by the lower courts, the respondents provide a total of 76 parking slots for their 80 classrooms and, thus, had more than sufficiently complied with the law. Ordinance No. 192, as amended, is, therefore, not a curative statute which may be applied retroactively.

11. **ID.; ID.; SEPARABILITY; THE OTHER SECTIONS OF THE ASSAILED ORDINANCE REMAIN VALID AND ENFORCEABLE.—** Sections 3.1 and 5 of Ordinance No. 192, as amended, are, thus, invalid and cannot be enforced against the respondents. Nonetheless, "the general rule is that where part of a statute is void as repugnant to the Constitution, while another part is valid, the valid portion, if susceptible to being separated from the invalid, may stand and be enforced." Thus, the other sections of the assailed ordinance remain valid and enforceable.

APPEARANCES OF COUNSEL

Jason A. Amante for petitioners.
Domingo Fregillana, Jr. for respondents.

DECISION

MENDOZA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, which seeks to set aside the December 1, 2003 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. SP No. 75691.

The Facts

Respondents St. Scholastica's College (*SSC*) and St. Scholastica's Academy-Marikina, Inc. (*SSA-Marikina*) are educational institutions organized under the laws of the Republic of the Philippines, with principal offices and business addresses at Leon Guinto Street, Malate, Manila, and at West Drive, Marikina Heights, Marikina City, respectively.[2]

Respondent SSC is the owner of four (4) parcels of land measuring a total of 56,306.80 square meters, located in Marikina Heights and covered by Transfer Certificate Title (*TCT*) No. 91537. Located within the property are SSA-Marikina, the residence of the sisters of the Benedictine Order, the formation house of the novices, and the retirement house for the elderly sisters. The property is enclosed by a tall concrete perimeter fence built some thirty (30) years ago. Abutting the fence along the West Drive are buildings, facilities, and other improvements.[3]

The petitioners are the officials of the City Government of Marikina. On September 30, 1994, the *Sangguniang Panlungsod* of Marikina City enacted Ordinance No. 192,[4] entitled "*Regulating the Construction of Fences and Walls in the*

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[1] *Rollo,* pp. 37-52. Penned by Associate Justice Jose L. Sabio, Jr., and concurred in by Associate Justice Delilah Vidallon-Magtolis and Associate Justice Hakim S. Abdulwahid.

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

[3] *Id.* at 38.

[4] *Id.* at 74-77.

Municipality of Marikina." In 1995 and 1998, Ordinance Nos. 217[5] and 200[6] were enacted to amend Sections 7 and 5, respectively. Ordinance No. 192, as amended, is reproduced hereunder, as follows:

ORDINANCE No. 192
Series of 1994

ORDINANCE REGULATING THE CONSTRUCTION OF FENCES AND WALLS IN THE MUNICIPALITY OF MARIKINA

WHEREAS, under Section 447.2 of Republic Act No. 7160 otherwise known as the Local Government Code of 1991 empowers the *Sangguniang Bayan* as the local legislative body of the municipality to "x x x Prescribe reasonable limits and restraints on the use of property within the jurisdiction of the municipality, x x x";

WHEREAS the effort of the municipality to accelerate its economic and physical development, coupled with urbanization and modernization, makes imperative the adoption of an ordinance which shall embody up-to-date and modern technical design in the construction of fences of residential, commercial and industrial buildings;

WHEREAS, Presidential Decree No. 1096, otherwise known as the National Building Code of the Philippines, does not adequately provide technical guidelines for the construction of fences, in terms of design, construction, and criteria;

WHEREAS, the adoption of such technical standards shall provide more efficient and effective enforcement of laws on public safety and security;

WHEREAS, it has occurred in not just a few occasions that high fences or walls did not actually discourage but, in fact, even protected burglars, robbers, and other lawless elements from the view of outsiders once they have gained ingress into these walls, hence, fences not necessarily providing security, but becomes itself a "security problem";

WHEREAS, to discourage, suppress or prevent the concealment of prohibited or unlawful acts earlier enumerated, and as guardian of

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

[6] *Id.* at 80.

the people of Marikina, the municipal government seeks to enact and implement rules and ordinances to protect and promote the health, safety and morals of its constituents;

WHEREAS, consistent too, with the "Clean and Green Program" of the government, lowering of fences and walls shall encourage people to plant more trees and ornamental plants in their yards, and when visible, such trees and ornamental plants are expected to create an aura of a clean, green and beautiful environment for Marikeños;

WHEREAS, high fences are unsightly that, in the past, people planted on sidewalks to "beautify" the façade of their residences but, however, become hazards and obstructions to pedestrians;

WHEREAS, high and solid walls as fences are considered "un-neighborly" preventing community members to easily communicate and socialize and deemed to create "boxed-in" mentality among the populace;

WHEREAS, to gather as wide-range of opinions and comments on this proposal, and as a requirement of the Local Government Code of 1991 (R.A. 7160), the *Sangguniang Bayan* of Marikina invited presidents or officers of homeowners associations, and commercial and industrial establishments in Marikina to two public hearings held on July 28, 1994 and August 25, 1994;

WHEREAS, the rationale and mechanics of the proposed ordinance were fully presented to the attendees and no vehement objection was presented to the municipal government;

NOW, THEREFORE, BE IT ORDAINED BY THE SANGGUNIANG BAYAN OF MARIKINA IN SESSION DULY ASSEMBLED:

Section 1. Coverage. — This Ordinance regulates the construction of all fences, walls and gates on lots classified or used for residential, commercial, industrial, or special purposes.

Section 2. Definition of Terms. —

a. Front Yard — refers to the area of the lot fronting a street, alley or public thoroughfare.

b. Back Yard — the part of the lot at the rear of the structure constructed therein.

c. Open fence — type of fence which allows a view of "thru-see" of the inner yard and the improvements therein. (Examples: wrought iron, wooden lattice, cyclone wire)

d. Front gate — refers to the gate which serves as a passage of persons or vehicles fronting a street, alley, or public thoroughfare.

Section 3. The standard height of fences or walls allowed under this ordinance are as follows:

(1) **Fences on the front yard — shall be no more than one (1) meter in height. Fences in excess of one (1) meter shall be of an open fence type, at least eighty percent (80%) see-thru;** and

(2) Fences on the side and back yard — shall be in accordance with the provisions of P.D. 1096 otherwise known as the National Building Code.

Section 4. No fence of any kind shall be allowed in areas specifically reserved or classified as parks.

Section 5. In no case shall walls and fences be built within the five (5) meter parking area allowance located between the front monument line and the building line of commercial and industrial establishments and educational and religious institutions.[7]

Section 6. Exemption. —

(1) The Ordinance does not cover perimeter walls of residential subdivisions.

(2) When public safety or public welfare requires, the *Sangguniang Bayan* may allow the construction and/or maintenance of walls higher than as prescribed herein and shall issue a special permit or exemption.

Section 7. Transitory Provision. — Real property owners whose existing fences and walls do not conform to the specifications herein are allowed adequate period of time from the passage of this Ordinance within which to conform, as follows:

(1) Residential houses — eight (8) years

(2) Commercial establishments — five (5) years

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[7] Ordinance No. 200, Series of 1998, *id*.

(3) Industrial establishments — three (3) years

(4) Educational institutions — five (5) years[8] (public and privately owned)

Section 8. Penalty. — Walls found not conforming to the provisions of this Ordinance shall be demolished by the municipal government at the expense of the owner of the lot or structure.

Section 9. The Municipal Engineering Office is tasked to strictly implement this ordinance, including the issuance of the necessary implementing guidelines, issuance of building and fencing permits, and demolition of non-conforming walls at the lapse of the grace period herein provided.

Section 10. Repealing Clause. — All existing Ordinances and Resolutions, Rules and Regulations inconsistent with the foregoing provisions are hereby repealed, amended or modified.

Section 11. Separability Clause. — If for any reason or reasons, local executive orders, rules and regulations or parts thereof in conflict with this Ordinance are hereby repealed and/or modified accordingly.

Section 12. Effectivity. — This ordinance takes effect after publication.

APPROVED: September 30, 1994

(Emphases supplied)

On April 2, 2000, the City Government of Marikina sent a letter to the respondents ordering them to demolish and replace the fence of their Marikina property to make it 80% see-thru, and, at the same time, to move it back about six (6) meters to provide parking space for vehicles to park.[9] On April 26, 2000, the respondents requested for an extension of time to comply with the directive.[10] In response, the petitioners, through then City Mayor Bayani F. Fernando, insisted on the enforcement of the subject ordinance.

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[8] Ordinance No. 217, Series of 1995, *id.* at 78.

[9] *Id.* at 39.

[10] *Id.* at 85.

Not in conformity, the respondents filed a petition for prohibition with an application for a writ of preliminary injunction and temporary restraining order before the Regional Trial Court, Marikina, Branch 273 (*RTC*), docketed as SCA Case No. 2000-381-MK.[11]

The respondents argued that the petitioners were acting in excess of jurisdiction in enforcing Ordinance No. 192, asserting that such contravenes Section 1, Article III of the 1987 Constitution. That demolishing their fence and constructing it six (6) meters back would result in the loss of at least 1,808.34 square meters, worth about ₱9,041,700.00, along West Drive, and at least 1,954.02 square meters, worth roughly ₱9,770,100.00, along East Drive. It would also result in the destruction of the garbage house, covered walk, electric house, storage house, comfort rooms, guards' room, guards' post, waiting area for visitors, waiting area for students, Blessed Virgin Shrine, P.E. area, and the multi-purpose hall, resulting in the permanent loss of their beneficial use. The respondents, thus, asserted that the implementation of the ordinance on their property would be tantamount to an appropriation of property without due process of law; and that the petitioners could only appropriate a portion of their property through eminent domain. They also pointed out that the goal of the provisions to deter lawless elements and criminality did not exist as the solid concrete walls of the school had served as sufficient protection for many years.[12]

The petitioners, on the other hand, countered that the ordinance was a valid exercise of police power, by virtue of which, they could restrain property rights for the protection of public safety, health, morals, or the promotion of public convenience and general prosperity.[13]

On June 30, 2000, the RTC issued a writ of preliminary injunction, enjoining the petitioners from implementing the

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[11] *Id.* at 39.

[12] *Id.* at 56-57.

[13] *Id.* at 57.

demolition of the fence at SSC's Marikina property.[14]

Ruling of the RTC

On the merits, the RTC rendered a Decision,[15] dated October 2, 2002, granting the petition and ordering the issuance of a writ of prohibition commanding the petitioners to permanently desist from enforcing or implementing Ordinance No. 192 on the respondents' property.

The RTC agreed with the respondents that the order of the petitioners to demolish the fence at the SSC property in Marikina and to move it back six (6) meters would amount to an appropriation of property which could only be done through the exercise of eminent domain. It held that the petitioners could not take the respondents' property under the guise of police power to evade the payment of just compensation.

It did not give weight to the petitioners' contention that the parking space was for the benefit of the students and patrons of SSA-Marikina, considering that the respondents were already providing for sufficient parking in compliance with the standards under Rule XIX of the National Building Code.

It further found that the 80% see-thru fence requirement could run counter to the respondents' right to privacy, considering that the property also served as a residence of the Benedictine sisters, who were entitled to some sense of privacy in their affairs. It also found that the respondents were able to prove that the danger to security had no basis in their case. Moreover, it held that the purpose of beautification could not be used to justify the exercise of police power.

It also observed that Section 7 of Ordinance No. 192, as amended, provided for retroactive application. It held, however, that such retroactive effect should not impair the respondents' vested substantive rights over the perimeter walls, the six-meter strips of land along the walls, and the building, structures,

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[14] *Id.* at 39-40.

[15] *Id.* at 54-68. Penned by Judge Olga Palanca-Enriquez.

facilities, and improvements, which would be destroyed by the demolition of the walls and the seizure of the strips of land.

The RTC also found untenable the petitioners' argument that Ordinance No. 192 was a remedial or curative statute intended to correct the defects of buildings and structures, which were brought about by the absence or insufficiency of laws. It ruled that the assailed ordinance was neither remedial nor curative in nature, considering that at the time the respondents' perimeter wall was built, the same was valid and legal, and the ordinance did not refer to any previous legislation that it sought to correct.

The RTC noted that the petitioners could still take action to expropriate the subject property through eminent domain.

The RTC, thus, disposed:

> **WHEREFORE,** the petition is **GRANTED**. The writ of prohibition is hereby issued commanding the respondents to permanently desist from enforcing or implementing Ordinance No. 192, Series of 1994, as amended, on petitioners' property in question located at Marikina Heights, Marikina, Metro Manila.
>
> No pronouncement as to costs.
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> **SO ORDERED.**[16]

Ruling of the CA

In its December 1, 2003 Decision, the CA dismissed the petitioners' appeal and affirmed the RTC decision.

The CA reasoned out that the objectives stated in Ordinance No. 192 did not justify the exercise of police power, as it did not only seek to regulate, but also involved the taking of the respondents' property without due process of law. The respondents were bound to lose an unquantifiable sense of security, the beneficial use of their structures, and a total of 3,762.36 square meters of property. It, thus, ruled that the assailed ordinance could not be upheld as valid as it clearly invaded the personal

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[16] *Id.* at 68.

and property rights of the respondents and "[f]or being unreasonable, and undue restraint of trade."[17]

It noted that although the petitioners complied with procedural due process in enacting Ordinance No. 192, they failed to comply with substantive due process. Hence, the failure of the respondents to attend the public hearings in order to raise objections did not amount to a waiver of their right to question the validity of the ordinance.

The CA also shot down the argument that the five-meter setback provision for parking was a legal easement, the use and ownership of which would remain with, and inure to, the benefit of the respondents for whom the easement was primarily intended. It found that the real intent of the setback provision was to make the parking space free for use by the public, considering that such would cease to be for the exclusive use of the school and its students as it would be situated outside school premises and beyond the school administration's control.

In affirming the RTC ruling that the ordinance was not a curative statute, the CA found that the petitioner failed to point out any irregularity or invalidity in the provisions of the National Building Code that required correction or cure. It noted that any correction in the Code should be properly undertaken by the Congress and not by the City Council of Marikina through an ordinance.

The CA, thus, disposed:

> **WHEREFORE,** all foregoing premises considered, the instant appeal is DENIED. The October 2, 2002 Decision and the January 13, 2003 Order of the Regional Trial Court (RTC) of Marikina City, Branch 273, granting petitioners-appellees' petition for Prohibition in SCA Case No. 2000-381-MK are hereby AFFIRMED.
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> **SO ORDERED.**[18]

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[17] *Id.* at 49.

[18] *Id.* at 51-52.

Aggrieved by the decision of the CA, the petitioners are now before this Court presenting the following:

ASSIGNMENT OF ERRORS

1. **WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DECLARING THAT CITY ORDINANCE NO. 192, SERIES OF 1994 IS NOT A VALID EXERCISE OF POLICE POWER;**
2. **WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE AFOREMENTIONED ORDINANCE IS AN EXERCISE OF THE CITY OF THE POWER OF EMINENT DOMAIN;**
3. **WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DECLARING THAT THE CITY VIOLATED THE DUE PROCESS CLAUSE IN IMPLEMENTING ORDINANCE NO. 192, SERIES OF 1994; AND**
4. **WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE ABOVE-MENTIONED ORDINANCE CANNOT BE GIVEN RETROACTIVE APPLICATION.**[19]

In this case, the petitioners admit that Section 5 of the assailed ordinance, pertaining to the five-meter setback requirement is, as held by the lower courts, invalid. [20] Nonetheless, the petitioners argue that such invalidity was subsequently cured by Zoning Ordinance No. 303, series of 2000. They also contend that Section 3, relating to the 80% see-thru fence requirement, must be complied with, as it remains to be valid.

Ruling of the Court

The ultimate question before the Court is whether Sections 3.1 and 5 of Ordinance No. 192 are valid exercises of police power by the City Government of Marikina.

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[19] *Id.* at 17.

[20] *Id.* at 182-188.

"Police power is the plenary power vested in the legislature to make statutes and ordinances to promote the health, morals, peace, education, good order or safety and general welfare of the people."[21] The State, through the legislature, has delegated the exercise of police power to local government units, as agencies of the State. This delegation of police power is embodied in Section 16[22] of the Local Government Code of 1991 (R.A. No. 7160), known as the General Welfare Clause,[23] which has two branches. "The first, known as the general legislative power, authorizes the municipal council to enact ordinances and make regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law. The second, known as the police power proper, authorizes the municipality to enact ordinances as may be necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the municipality and its inhabitants, and for the protection of their property."[24]

White Light Corporation v. City of Manila,[25] discusses the test of a valid ordinance:

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[21] *Social Justice Society (SJS) v. Atienza, Jr.,* G.R. No. 156052, February 13, 2008, 545 SCRA 92, 136.

[22] Sec. 16. General Welfare. — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

[23] *Acebedo Optical Company, Inc. v. Court of Appeals,* 385 Phil. 956, 969 (2000).

[24] *Rural Bank of Makati v. Municipality of Makati,* G.R. No. 150763, July 2, 2004, 433 SCRA 362, 371-372.

[25] G.R. No. 122846, January 20, 2009, 576 SCRA 416.

The test of a valid ordinance is well established. A long line of decisions including *City of Manila* has held that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and pass according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.[26]

Ordinance No. 192 was passed by the City Council of Marikina in the apparent exercise of its police power. To successfully invoke the exercise of police power as the rationale for the enactment of an ordinance and to free it from the imputation of constitutional infirmity, two tests have been used by the Court — the rational relationship test and the strict scrutiny test:

> We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges. Using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest. Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered. Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.[27]

Even without going to a discussion of the strict scrutiny test, Ordinance No. 192, series of 1994 must be struck down for not being reasonably necessary to accomplish the City's purpose. More importantly, it is oppressive of private rights.

Under the rational relationship test, an ordinance must pass the following requisites as discussed in *Social Justice Society (SJS) v. Atienza, Jr.*:[28]

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[26] *Id.* at 433.

[27] *Id.* at 437.

[28] *Supra* note 21.

As with the State, local governments may be considered as having properly exercised their police power only if the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require its exercise and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. In short, there must be a concurrence of a lawful subject and lawful method.[29]

Lacking a concurrence of these two requisites, the police power measure shall be struck down as an arbitrary intrusion into private rights and a violation of the due process clause.[30]

Section 3.1 and 5 of the assailed ordinance are pertinent to the issue at hand, to wit:

Section 3. The standard height of fences of walls allowed under this ordinance are as follows:

(1) Fences on the front yard — shall be no more than one (1) meter in height. Fences in excess of one (1) meter shall be an open fence type, at least eighty percent (80%) see-thru;

x x x x x x x x x

Section 5. In no case shall walls and fences be built within the five (5) meter parking area allowance located between the front monument line and the building line of commercial and industrial establishments and educational and religious institutions.

The respondents, thus, sought to prohibit the petitioners from requiring them to (1) demolish their existing concrete wall, (2) build a fence (in excess of one meter) which must be 80% see-thru, and (3) build the said fence six meters back in order to provide a parking area.

Setback Requirement

The Court first turns its attention to Section 5 which requires the five-meter setback of the fence to provide for a parking area. The petitioners initially argued that the ownership of the

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[29] *Id.* at 138.

[30] *City of Manila v. Laguio, Jr.,* 495 Phil. 289, 313 (2005).

parking area to be created would remain with the respondents as it would primarily be for the use of its students and faculty, and that its use by the public on non-school days would only be incidental. In their Reply, however, the petitioners admitted that Section 5 was, in fact, invalid for being repugnant to the Constitution.[31]

The Court agrees with the latter position.

The Court joins the CA in finding that the real intent of the setback requirement was to make the parking space free for use by the public, considering that it would no longer be for the exclusive use of the respondents as it would also be available for use by the general public. Section 9 of Article III of the 1987 Constitution, a provision on eminent domain, provides that private property shall not be taken for public use without just compensation.

The petitioners cannot justify the setback by arguing that the ownership of the property will continue to remain with the respondents. It is a settled rule that neither the acquisition of title nor the total destruction of value is essential to taking. In fact, it is usually in cases where the title remains with the private owner that inquiry should be made to determine whether the impairment of a property is merely regulated or amounts to a compensable taking.[32] The Court is of the view that the implementation of the setback requirement would be tantamount to a taking of a total of 3,762.36 square meters of the respondents' private property for public use without just compensation, in contravention to the Constitution.

Anent the objectives of prevention of concealment of unlawful acts and "un-neighborliness," it is obvious that providing for a parking area has no logical connection to, and is not reasonably necessary for, the accomplishment of these goals.

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[31] *Rollo,* p. 184.

[32] *Office of the Solicitor General v. Ayala Land, Incorporated,* G.R. No. 177056, September 18, 2009, 600 SCRA 617, 644-645.

Regarding the beautification purpose of the setback requirement, it has long been settled that the State may not, under the guise of police power, permanently divest owners of the beneficial use of their property solely to preserve or enhance the aesthetic appearance of the community.[33] The Court, thus, finds Section 5 to be unreasonable and oppressive as it will substantially divest the respondents of the beneficial use of their property solely for aesthetic purposes. Accordingly, Section 5 of Ordinance No. 192 is invalid.

The petitioners, however, argue that the invalidity of Section 5 was properly cured by Zoning Ordinance No. 303,[34] Series of 2000, which classified the respondents' property to be within an institutional zone, under which a five-meter setback has been required.

The petitioners are mistaken. Ordinance No. 303, Series of 2000, has no bearing to the case at hand.

The Court notes with displeasure that this argument was only raised for the first time on appeal in this Court in the petitioners' Reply. Considering that Ordinance No. 303 was enacted on December 20, 2000, the petitioners could very well have raised it in their defense before the RTC in 2002. The settled rule in this jurisdiction is that a party cannot change the legal theory of this case under which the controversy was heard and decided in the trial court. It should be the same theory under which the review on appeal is conducted. Points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal. This will be offensive to the basic rules of fair play, justice, and due process.[35]

Furthermore, the two ordinances have completely different purposes and subjects. Ordinance No. 192 aims to regulate the

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[33] *People v. Fajardo,* 104 Phil. 443, 447-448 (1958).

[34] *Rollo,* pp. 190-310.

[35] *Peña v. Tolentino,* G.R. Nos. 155227-28, February 9, 2011, 642 SCRA 310, 324-325.

construction of fences, while Ordinance No. 303 is a zoning ordinance which classifies the city into specific land uses. In fact, the five-meter setback required by Ordinance No. 303 does not even appear to be for the purpose of providing a parking area.

By no stretch of the imagination, therefore, can Ordinance No. 303, "cure" Section 5 of Ordinance No. 192.

In any case, the clear subject of the petition for prohibition filed by the respondents is Ordinance No. 192 and, as such, the precise issue to be determined is whether the petitioners can be prohibited from enforcing the said ordinance, and no other, against the respondents.

80% See-Thru Fence Requirement

The petitioners argue that while Section 5 of Ordinance No. 192 may be invalid, Section 3.1 limiting the height of fences to one meter and requiring fences in excess of one meter to be at least 80% see-thru, should remain valid and enforceable against the respondents.

The Court cannot accommodate the petitioner.

For Section 3.1 to pass the rational relationship test, the petitioners must show the reasonable relation between the purpose of the police power measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded.[36]

The principal purpose of Section 3.1 is "to discourage, suppress or prevent the concealment of prohibited or unlawful acts." The ultimate goal of this objective is clearly the prevention of crime to ensure public safety and security. The means employed by the petitioners, however, is not reasonably necessary for the accomplishment of this purpose and is unduly oppressive to private rights.

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[36] *City of Manila v. Laguio, Jr., supra* note 30, at 312-313.

The petitioners have not adequately shown, and it does not appear obvious to this Court, that an 80% see-thru fence would provide better protection and a higher level of security, or serve as a more satisfactory criminal deterrent, than a tall solid concrete wall. It may even be argued that such exposed premises could entice and tempt would-be criminals to the property, and that a see-thru fence would be easier to bypass and breach. It also appears that the respondents' concrete wall has served as more than sufficient protection over the last 40 years.

As to the beautification purpose of the assailed ordinance, as previously discussed, the State may not, under the guise of police power, infringe on private rights solely for the sake of the aesthetic appearance of the community. Similarly, the Court cannot perceive how a see-thru fence will foster "neighborliness" between members of a community.

Compelling the respondents to construct their fence in accordance with the assailed ordinance is, thus, a clear encroachment on their right to property, which necessarily includes their right to decide how best to protect their property.

It also appears that requiring the exposure of their property via a see-thru fence is violative of their right to privacy, considering that the residence of the Benedictine nuns is also located within the property. The right to privacy has long been considered a fundamental right guaranteed by the Constitution that must be protected from intrusion or constraint. The right to privacy is essentially the right to be let alone,[37] as governmental powers should stop short of certain intrusions into the personal life of its citizens.[38] It is inherent in the concept of liberty, enshrined in the Bill of Rights (Article III) in Sections 1, 2, 3 (1), 6, 8, and 17, Article III of the 1987 Constitution.[39]

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[37] *Gamboa v. Chan,* G.R. No. 193636, July 24, 2012, 677 SCRA 385, 396, citing *Morfe v. Mutuc,* 130 Phil. 415 (1968).

[38] *White Light Corporation v. City of Manila, supra* note 19, at 441, citing *City of Manila v. Laguio,* 495 Phil. 289 (2005).

[39] *Gamboa v. Chan, supra* note 37, at 397-398, citing *Ople v. Torres,* 354 Phil. 948 (1998).

The enforcement of Section 3.1 would, therefore, result in an undue interference with the respondents' rights to property and privacy. Section 3.1 of Ordinance No. 192 is, thus, also invalid and cannot be enforced against the respondents.

No Retroactivity

Ordinance No. 217 amended Section 7 of Ordinance No. 192 by including the regulation of educational institutions which was unintentionally omitted, and giving said educational institutions five (5) years from the passage of Ordinance No. 192 (and not Ordinance No. 217) to conform to its provisions.[40] The petitioners argued that the amendment could be retroactively

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Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

x x x x x x x x x

Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health as may be provided by law.

x x x x x x x x x

Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

x x x x x x x x x

Sec. 17. No person shall be compelled to be a witness against himself.

[40] *Rollo,* pp. 78-79.

applied because the assailed ordinance is a curative statute which is retroactive in nature.

Considering that Sections 3.1 and 5 of Ordinance No. 192 cannot be enforced against the respondents, it is no longer necessary to rule on the issue of retroactivity. The Court shall, nevertheless, pass upon the issue for the sake of clarity.

"Curative statutes are enacted to cure defects in a prior law or to validate legal proceedings which would otherwise be void for want of conformity with certain legal requirements. They are intended to supply defects, abridge superfluities and curb certain evils. They are intended to enable persons to carry into effect that which they have designed or intended, but has failed of expected legal consequence by reason of some statutory disability or irregularity in their own action. They make valid that which, before the enactment of the statute was invalid. Their purpose is to give validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with. Curative statutes, therefore, by their very essence, are retroactive."[41]

The petitioners argue that Ordinance No. 192 is a curative statute as it aims to correct or cure a defect in the National Building Code, namely, its failure to provide for adequate guidelines for the construction of fences. They ultimately seek to remedy an insufficiency in the law. In aiming to cure this insufficiency, the petitioners attempt to add lacking provisions to the National Building Code. This is not what is contemplated by curative statutes, which intend to correct irregularities or invalidity in the law. The petitioners fail to point out any irregular or invalid provision. As such, the assailed ordinance cannot qualify as curative and retroactive in nature.

At any rate, there appears to be no insufficiency in the National Building Code with respect to parking provisions in relation to the issue of the respondents. Paragraph 1.16.1, Rule XIX of the Rules and Regulations of the said code requires an educational

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[41] *Narzoles v. National Labor Relations Commission,* 395 Phil. 758, 764-765 (2000).

institution to provide one parking slot for every ten classrooms. As found by the lower courts, the respondents provide a total of 76 parking slots for their 80 classrooms and, thus, had more than sufficiently complied with the law.

Ordinance No. 192, as amended, is, therefore, not a curative statute which may be applied retroactively.

Separability

Sections 3.1 and 5 of Ordinance No. 192, as amended, are, thus, invalid and cannot be enforced against the respondents. Nonetheless, "the general rule is that where part of a statute is void as repugnant to the Constitution, while another part is valid, the valid portion, if susceptible to being separated from the invalid, may stand and be enforced."[42] Thus, the other sections of the assailed ordinance remain valid and enforceable.

Conclusion

Considering the invalidity of Sections 3.1 and 5, it is clear that the petitioners were acting in excess of their jurisdiction in enforcing Ordinance No. 192 against the respondents. The CA was correct in affirming the decision of the RTC in issuing the writ of prohibition. The petitioners must permanently desist from enforcing Sections 3.1 and 5 of the assailed ordinance on the respondents' property in Marikina City.

WHEREFORE, the petition is **DENIED**. The October 2, 2002 Decision of the Regional Trial Court in SCA Case No. 2000-381-MK is **AFFIRMED** but **MODIFIED** to read as follows:

> **WHEREFORE,** the petition is **GRANTED.** The writ of prohibition is hereby issued commanding the respondents to permanently desist from enforcing or implementing Sections 3.1 and 5 of Ordinance No. 192, Series of 1994, as amended, on the petitioners' property in question located in Marikina Heights, Marikina, Metro Manila.
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> No pronouncement as to costs.

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[42] *PKSMMN v. Executive Secretary,* G.R. Nos. 147036-37, April 10, 2012, 669 SCRA 49, 74.

SO ORDERED.

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

Perez, J., on official leave.

EN BANC

[G.R. No. 179611. March 12, 2013]

EFREN S. ALMUETE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROCEDURE AFTER AFFIRMANCE OR MODIFICATION BY SUPREME COURT OR COURT OF APPEALS IN CRIMINAL CASES (ADMINISTRATIVE CIRCULAR NO. 16-93); DISCONTINUED THE PRACTICE OF REQUIRING THE CONVICT TO APPEAR BEFORE THE TRIAL COURT FOR PROMULGATION OF THE JUDGMENT OF THE APPELLATE COURT.—** Administrative Circular No. 16-93, issued on September 9, 1993, provides that. x x x **The practice of requiring the convict to appear before the trial court for "promulgation" of the judgment of the appellate court should, therefore, be immediately discontinued.** It is not only an unauthorized surplusage entailing unnecessary expense, but it could also create security problems where the convict was already under detention during the pendency of the appeal, and the place of confinement is at some distance from the station of the court. x x x It is clear from the foregoing that the practice of requiring convicts to appear before the trial courts for promulgation of the affirmance or modification by this Court or the CA of judgments of conviction in criminal cases is no longer allowed. Hence, we find no error on the part

of the RTC in denying the Motion for Repromulgation of the RTC's September 8, 1998 Decision which was reinstated in *People v. Court of Appeals.*

2. ID.; ID.; JUDGMENTS; THE PROMULGATION OF JUDGMENT IS VALID IN CASE AT BAR.— Petitioner's attempt to assail the validity of the promulgation of the RTC's September 8, 1998 Decision must likewise fail as this has already been addressed by this Court in *People v. Court of Appeals*. As this Court has explained, there was no reason to postpone the promulgation because petitioner's absence was unjustifiable. Hence, no abuse of discretion could be attributed to the RTC in promulgating its Decision despite the absence of petitioner. It bears stressing that the June 10, 2004 Decision of this Court has attained finality. In fact, an Entry of Judgment was made by this Court on February 15, 2005.

3. ID.; ID.; ID.; MODIFICATION OF PENALTY IMPOSED AFTER FINALITY OF DECISION MAY BE ALLOWED; APPLICATION OF THE RULE ON IMMUTABILITY OF JUDGMENTS MAY BE RELAXED OR SUSPENDED BASED ON CERTAIN RECOGNIZED EXCEPTIONS AND WHEN SUBSTANTIAL JUSTICE DEMAND ITS SUSPENSION.— This Court is not unaware of the rule that "a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest court of the land, rendered it." However, this Court has suspended the application of this rule based on certain recognized exceptions, *viz*: Aside from matters of life, liberty, honor or property which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (a) the existence of special or compelling circumstances, (b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (d) a lack of any showing that the review sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby. In this case, it cannot be gainsaid that what is involved is the life and liberty of petitioner. If his penalty of imprisonment remains uncorrected, it would be not conformable with law and

he would be made to suffer the penalty of imprisonment of 18 years, 2 months and 21 days of *reclusion temporal* as minimum, to 40 years of *reclusion perpetua*, as maximum, which is outside the range of the penalty prescribed by law. Contrast this to the proper imposable penalty the minimum of which should only be within the range of 2 years, 4 months and 1 day to 6 years of *prision correccional*, while the maximum should only be anywhere between 11 years, 8 months and 1 day of *prision mayor* to 13 years of *reclusion temporal*. Substantial justice demands that we suspend our Rules in this case. "It is always within the power of the court to suspend its own [R]ules or except a particular case from its operation, whenever the purposes of justice require. x x x Indeed, when there is a strong showing that a grave miscarriage of justice would result from the strict application of the Rules, this Court will not hesitate to relax the same in the interest of substantial justice." Suspending the Rules is justified "where there exist strong compelling reasons, such as serving the ends of justice and preventing a miscarriage thereof." After all, the Court's "primordial and most important duty is to render justice x x x." Surely, this is not the first time that the Court modified the penalty imposed notwithstanding the finality of the assailed decision.

4. **ID.; ID.; APPEALS; PETITIONER'S RIGHT TO APPEAL HAS PRESCRIBED; IN FILING A PETITION FOR *CERTIORARI* INSTEAD OF AN APPEAL, PETITIONER AVAILED OF THE WRONG REMEDY.—** As to whether petitioner may still appeal the RTC's September 8, 1998 Decision, we rule in the negative. In *People v. Court of Appeals*, this Court reversed petitioner's acquittal by the CA as it was made with grave abuse of discretion. This Court explained that an acquittal via a Petition for *Certiorari* is not allowed because "the authority to review perceived errors of the trial court in the exercise of its judgment and discretion x x x are correctible only by appeal by writ of error." Thus, in filing a Petition for *Certiorari* instead of an appeal, petitioner availed of the wrong remedy. x x x Clearly, petitioner's right to appeal the RTC's September 8, 1998 Decision has long prescribed. Consequently, the said Decision is no longer open to an appeal.

5. **CRIMINAL LAW; PENALTIES; PENALTY IMPOSED, MODIFIED.—** Perusal of the records would show that the trial

court imposed the penalty as prescribed in Article 310 which is two degrees higher than those specified in Article 309. This is erroneous considering that the penalty prescribed in Article 310 would apply only if the theft was committed under any the following circumstances: a) by a domestic servant, or with grave abuse of confidence, or b) if the stolen property is motor vehicle, mail matter or large cattle, or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or c) if the property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. None of these circumstances is present in the instant case. Thus, the proper imposable penalty should be that which is prescribed under Article 309. In this case, the amount of the timber involved is ₱57,012.00. Since the amount exceeds ₱22,000.00, the penalty of *prision mayor* in its minimum and medium periods should be imposed in its maximum period plus an additional one (1) year for each additional ₱10,000 pesos in excess of ₱22,000.00 or three more years. Thus, the correct imposable maximum penalty is anywhere between eleven (11) years, eight (8) months and one (1) day of *prision mayor* to thirteen (13) years of *reclusion temporal*. Applying the Indeterminate Sentence Law, the minimum penalty is one degree lower than that prescribed by the law. In this case, the minimum penalty should be *prision correccional* in its medium and maximum periods, which is anywhere between two (2) years, four (4) months and one (1) day to six (6) years.

APPEARANCES OF COUNSEL

Law Firm of Lapena Villanueva Manzano & Associates for petitioner.

The Solicitor General for respondent.

DECISION

DEL CASTILLO, *J.*:

Section 6,[1] Rule 120 of the 1985 Rules on Criminal Procedure allows promulgation of judgment *in absentia* and gives the accused a period of fifteen (15) days from notice to him or his counsel within which to appeal; otherwise, the decision becomes final.[2]

This Petition for Review on *Certiorari*[3] under Rule 45 of the Rules of Court assails the May 4, 2007 Resolution[4] and the September 4, 2007 Resolution[5] of the Court of Appeals (CA) in CA-G.R. SP No. 98502.

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[1] Section 6. *Promulgation of judgment*. — The judgment is promulgated by reading the same in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside of the province or city, the judgment may be promulgated by the clerk of court.

If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court that rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal.

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. In case the accused fails to appear thereat the promulgation shall consist in the recording of the judgment in the criminal docket and a copy thereof shall be served upon the accused or counsel. If the judgment is for conviction and the accused's failure to appear was without justifiable cause, the court shall further order the arrest of the accused, who may appeal within fifteen (15) days from notice of the decision to him or his counsel. (Now amended by the 2000 Rules of Criminal Procedure)

[2] *Estrada v. People,* 505 Phil. 339, 354-357 (2005).

[3] *Rollo,* pp. 9-23.

[4] *Id.* at 24-29; penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Mario L. Guariña III and Monina Arevalo-Zenarosa.

[5] *Id.* at 30-31.

Factual Antecedents

This case is an offshoot of *People v. Court of Appeals*,[6] docketed as G.R. No. 144332 and promulgated on June 10, 2004.

Efren D. Almuete (petitioner), Johnny Ila (Ila) and Joel Lloren (Lloren) were charged before the Regional Trial Court (RTC) of Nueva Vizcaya, Branch 27, with violation of Section 68[7] of Presidential Decree (P.D.) No. 705, otherwise known as the "Revised Forestry Code of the Philippines," as amended by Executive Order (E.O.) No. 277,[8] docketed as Criminal Case No. 2672.[9]

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[6] G.R. No. 144332, June 10, 2004, 431 SCRA 610.

[7] Sec. 68. Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License. Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

[8] AMENDING SECTION 68 OF PRESIDENTIAL DECREE NO. 705, AS AMENDED, OTHERWISE KNOWN AS THE REVISED FORESTRY CODE OF THE PHILIPPINES, FOR THE PURPOSE OF PENALIZING POSSESSION OF TIMBER OR OTHER FOREST PRODUCTS WITHOUT THE LEGAL DOCUMENTS REQUIRED BY EXISTING FOREST LAWS, AUTHORIZING THE CONFISCATION OF ILLEGALLY CUT, GATHERED, REMOVED AND POSSESSED FOREST PRODUCTS, AND GRANTING REWARDS TO INFORMERS OF VIOLATIONS OF FORESTRY LAWS, RULES AND REGULATIONS.

[9] *Supra* note 6 at 612.

On the scheduled date of promulgation of judgment, petitioner's counsel informed the trial court that petitioner and Lloren were ill while Ila was not notified of the scheduled promulgation.[10] The RTC, however, found their absence inexcusable and proceeded to promulgate its Decision as scheduled.[11] The dispositive portion of the September 8, 1998 Decision reads:

WHEREFORE, finding the accused, namely, Efren S. Almuete, Johnny Ila *y* Ramel and Joel Lloren *y* dela Cruz GUILTY beyond reasonable doubt of violation of Section 68, P.D. No. 705, as amended, they are each sentenced to suffer the penalty of 18 years, 2 months and 21 days of *reclusion temporal*, as minimum period to 40 years of *reclusion perpetua* as maximum period. Costs against the said accused.

SO ORDERED.[12]

Accordingly, the RTC cancelled the bail bonds of petitioner, Ila and Lloren[13] and issued warrants of arrest against them.[14]

Petitioner and his co-accused moved for reconsideration, questioning the validity of the promulgation, the factual and legal bases of their conviction, and the correctness of the penalty imposed.[15]

On October 12, 1998, the RTC denied their motion for lack of merit.[16]

Instead of filing an appeal, petitioner and his co-accused filed a Petition for *Certiorari*, docketed as CA-G.R. SP No. 49953, with the CA.[17]

On May 19, 2000, the CA granted the Petition and disposed of the case in this wise:

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[10] *Id.* at 613.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* at 621.

[15] *Id.* at 613.

[16] *Id.* at 614.

[17] *Id.*

WHEREFORE, premises considered, the present petition is hereby GRANTED. On the basis of the evidence on record, accused Efren S. Almuete should be, as he is hereby ACQUITTED of the charge against him.

The court *a quo* is ORDERED to re-promulgate the decision in the presence of the accused Ila and Lloren, duly assisted by counsel of their own choice, after notice and allow them to appeal. Let the complete records of this case be remanded to the court *a quo*.

SO ORDERED.[18]

The acquittal of petitioner prompted the People of the Philippines to elevate the case to this Court *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, docketed as G.R. No. 144332.

On June 10, 2004, this Court reversed petitioner's acquittal and reinstated the RTC's September 8, 1998 Decision and its October 12, 1998 Order, to wit:

IN LIGHT OF ALL THE FOREGOING, the petition is **GRANTED**. The assailed decision and resolution of the Court of Appeals are **REVERSED AND SET ASIDE**. The Decision of the Regional Trial Court dated September 8, 1998 and its Order dated October 12, 1998 are **REINSTATED**. No costs.

SO ORDERED.[19]

Aggrieved, petitioner moved for reconsideration but his motion was denied by this Court in a Resolution dated January 17, 2005.[20]

On February 15, 2005, this Court issued an Entry of Judgment.[21]

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[18] *Id.* at 615.

[19] *Id.* at 622; penned by Associate Justice Romeo J. Callejo, Sr. and concurred in by Associate Justices Reynato S. Puno, Leonardo A. Quisumbing, Ma. Alicia Austria-Martinez and Dante O. Tinga.

[20] *Rollo,* pp. 190-191.

[21] *Id.* at 191.

Unfazed, petitioner filed a second and a third Motion for Reconsideration, which were denied by this Court in its March 28, 2005 and November 9, 2005 Resolutions, respectively.[22]

Petitioner then filed a Motion for Clarification[23] on whether he could still appeal the RTC's September 8, 1998 Decision. This Court noted without action his Motion for Clarification in its July 26, 2006 Resolution.[24]

On December 13, 2006, petitioner filed with the RTC a Motion for Repromulgation[25] of the September 8, 1998 Decision.

Ruling of the Regional Trial Court

The RTC, in its January 17, 2007 Order,[26] denied the Motion for Repromulgation.

Petitioner sought reconsideration but the RTC denied the same in its February 20, 2007 Order.[27]

Ruling of the Court of Appeals

Imputing grave abuse of discretion on the part of the RTC, petitioner filed a Petition for *Certiorari*[28] with the CA. On May 4, 2007, the CA rendered its Resolution[29] which dismissed the Petition for lack of merit.

Petitioner's Motion for Reconsideration[30] was likewise denied by the CA in its September 4, 2007 Resolution.[31]

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[22] *Id.*

[23] *Id.* at 62-65.

[24] *Id.* at 66.

[25] *Id.* at 67-71.

[26] *Id.* at 32-35; penned by Acting Presiding Judge Menrado V. Corpuz.

[27] *Id.* at 36.

[28] *Id.* at 72-83.

[29] *Id.* at 24-29.

[30] CA *rollo,* pp. 67-71.

[31] *Rollo,* pp. 30-31.

Issues

Hence, this recourse, with petitioner raising the following issues:

1. Whether x x x the Decision of the [RTC] convicting [p]etitioner Almuete of the charge against him passed the requisite conviction beyond reasonable doubt.

2. Whether x x x the promulgation of the Decision of the [RTC] convicting the petitioner was valid despite the absence of the petitioner and regardless of petitioner's intention to be present at the promulgation of the Decision.

3. Whether x x x the Honorable [CA] committed grave abuse of discretion when it acquitted petitioner Almuete in a Petition for *Certiorari* under Rule 65 of the Rules of Court.

4. Whether x x x the judgment of acquittal by the Honorable [CA] bars further proceedings and that to do so would constitute a violation of petitioner's constitutional right against double jeopardy.

5. Whether x x x the denial of the [RTC] of petitioner's motion for re-promulgation is in order, the denial being based on an inappropriate Administrative Order of this Honorable Supreme Court (Administrative Order No. 16-93).[32]

Petitioner's Arguments

Petitioner maintains his innocence and asserts that he was wrongly convicted by the RTC because his guilt was not proven beyond reasonable doubt.[33] He argues that his conviction was based on circumstantial and hearsay evidence as he was convicted only because he owns the truck containing the lumber.[34] Thus, he contends that his earlier acquittal by the CA was proper,[35] and that his acquittal can no longer be assailed without violating the principle of double jeopardy.[36]

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[32] *Id.* at 156-157.

[33] *Id.* at 157-170.

[34] *Id.* at 157-158.

[35] *Id.* at 173-176.

[36] *Id.* at 176-178.

Petitioner likewise assails the validity of the promulgation of the judgment against him since it was made in his absence.[37] He insists that he had a valid reason for not attending the promulgation of the judgment as he was suffering from stress, anxiety, and some physiological disturbance, and thus, was advised to rest.[38] He also claims that the RTC's denial of his Motion for Repromulgation was not proper.[39] Hence, a repromulgation of the judgment should be made to allow him to avail of his right to appeal.[40]

Respondent's Arguments

The Solicitor General, on behalf of the People, contends that the issues and arguments raised by petitioner may no longer be entertained as these have been addressed in *People v. Court of Appeals,*[41] which is already the "law of the case."[42] He likewise points out that the promulgation of judgment *in absentia* is allowed under Section 6[43] of Rule 120 of the 1985 Rules of Criminal Procedure,[44] and that the denial of petitioner's Motion for Repromulgation of the September 8, 1998 Decision is proper as the same is in accordance with Administrative Circular No. 16-93.[45]

As to petitioner's right to appeal, respondent opines that petitioner's right has prescribed,[46] as the same should have

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[37] *Id.* at 170-173.

[38] *Id.* at 171.

[39] *Id.* at 178-179.

[40] *Id.* at 180.

[41] *Supra* note 6.

[42] *Rollo,* pp. 195-199.

[43] *Supra* note 1.

[44] *Rollo*, pp. 199-201.

[45] Dated September 9, 1993; Re: PROCEDURE AFTER AFFIRMANCE OR MODIFICATION BY THE SUPREME COURT OR COURT OF APPEALS OF JUDGMENTS OF CONVICTION IN CRIMINAL CASES.

[46] *Id.* at 205-213.

been filed within 15 days from the time he or his counsel received a copy of the September 8, 1998 Decision instead of filing a Petition for *Certiorari* with the CA.[47]

However, notwithstanding the finality of petitioner's conviction, respondent recommends that the penalty be modified by reducing the same to six (6) years and one (1) day to ten (10) years in accordance with the Indeterminate Sentence Law (ISL).[48]

Our Ruling

The petition lacks merit.

The denial of the Motion for Repromulgation is in accordance with Administrative Circular No. 16-93

Administrative Circular No. 16-93, issued on September 9, 1993, provides that:

TO: ALL JUDGES OF THE REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS

RE: PROCEDURE AFTER AFFIRMANCE OR MODIFICATION BY SUPREME COURT OR COURT OF APPEALS OF JUDGMENTS OF CONVICTION IN CRIMINAL CASES

To ensure uniformity in the procedure to be observed by the trial courts in criminal cases after their judgments of conviction shall have been affirmed or modified by the Supreme Court or the Court of Appeals, attention is invited to the decisional and statutory guidelines set out hereunder.

1. The procedure for the promulgation of judgments in the trial courts in criminal cases, differs from that prescribed for the Supreme Court and the Court of Appeals where promulgation is effected by filing the signed copy of the judgment with the Clerk of Court who causes true copies thereof to be served upon the parties. The procedural consequence of this distinction was reiterated in *Jesus Alvarado, etc. vs. The Director of Prisons,* to wit:

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[47] *Id.* at 207-208.

[48] *Id.* at 216.

By Sections 8 and 9 of Rule 53 (now Sections 10 and 11 of Rule 51) in relation to Section 17 of Rule 120 (now Section 17 of Rule 124), a judgment is entered 15 days after its promulgation, and 10 days thereafter, the records are remanded to the court below including a certified copy of the judgment for execution.

In the case of *People vs. Sumilang* (44 Off. Gaz., 881, 883; 77 Phil. 764), it was explained that "the certified copy of the judgment is sent by the clerk of the appellate court to the lower court under Section 9 of Rule 53, not for the promulgation or reading thereof to the defendant, but for the execution of the judgment against him," it "not being necessary to promulgate or read it to the defendant, because it is to be presumed that accused or his attorney had already been notified thereof in accordance with Sections 7 and 8, as amended, of the same Rules 53 (now Sections 9 and 10 of Rule 51)," and that the duty of the Court of First Instance in respect to such judgment is merely to see that it is duly executed when in their nature the intervention of the court of first instance is necessary to that end.

2. **The practice of requiring the convict to appear before the trial court for "promulgation" of the judgment of the appellate court should, therefore, be immediately discontinued.** It is not only an unauthorized surplusage entailing unnecessary expense, but it could also create security problems where the convict was already under detention during the pendency of the appeal, and the place of confinement is at some distance from the station of the court. Upon receipt of the certified copy of the judgment of the appellate court if the convict is under detention, the trial court should issue forthwith the corresponding mittimus or commitment order so that the prisoner may be considered remitted or may be transferred to the corresponding prison facility for confinement and service of sentence. When the convict is out on bail, the trial court shall immediately order the bondsman to surrender the convict to it within ten (10) days from notice and thereafter issue the corresponding mittimus. In both cases, the trial court shall submit to this Court proof of the execution of judgment within fifteen (15) days from date of such execution. (Emphasis supplied)

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It is clear from the foregoing that the practice of requiring convicts to appear before the trial courts for promulgation of the affirmance or modification by this Court or the CA of

judgments of conviction in criminal cases is no longer allowed. Hence, we find no error on the part of the RTC in denying the Motion for Repromulgation of the RTC's September 8, 1998 Decision which was reinstated in *People v. Court of Appeals*.[49]

The promulgation of judgment is valid.

Petitioner's attempt to assail the validity of the promulgation of the RTC's September 8, 1998 Decision must likewise fail as this has already been addressed by this Court in *People v. Court of Appeals.*[50] As this Court has explained, there was no reason to postpone the promulgation because petitioner's absence was unjustifiable.[51] Hence, no abuse of discretion could be attributed to the RTC in promulgating its Decision despite the absence of petitioner.[52]

It bears stressing that the June 10, 2004 Decision of this Court has attained finality. In fact, an Entry of Judgment was made by this Court on February 15, 2005.

Petitioner's right to appeal has prescribed.

As to whether petitioner may still appeal the RTC's September 8, 1998 Decision, we rule in the negative.

In *People v. Court of Appeals*,[53] this Court reversed petitioner's acquittal by the CA as it was made with grave abuse of discretion. This Court explained that an acquittal via a Petition for *Certiorari* is not allowed because "the authority to review perceived errors of the trial court in the exercise of its judgment and discretion x x x are correctible only by appeal by writ of error."[54] Thus, in filing a Petition for *Certiorari* instead of an appeal, petitioner availed of the wrong remedy.

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[49] *Supra* note 6.

[50] *Id.*

[51] *Id.* at 620-622.

[52] *Id.* at 622.

[53] *Supra* note 6.

[54] *Id.* at 619.

Thus:

In this case, the RTC rendered judgment finding all the accused, respondents herein, guilty of the crime charged based on the evidence on record and the law involved, and sentenced them to suffer the penalty of imprisonment as provided for in P.D. No. 705, in relation to Articles 304 and 305 of the Revised Penal Code. They had a plain, speedy and adequate remedy at law to overturn the decision as, in fact, they even filed a motion for reconsideration of the decision on its merits, and for the nullification of the promulgation of the said decision. Upon the trial court's denial of their motion for reconsideration, the petitioners had the right to appeal, by writ of error, from the decision on its merits on questions of facts and of law. The appeal of the petitioners in due course was a plain, speedy and adequate remedy. In such appeal, the petitioners could question the findings of facts of the trial court, its conclusions based on the said findings, as well as the penalty imposed by the court. It bears stressing that an appeal in a criminal case throws the whole case open for review and that the appellate court can reverse any errors of the trial court, whether assigned or unassigned, found in its judgment. **However, instead of appealing the decision by writ of error, the respondents filed their petition for *certiorari* with the CA assailing the decision of the trial court on its merits**. They questioned their conviction and the penalty imposed on them, alleging that the prosecution failed to prove their guilt for the crime charged, the evidence against them being merely hearsay and based on mere inferences. In fine, the respondents alleged mere errors of judgment of the trial court in their petition. It behooved the appellate court to have dismissed the petition, instead of giving it due course and granting it.

The CA reviewed the trial court's assessment of the evidence on record, its findings of facts, and its conclusions based on the said findings. The CA forthwith concluded that the said evidence was utterly insufficient on which to anchor a judgment of conviction, and acquitted respondent Almuete of the crime charged.

The appellate court acted with grave abuse of its discretion when it ventured beyond the sphere of its authority and arrogated unto itself, in the *certiorari* proceedings, the authority to review perceived errors of the trial court in the exercise of its judgment and discretion, which are correctible only by appeal by writ of error. Consequently, the decision of the CA acquitting respondent

Almuete of the crime charged is a nullity. If a court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void. The lack of statutory authority to make a particular judgment is akin to lack of subject-matter jurisdiction. In this case, the CA is authorized to entertain and resolve only errors of jurisdiction and not errors of judgment.

A void judgment has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. It cannot impair or create rights; nor can any right be based on it. **Thus, respondent Almuete cannot base his claim of double jeopardy on the appellate court's decision**.[55] (Emphasis supplied)

Clearly, petitioner's right to appeal the RTC's September 8, 1998 Decision has long prescribed. Consequently, the said Decision is no longer open to an appeal.

The penalty imposed must be modified.

Nonetheless, we agree with the suggestion of the Office of the Solicitor General that the penalty imposed by the RTC in its September 8, 1998 Decision must be modified. Concededly, this case is an offshoot of G.R. No. 144332 which the Court decided on June 10, 2004 which found grave abuse of discretion on the part of the CA in acquitting Almuete.

Section 68 of P.D. No. 705, as amended by E.O. No. 277, provides that:

Sec. 68. Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License. Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be **punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code:** Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to

[55] *Id.* at 618-619.

the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found. (Emphasis supplied)

On the other hand, Articles 309 and 310 of the Revised Penal Code state that:

Art. 309. *Penalties*. — Any person guilty of theft shall be punished by:

1. The **penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceed[s] the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos,** but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be. (Emphasis supplied)

x x x x x x x x x

Art. 310. *Qualified theft*. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding articles, **if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance**. (Emphasis supplied)

Perusal of the records would show that the trial court imposed the penalty as prescribed in Article 310 which is two degrees

higher than those specified in Article 309.[56] This is erroneous considering that the penalty prescribed in Article 310 would apply only if the theft was committed under any the following circumstances: a) by a domestic servant, or with grave abuse of confidence, or b) if the stolen property is motor vehicle, mail matter or large cattle, or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or c) if the property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. None of these circumstances is present in the instant case. Thus, the proper imposable penalty should be that which is prescribed under Article 309.

In this case, the amount of the timber involved is ₱57,012.00. Since the amount exceeds ₱22,000.00, the penalty of *prision mayor* in its minimum and medium periods[57] should be imposed in its maximum period[58] plus an additional one (1) year for each additional ₱10,000 pesos in excess of ₱22,000.00 or three

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[56] The trial court stated:

Under Article 309 in relation to Article 310 of the Revised Penal Code, the penalty imposable is two degrees higher than *prision mayor* in its minimum and medium periods, with the additional penalty of one year for each additional ten thousand pesos to 22,000 pesos. The penalty imposable to all the accused, therefore is *reclusion temporal* in its medium and maximum periods and an additional three years to the maximum period of *reclusion temporal*.

Adding three (3) years to the maximum period of *reclusion temporal* maximum which is 20 years will make the maximum penalty include *reclusion perpetua* whose maximum imposable penalty is 40 years. (*See* Decision in Criminal Case No. 2672, p. 11, records, Vol. 1, p. 11.)

[57] *Prision mayor* in its minimum and medium periods ranges from six (6) years and one (1) day to ten (10) years.

Minimum — six (6) years and one (1) day to seven (7) years and eight (8) months.

Medium — seven (7) years, four (4) months and one (1) day to eight (8) years and eight (8) months.

Maximum — eight (8) years, eight (8) months and one (1) day to ten (10) years.

[58] Eight (8) years, 8 months and one (1) day to ten (10) years.

more years.[59] Thus, the correct imposable maximum penalty is anywhere between eleven (11) years, eight (8) months and one (1) day of *prision mayor* to thirteen (13) years of *reclusion temporal*.

Applying the Indeterminate Sentence Law, the minimum penalty is one degree lower than that prescribed by the law. In this case, the minimum penalty should be *prision correccional* in its medium and maximum periods, which is anywhere between two (2) years, four (4) months and one (1) day to six (6) years.

This Court is not unaware of the rule that "a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest court of the land, rendered it."[60] However, this Court has suspended the application of this rule based on certain recognized exceptions, *viz.*:

> Aside from matters of life, liberty, honor or property which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (a) the existence of special or compelling circumstances, (b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (d) a lack of any showing that the review sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby.[61]

In this case, it cannot be gainsaid that what is involved is the life and liberty of petitioner. If his penalty of imprisonment remains uncorrected, it would be not conformable with law

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[59] ₱57,012.00 - 22,000.00 = ₱35,012.00

[60] *Apo Fruits Corporation v. Land Bank of the Philippines,* G.R. No. 164195, October 12, 2010, 632 SCRA 727, 760. Citation omitted. See *Peña v. Government Service Insurance System,* 533 Phil. 670, 689-690 (2006).

[61] *Sanchez v. Court of Appeals,* 452 Phil. 665, 674 (2003). Citations omitted. See *Dra. Baylon v. Fact-Finding Intelligence Bureau,* 442 Phil. 217, 230-231 (2002).

and he would be made to suffer the penalty of imprisonment of 18 years, 2 months and 21 days of *reclusion temporal* as minimum, to 40 years of *reclusion perpetua*, as maximum, which is outside the range of the penalty prescribed by law. Contrast this to the proper imposable penalty the minimum of which should only be within the range of 2 years, 4 months and 1 day to 6 years of *prision correccional*, while the maximum should only be anywhere between 11 years, 8 months and 1 day of *prision mayor* to 13 years of *reclusion temporal*. Substantial justice demands that we suspend our Rules in this case. "It is always within the power of the court to suspend its own [R]ules or except a particular case from its operation, whenever the purposes of justice require. x x x Indeed, when there is a strong showing that a grave miscarriage of justice would result from the strict application of the Rules, this Court will not hesitate to relax the same in the interest of substantial justice."[62] Suspending the Rules is justified "where there exist strong compelling reasons, such as serving the ends of justice and preventing a miscarriage thereof."[63] After all, the Court's "primordial and most important duty is to render justice x x x."[64]

Surely, this is not the first time that the Court modified the penalty imposed notwithstanding the finality of the assailed decision.

In *People v. Barro*,[65] Benigno Barro (Benigno), Joel Florin (Florin) and Joel Barro (Joel) were charged with murder. After trial, the trial court convicted them as charged. Only Benigno and Florin filed their notice of appeal. Joel failed to appeal as he escaped from confinement. Hence, the trial court's Decision insofar as Joel is concerned had become final and executory. In the Court's Decision of August 17, 2000, the appeal filed by Benigno and Florin was found without merit. However, the

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[62] *People v. Flores,* 336 Phil. 58, 62-63 (1997). Citation omitted.

[63] *Dizon v. Court of Appeals,* 444 Phil. 161, 165 (2003). Citation omitted.

[64] *Apo Fruits Corporation v. Land Bank of the Philippines, supra* note 60 at 763-764.

[65] 392 Phil. 857 (2000).

Court noted that as regards Joel, the penalty imposed by the trial court was "outside the range"[66] of the penalty prescribed for the offense. Consequently, the Court modified the penalty imposed on him notwithstanding that the same had already become final and executory. The Court ratiocinated that:

> Joel Barro, below 15 years old at the time of the commission of the offense, is entitled to the privileged mitigating circumstance of minority pursuant to Article 68, par. 1 of the Revised Penal Code. The penalty for murder is *reclusion temporal* in its maximum period to death. Two degrees lower is *prision correccional* maximum to *prision mayor* medium. Joel Barro escaped from jail, hence, he is disqualified from the benefits of the Indeterminate Sentence Law. He should, therefore, be meted the straight penalty of eight years which is within the medium period (6 years 1 month and 11 days to 8 years and 20 days) of the said penalty. **The trial court erred in imposing the penalty of imprisonment of 8 years and 8 months because it is outside the range of said penalty. The records show that Joel Barro did not appeal. However, where the penalty imposed on the co-accused who did not appeal was a nullity because it was never authorized by law, that penalty imposed on the accused can be corrected to make it conform to the penalty prescribed by law, the reason being that, said penalty can never become final and executory and it is within the duty and inherent power of the Court to have it conformable with law**.[67]

In *Estrada v. People*,[68] petitioner was charged with the crime of estafa. While the trial was pending, petitioner jumped bail. Understandably, during the promulgation of judgment in 1997, petitioner was absent. Two years later, or in 1999, petitioner was arrested. She then moved for reconsideration of the trial court's Decision. The same was denied for having been filed out of time. Thus, petitioner filed a Petition for *Certiorari* before the CA which was denied. Hence, petitioner brought the case before this Court. In its Decision dated August 25, 2005, the Court ruled that petitioner's trial in absentia was proper; that she was not denied due process; and that the denial by the trial

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[66] *Id.* at 875.

[67] *Id.* at 875-876. Emphasis supplied.

[68] *Supra* note 2.

court of her motion for reconsideration was proper as the same was filed beyond the reglementary period. However, the Court noted that the penalty imposed by the trial court (which is 12 years of *prision mayor* to 24 years as maximum) on petitioner was erroneous. As computed by the Court, considering that the amount defrauded is only ₱68,700.00, the proper *minimum* imposable penalty should only be within the range of "6 months, and 1 day of *prision correccional* in its minimum period and 4 years and 2 months of *prision correccional* in its medium period"[69] while the proper maximum imposable penalty should only be within the range of "10 years, 8 months and 21 days and 12 years of *prision mayor* in its maximum period."[70] Hence, notwithstanding the finality of the trial court's Decision, the Court modified the penalty imposed, as the same was outside the range prescribed by law.

In *Rigor v. The Superintendent, New Bilibid Prison*,[71] this Court also modified the penalty imposed on the petitioner notwithstanding the finality of the trial court's Decision based on the observation that the penalty imposed by the trial court was erroneous because it was outside the range prescribed by law. The Court ruled thus:

> However, the Court noted a palpable error apparent in the Joint Decision of the trial court that must be rectified in order to avoid its repetition. The trial court erroneously included an additional one day on the maximum period of *arresto mayor* imposed on petitioner, which is incorrect, as it is outside the range of said penalty. The duration of *arresto mayor* is only from one month and one day to six months. Adding one day to the maximum penalty will place it within the range of *prision correccional*.
>
> Moreover, imposing the maximum penalty of imprisonment of four years, four months and one day of *prision correccional* is also incorrect as it is outside the range of the penalty imposable in this case. x x x
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> x x x x x x x x x

[69] *Id.* at 359.

[70] *Id.*

[71] 458 Phil. 561 (2003).

[T]he error of the trial court in the present case can be corrected to make it conform to the penalty prescribed by law as it is within the Court's duty and inherent power. x x x

x x x x x x x x x

Thus, the correction to be made by this Court is meant only for the penalty imposed against petitioner to be in accordance with the law and nothing else. It is not tantamount to a reduction in order to be favorable to the petitioner nor an increase so as to be prejudicial to him.[72]

In *People v. Gatward*[73] the Court explicitly stated that by merely modifying the penalty imposed, it is not reopening the case; neither is it saying that there was error in judgment. In the same manner, in this case, we are not reopening G.R. No. 144332, much more reversing it. Thus:

x x x In the case of U Aung Win, and the same hold true with respect to Gatward, the penalty inflicted by the court *a quo* was a nullity because it was never authorized by law as a valid punishment. The penalties which consisted of aliquot *one-third portions of an indivisible penalty* are self-contradictory in terms and unknown in penal law. Without intending to sound sardonic or facetious, it was akin to imposing the indivisible penalties of public censure, or perpetual absolute or special disqualification, or death in their minimum or maximum periods.

This was not a case of a court rendering an erroneous judgment by inflicting a penalty higher or lower than the one imposable under the law but with both penalties being legally recognized and authorized as valid punishments. An erroneous judgment, as thus understood, is a valid judgment. But a judgment which ordains a penalty which does not exist in the catalogue of penalties or which is an impossible version of that in the roster of lawful penalties is necessarily void, since the error goes into the very essence of the penalty and does not merely arise from the misapplication thereof. Corollarily, such a judgment can never become final and executory.

Nor can it be said that, despite the failure of the accused to appeal, his case was reopened in order that a higher penalty may be imposed

[72] *Id.* at 567-568.

[73] 335 Phil. 441 (1997).

on him. There is here no reopening of the case, as in fact the judgment is being affirmed but with a correction of the very substance of the penalty to make it conformable to law, pursuant to a duty and power inherent in this Court. The penalty has not been changed since what was decreed by the trial court and is now being likewise affirmed by this Court is the same penalty of *reclusion perpetua* which, unfortunately, was imposed by the lower court in an elemental form which is non-existent in and not authorized by law. Just as the penalty has not been reduced in order to be favorable to the accused, neither has it been increased so as to be prejudicial to him.

Finally, no constitutional or legal right of this accused is violated by the imposition upon him of the corrected duration, inherent in the essence and concept, of the penalty. Otherwise, he would be serving a void sentence with an illegitimate penalty born out of a figurative liaison between judicial legislation and unequal protection of law. He would thus be the victim of an inadvertence which could result in the nullification, not only of the judgment and the penalty meted therein, but also of the sentence he may actually have served. Far from violating any right of U Aung Win, therefore, the remedial and corrective measures interposed by this opinion protect him against the risk of another trial and review aimed at determining the correct period of imprisonment.[74]

Also, it would not be amiss to mention that the Office of the Solicitor General prayed for the modification of the imposable penalty.[75]

Finally, pursuant to Section 11 (a),[76] Rule 122 of the Revised Rules on Criminal Procedure, the favorable modification of the penalty should likewise apply to petitioner's co-accused who failed to appeal.[77]

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[74] *Id.* at 460-461.

[75] *See* Comment (with prayer for the modification of the imposable penalty), pp. 33-35; *rollo,* pp. 123-125; Memorandum (of the Office of the Solicitor General), pp. 33-35; *rollo,* pp. 214-216.

[76] SECTION 11. *Effect of appeal by any of several accused.* —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

[77] *People v. Barro, supra* note 65 at 875-876.

WHEREFORE, the Petition is hereby **DENIED.** The May 4, 2007 and the September 4, 2007 Resolutions of the Court of Appeals in CA-G.R. SP No. 98502 are hereby **AFFIRMED.** In addition, for reasons stated above, the September 8, 1998 Decision of the Regional Trial Court of Nueva Vizcaya, Branch 27, docketed as Criminal Case No. 2672, is hereby **MODIFIED** insofar as the penalty of imprisonment is concerned. The accused, namely, Efren S. Almuete, Johnny Ila *y* Ramel and Joel Lloren *y* dela Cruz are each sentenced to suffer the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to thirteen (13) years of *reclusion temporal*, as maximum.

SO ORDERED.

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

Perez, J., on official leave.

EN BANC

[G.R. No. 183460. March 12, 2013]

Spouses NERIO and SOLEDAD PADOR and REY PADOR, *petitioners, vs.* ***Barangay*** **Captain BERNABE ARCAYAN,** ***Barangay Tanod*** **CHIEF ROMEO PADOR,** ***Barangay Tanods*** **ALBERTO ALIVIO, CARMELO REVALES, ROBERTO ALIMORIN, WINELO ARCAYAN, CHRISTOPHER ALIVIO & BIENVENIDO ARCAYAN, all of** ***Barangay*** **Tabunan, Cebu City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; WRIT OF *AMPARO*; TO BE ENTITLED TO THE PRIVILEGE OF THE WRIT, PETITIONERS

MUST PROVE BY SUBSTANTIAL EVIDENCE, THAT THEIR RIGHTS TO LIFE, LIBERTY AND SECURITY ARE BEING VIOLATED OR THREATENED BY AN UNLAWFUL ACT OR OMISSION.— Section 1 of the Rule on the Writ of *Amparo* provides for the grounds that may be relied upon in a petition therefor, as follows: SEC. 1. Petition. – The petition for a writ of *amparo* is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof. Thus, to be entitled to the privilege of the writ, petitioners must prove by substantial evidence that their rights to life, liberty and security are being violated or threatened by an unlawful act or omission.

2. **ID.; ID.; ID.; THE ALLEGED INTRUSION UPON PETITIONERS' *AMPALAYA* FARM IS AN INSUFFICIENT GROUND TO GRANT THE PRIVILEGE OF THE WRIT; THE INTRUSION WAS MERELY A VIOLATION OF PETITIONER'S PROPERTY RIGHTS.—** A closer look at the instant Petition shows that it is anchored on the following allegations: *first*, that respondents conducted a raid on the property of petitioner based on information that the latter were cultivators of *marijuana*; *second*, that respondent *barangay* captain sent them invitation letters without stating the purpose of the invitation; *third*, that respondent *barangay* captain refused to receive petitioners' letter-reply; and *fourth*, that petitioners anticipate the possibility of more harassment cases, false accusations, and potential violence from respondents. All these allegations are insufficient bases for a grant of the privilege of the writ. On the first allegation, we find that the supposed raid on petitioners' *ampalaya* farm was sufficiently controverted by respondents. Respondents alleged, and the trial court found, that a roving patrol was conducted, not on the *ampalaya* farm of Nerio Pador, but on an area locally called *Sitio* Gining, which was beside the lot possessed by David Quintana. Assuming, however, that respondents had in fact entered the *ampalaya* farm, petitioner Rey Pador himself admitted that they had done so with his permission, as stated in his affidavit. x x x Finally, even assuming that the entry was done without petitioners' permission, we cannot grant the privilege of the writ of *amparo* based upon a trespass on their *ampalaya* farm.

Granting that the intrusion occurred, it was merely a violation of petitioners' property rights. In *Tapuz v. Del Rosario*, we ruled that the writ of *amparo* does not envisage the protection of concerns that are purely property or commercial in nature. x x x We therefore rule that the alleged intrusion upon petitioners' *ampalaya* farm is an insufficient ground to grant the privilege of the writ of *amparo*.

3. **ID.; ID.; ID.; THE *BARANGAY* CAPTAIN'S ACT OF SENDING INVITATION LETTERS TO PETITIONERS AND FAILURE TO SIGN THE RECEIVING COPY OF THEIR LETTER REPLY, DID NOT VIOLATE OR THREATENED THEIR CONSTITUTIONAL RIGHT TO LIFE, LIBERTY OR SECURITY; ALLEGATION OF FUTURE HARASSMENTS, FALSE ACCUSATIONS AND POSSIBLE VIOLENCE FROM RESPONDENTS IS BASELESS, UNFOUNDED AND GROUNDED ON PURE SPECULATIONS AND CONJECTURES.—** On petitioners' second and third allegations, we find that the *barangay* captain's act of sending invitation letters to petitioners and failure to sign the receiving copy of their letter-reply did not violate or threaten their constitutional right to life, liberty or security. The records show that *Barangay* Captain Arcayan sufficiently explained the factual basis for his actions. Moreover, the records are bereft of any evidence that petitioners were coerced to attend the conference through the use of force or intimidation. On the contrary, they had full freedom to refuse to attend the conference, as they have in fact done in this case. The fourth allegation of petitioner – that, following these events, they can anticipate more harassment cases, false accusations and possible violence from respondents – is baseless, unfounded, and grounded merely on pure speculations and conjectures. As such, this allegation does not warrant the consideration of this Court.

4. **ID.; ID.; ID.; THE PRIVILEGE OF THE WRIT OF *AMPARO* IS AN EXTRAORDINARY REMEDY ADOPTED TO ADDRESS THE SPECIAL CONCERNS OF EXTRA-LEGAL KILLINGS AND ENFORCED DISAPPEARANCES; THE REMEDY SHOULD BE RESORTED TO AND GRANTED JUDICIOUSLY FOR ITS INTENDED PURPOSE AND NOT INDISCRIMINATELY ON THE BASIS OF UNSUBSTANTIATED**

ALLEGATIONS.— On a final note, we reiterate that the privilege of the writ of *amparo* is an extraordinary remedy adopted to address the special concerns of **extra-legal killings and enforced disappearances**. "Accordingly, the remedy ought to be resorted to and granted judiciously, lest the ideal sought by the *Amparo* Rule be diluted and undermined by the indiscriminate filing of *amparo* petitions for purposes less than the desire to secure *amparo* reliefs and protection and/or on the basis of unsubstantiated allegations."

APPEARANCES OF COUNSEL

VTU & M Legal Team for petitioners.
Castillo and Diaz Law Firm for respondents.

D E C I S I O N

SERENO, C.*J*.:

This Petition for Review on *Certiorari*[1] assails the Resolution[2] of the Regional Trial Court (RTC), Branch 17, Cebu City, in Spec. Proc. No. 16061-CEB. The RTC Resolution denied the Petition for a Writ of *Amparo* filed by petitioner-spouses Nerio and Soledad Pador and Rey Pador against respondents — *Barangay* Captain Bernabe Arcayan, *Barangay Tanod* Chief Romeo Pador, and *Barangay Tanods* Alberto Alivio, Carmelo Revales, Roberto Alimorin, Winelo Arcayan, Christopher Alivio and Bienvenido Arcayan.

On 22 March 2008, petitioners filed with the RTC a Verified Petition for the Issuance of a Writ of *Amparo*.[3]

Petitioners alleged that in February 2008, rumors circulated that petitioner Nerio Pador was a *marijuana* planter in *Barangay*

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[1] *Rollo,* pp. 12-56; Verified Petition for Review on *Certiorari* dated 16 July 2008.

[2] *Id.* at 57-59; Resolution dated 3 July 2008, penned by Judge Silvestre A. Maamo, Jr.

[3] RTC Records, pp. 1-8; Verified Petition dated 22 March 2008.

Tabunan, Cebu City.[4] On 17 March 2008, respondents Alberto Alivio, Carmelo Revales and Roberto Alimorin raided their *ampalaya* farm to search for *marijuana* plants, but found none.[5] After the raid, petitioners Nerio and Rey Pador received invitation letters for a conference from respondent *Barangay* Captain Arcayan.[6] They referred the invitation letters to their counsel, who advised them not to attend and, instead, send a letter-reply to *Barangay* Captain Arcayan. When the latter received the letter-reply, he allegedly read its contents, got one copy, and refused to sign a receipt of the document.[7] Petitioners then concluded that the conduct of the raid, the sending of the invitation letters, the refusal of respondent *barangay* captain to receive their letter-reply — as well as the possibility of more harassment cases, false accusations, and possible violence from respondents — gravely threatened their right to life, liberty and security and necessitated the issuance of a writ of *amparo*.[8]

After examining the contents of the petition and the affidavits attached to it, the RTC issued the Writ and directed respondents to make a verified return.[9]

In compliance with the RTC's directive, respondents filed their Verified Return and/or Comment.[10] In their counter-statement of facts, they alleged that on 16 March 2008, respondent Winelo Arcayan received a report regarding the alleged existence of a *marijuana* plantation in a place called *Sitio* Gining in *Barangay* Tabunan.[11] He then referred the matter to *Barangay Tanod* Chief

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[4] *Id.* at 9; Affidavit of Rosemelinda Pador dated 22 March 2008.

[5] *Id.* at 3; Verified Petition dated 22 March 2008.

[6] *Id.* at 4; Verified Petition dated 22 March 2008.

[7] *Id.*

[8] *Id.* at 4-5; Verified Petition dated 22 March 2008.

[9] *Id.* at 23-24; Writ of *Amparo* dated 26 March 2008.

[10] *Id.* at 28-42; Verified Return and/or Comment on the Petition dated 31 March 2008.

[11] *Id.* at 30; Verified Return and/or Comment on the Petition dated 31 March 2008.

Romeo Pador and *Barangay* Captain Arcayan, who commenced to organize a patrol.[12]

On the morning of 17 March 2008, while the *barangay tanods* were having a final briefing, Carmelo Revales left the place to take his breakfast.[13] While he was taking his breakfast, Nerio Pador, who was riding a motorcycle, stopped and accused the former of uprooting the *marijuana* plants.[14] Carmelo denied any knowledge about the incident, and Nerio thereafter threatened to have him killed. Carmelo promptly reported this threat to the other *barangay tanods.*[15]

Respondents recounted that, notwithstanding Nerio's actions, they proceeded to patrol the area.[16] When they passed by the house of Nerio, he angrily uttered in Cebuano, "If I will be informed who reported the matter to the police, I will attack the informant." Carmelo then asked him, "Who reported to you?" Nerio replied, "I will tell you later once I will be captured by police authorities. All of us will be dead this afternoon. I want a shoot out!"[17]

Respondents thereafter commenced their patrol of a place owned by a certain David Quintana, but their rounds yielded a negative result.[18]

Later that evening, while respondent Alberto Alivio was passing by the house of Nerio, the latter threatened to kill him, saying, "I want to kill now!"[19] Alberto then asked him, "Who reported

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[12] *Id.*

[13] *Id.* at 31; Verified Return and/or Comment on the Petition dated 31 March 2008.

[14] *Id.* at 53-54; Affidavit of Carmelo Revales dated 31 March 2008.

[15] *Id.* at 54; Affidavit of Carmelo Revales dated 31 March 2008.

[16] *Id.* at 31; Verified Return and/or Comment on the Petition dated 31 March 2008.

[17] *Id.* at 54; Affidavit of Carmelo Revales dated 31 March 2008.

[18] *Id.* at 32; Verified Return and/or Comment on the Petition dated 31 March 2008.

[19] *Id.* at 32-33; Verified Return and/or Comment on the Petition dated 31 March 2008.

to you so that the truth will come out?" Nerio then punched the door of his house and said, "I will tell you later when I will be captured by the police authorities!" Alberto then left the place and reported the matter to respondent *Barangay* Captain Arcayan.[20]

In response to the reports, *Barangay* Captain Arcayan stated that he ordered his secretary to prepare invitation letters for petitioners Nerio and Rey Pador, as the allegations of threats and intimidation made by Nerio against some of the *barangay tanods* were serious. *Barangay* Captain Arcayan explained that he no longer signed a copy of petitioners' letter-reply, as he had already been given a copy of it.[21]

The RTC then heard the Petition. On 3 July 2008, it issued the assailed Resolution[22] finding that petitioners' claims were based merely on hearsay, speculations, surmises and conjectures, and that respondents had sufficiently explained the reason behind the issuance of the letters of invitation. It thereafter proceeded to deny petitioners the privilege of the writ of *amparo*.[23]

Dissatisfied with the ruling of the RTC, petitioners filed the instant Petition for Review[24] before this Court, ascribing grave and serious error on the part of the trial court.[25]

The Court's Ruling

We uphold the RTC's Resolution and deny the instant Petition.

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[20] *Id.* at 33; Verified Return and/or Comment on the Petition dated 31 March 2008.

[21] *Id.* at 67; Affidavit of Bernabe Arcayan dated 8 April 2008.

[22] *Id.* at 136-138; Resolution dated 3 July 2008.

[23] *Id.* at 138; Resolution dated 3 July 2008.

[24] *Rollo,* pp. 12-56; Verified Petition for Review on *Certiorari* dated 16 July 2008.

[25] *Id.* at 19; Verified Petition for Review on *Certiorari* dated 16 July 2008.

Section 1 of the Rule on the Writ of *Amparo*[26] provides for the grounds that may be relied upon in a petition therefor, as follows:

> SEC. 1. Petition. — The petition for a writ of *amparo* is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.
>
> The writ shall cover extralegal killings and enforced disappearances or threats thereof.

Thus, to be entitled to the privilege of the writ, petitioners must prove by substantial evidence[27] that their rights to life, liberty and security are being violated or threatened by an unlawful act or omission.

A closer look at the instant Petition shows that it is anchored on the following allegations: *first,* that respondents conducted a raid on the property of petitioner based on information that the latter were cultivators of *marijuana; second,* that respondent *barangay* captain sent them invitation letters without stating the purpose of the invitation; *third,* that respondent *barangay* captain refused to receive petitioners' letter-reply; and *fourth*, that petitioners anticipate the possibility of more harassment cases, false accusations, and potential violence from respondents.

All these allegations are insufficient bases for a grant of the privilege of the writ.

On the first allegation, we find that the supposed raid on petitioners' *ampalaya* farm was sufficiently controverted by respondents.

Respondents alleged, and the trial court found, that a roving patrol was conducted, not on the *ampalaya* farm of Nerio Pador, but on an area locally called *Sitio* Gining, which was beside the lot possessed by David Quintana.[28]

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[26] A.M. No. 07-9-12-SC, adopted on 16 October 2007.

[27] Secs. 17 and 18, Rule on the Writ of *Amparo*.

[28] RTC Records, p. 138; Resolution dated 3 July 2008.

Assuming, however, that respondents had in fact entered the *ampalaya* farm, petitioner Rey Pador himself admitted that they had done so with his permission, as stated in his affidavit:

> 5. Around 8:00 a.m., I saw Tabunan barangay tanod Roberto Alimorin. I greeted him good morning. He told me that there are reports that marijuana plants were grown at our *ampalaya* farm and that there is already a raid.
>
> 6. Being innocent and nothing to hide, I allowed Mr. Alimorin to search the *ampalaya* farm for marijuana plants.[29]

Finally, even assuming that the entry was done without petitioners' permission, we cannot grant the privilege of the writ of *amparo* based upon a trespass on their *ampalaya* farm. Granting that the intrusion occurred, it was merely a violation of petitioners' property rights. In *Tapuz v. Del Rosario*,[30] we ruled that the writ of *amparo* does not envisage the protection of concerns that are purely property or commercial in nature, as follows:

> [T]he writ of *amparo* was originally conceived as a response to the extraordinary rise in the number of killings and enforced disappearances, and to the perceived lack of available and effective remedies to address these extraordinary concerns. It is intended to address violations of or threats to the rights to life, liberty or security, as an extraordinary and independent remedy beyond those available under the prevailing Rules, or as a remedy supplemental to these Rules. **What it is not, is a writ to protect concerns that are purely property or commercial. Neither is it a writ that we shall issue on amorphous and uncertain grounds.**[31] x x x (Emphasis in the original)

We therefore rule that the alleged intrusion upon petitioners' *ampalaya* farm is an insufficient ground to grant the privilege of the writ of *amparo*.

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[29] *Id.* at 12; Affidavit dated 22 March 2008.

[30] G.R. No. 182484, 17 June 2008, 554 SCRA 768.

[31] *Id.* at 784.

On petitioners' second and third allegations, we find that the *barangay* captain's act of sending invitation letters to petitioners and failure to sign the receiving copy of their letter-reply did not violate or threaten their constitutional right to life, liberty or security. The records show that *Barangay* Captain Arcayan sufficiently explained the factual basis for his actions. Moreover, the records are bereft of any evidence that petitioners were coerced to attend the conference through the use of force or intimidation. On the contrary, they had full freedom to refuse to attend the conference, as they have in fact done in this case.

The fourth allegation of petitioner — that, following these events, they can anticipate more harassment cases, false accusations and possible violence from respondents — is baseless, unfounded, and grounded merely on pure speculations and conjectures. As such, this allegation does not warrant the consideration of this Court.

On a final note, we reiterate that the privilege of the writ of *amparo* is an extraordinary remedy adopted to address the special concerns of **extra-legal killings and enforced disappearances.** "Accordingly, the remedy ought to be resorted to and granted judiciously, lest the ideal sought by the *Amparo* Rule be diluted and undermined by the indiscriminate filing of *amparo* petitions for purposes less than the desire to secure *amparo* reliefs and protection and/or on the basis of unsubstantiated allegations."[32]

WHEREFORE, premises considered, the instant Petition for Review is **DENIED.** The 3 July 2008 Resolution of the Regional Trial Court, Branch 17, Cebu City, in Spec. Proc. No. 16061-CEB is **AFFIRMED.**

SO ORDERED.

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

Perez, J., on official leave.

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[32] *Rubrico v. Macapagal-Arroyo,* G.R. No. 183871, 18 February 2010, 613 SCRA 233, 261.

EN BANC

[G.R. No. 193706. March 12, 2013]

EBRENCIO F. INDOYON, JR., Municipal Treasurer, Lingig, Surigao del Sur, *petitioner, vs.* **COURT OF APPEALS, Twenty-Second Division, Cagayan de Oro City,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; UNDER SUPREME COURT CIRCULAR NO. 2-90, AN APPEAL TAKEN TO THE COURT OR TO THE COURT OF APPEALS BY A WRONG OR INAPPROPRIATE MODE MERITS OUTRIGHT DISMISSAL.—** This Petition invokes the liberality of the Court and considerations of substantial justice in seeking to overturn the Resolutions of the CA. For noncompliance with the Rules of Court and Supreme Court circulars, the Petition filed by petitioner with the CA was properly dismissed. And yet, in the instant Petition, he once again ignores the Rules of Court and a circular issued by this Court. Under Section 1, Rule 45 of the Rules of Court, the proper remedy to question the CA's judgment, final order or resolution, as in the present case, is a petition for review on *certiorari*. The petition must be filed within fifteen (15) days from notice of the judgment, final order or resolution appealed from; or of the denial of petitioner's motion for reconsideration filed in due time after notice of the judgment. By filing a special civil action for *certiorari* under Rule 65, petitioner therefore clearly availed himself of the wrong remedy. Under Supreme Court Circular 2-90, an appeal taken to this Court or to the CA by a wrong or an inappropriate mode merits outright dismissal. On this score alone, the instant Petition may be dismissed.

2. **ID.; ID.; ID.; IGNORANCE OF THE LAW ON APPEALS CANNOT BE TOLERATED; PETITIONER'S PREVIOUS FAILURE TO COMPLY WITH THE RULES SHOWS A PREDILECTION FOR UTTERLY DISREGARDING THE RULES.—** In *Ybanez v. Court of Appeals,* we have said that

the Court cannot tolerate this ignorance of the law on appeals. It has in fact reproached litigants who have sought to delegate to this Court the task of determining under which rule their petitions should fall. In the cited case, we emphasized that paragraph 4(e) of Supreme Court Circular 2-90 specifically warns litigants' counsels to follow to the letter the requisites prescribed by law on appeals. This provision reads: Duty of counsel. — It is therefore incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether these be of fact or law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to his client's cause. The inexcusability of this disregard for the rules becomes even more glaring, considering that petitioner has previously shown grave indifference to technical rules before the CA. As already explained above, the assailed CA Resolution properly dismissed his Petition for failure to comply with procedural rules. He should have learned his lesson from that experience instead of repeating the same disregard for the rules before this Court. We reiterate that under Supreme Court Circular 2-90, the filing of an improper remedy of special civil action for *certiorari* under Rule 65, when the proper remedy should have been to file a petition for review on *certiorari* under Rule 45, merits the outright dismissal of a Petition such as this one. We remind petitioner, as we have consistently reminded countless other litigants, that the invocation of substantial justice is not a magic potion that will automatically compel this Court to set aside technical rules. This principle is especially true when a litigant, as in the present case, shows a predilection for utterly disregarding the Rules.

3. **ID.; ID.; ID.; THE POLICY OF LIBERAL CONSTRUCTION MAY BE INVOKED ONLY IN SITUATIONS IN WHICH THERE IS SOME EXCUSABLE FORMAL DEFICIENCY OR ERROR IN A PLEADING, BUT NOT WHEN THE APPLICATION OF THE POLICY RESULTS IN THE UTTER DISREGARD OF THE RULES.—** We emphasize that an appeal is not a matter of right, but of sound judicial discretion. Thus, an appeal may be availed of only in the

manner provided by law and the rules. Failure to follow procedural rules merits the dismissal of the case, especially when the rules themselves expressly say so, as in the instant case. While the Court, in certain cases, applies the policy of liberal construction, this policy may be invoked only in situations in which there is some excusable formal deficiency or error in a pleading, but not when the application of the policy results in the utter disregard of procedural rules, as in this case. We dread to think of what message may be sent to the lower courts if the highest Court of the land finds fault with them for properly applying the rules. That action will surely demoralize them. More seriously, by rendering for naught the rules that this Court itself has set, it would be undermining its own authority over the lower courts.

4. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NO BASIS TO HOLD THE COURT OF APPEALS GUILTY OF GRAVE ABUSE OF DISCRETION WHEN THE LATTER WAS SIMPLY IMPLEMENTING THE RULES SET FORTH BY THE COURT.—** In any event, even if we were to be liberal and overlook our own Circular 2-90, we rule that there was no grave abuse of discretion on the part of the CA in dismissing, for technical infirmities, the Petition for Review on *Certiorari* filed by petitioner under Rule 43. At the outset, we emphasize that a writ of *certiorari* is an extraordinary prerogative writ that is never demandable as a matter of right. To warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. Applying the above definition to the instant case, we find that there is no basis to ask this Court to hold the CA guilty of grave abuse of discretion when the latter was simply implementing the rules that we ourselves have set forth in several circulars. x x x There is no question that the CA was simply applying the rules laid down by this Court. In fact, petitioner does not question the proper application of the technical rules by the CA. It is precisely

for this reason that he is merely invoking the liberal application of those rules. We also note that not only one but several rules have not been complied with.

5. **ID.; ID.; ID.; *CERTIORARI* CANNOT BE ALLOWED WHEN A PARTY TO A CASE FAILS TO APPEAL A JUDGMENT DESPITE THE AVAILABILITY OF THAT REMEDY; *CERTIORARI IS* NOT A SUBSTITUTE FOR A LOST APPEAL.—** We note that for a proper invocation of the remedy of *certiorari* under Rule 65 of the Revised Rules of Court, one of the essential requisites is that there be no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. As already discussed earlier, the proper remedy of petitioner should have been to file a petition for review on *certiorari*. We cannot help but suspect that his failure to avail himself of that remedy within the reglementary period of 15 days was the reason he filed, instead, the present special civil action. A special civil action provides for a longer period of 60 days from notice of the assailed judgment, order or resolution. We note that the instant Petition was filed 35 days after that notice, by which time petitioner had therefore lost his appeal under Rule 45. In *Republic of the Philippines v. Court of Appeals,* we dismissed a Rule 65 Petition on the ground that the proper remedy for the petitioner therein should have been an appeal under Rule 45 of the Rules of Court. In that case, we stressed how we had time and again reminded members of the bench and the bar that a special civil action for *certiorari* under Rule 65 lies only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Thus, *certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy. *Certiorari* is not a substitute for a lost appeal.

APPEARANCES OF COUNSEL

Gil U. Banaag and *Pastor J. Trimor, Jr.* for petitioner.

DECISION

SERENO, C.*J*.:

This is a Petition for *Certiorari* filed under Rule 65 of the Revised Rules of Court asking this Court to determine once again whether the Court of Appeals, Cagayan de Oro City (CA) committed grave abuse of discretion in dismissing petitioner's Rule 43 Petition for Review on *Certiorari*. The Petition assails the 05 June 2009 and 16 July 2010 Resolutions in CA-G.R. SP No. 02855-MIN of the CA.[1]

FACTS

Petitioner Ebrencio F. Indoyon, Jr., was the municipal treasurer of the Municipality of Lingig, Surigao del Sur, with Salary Grade 24.[2] On 8 August 2005, upon examination of his cash and accounts covering the period 22 June 2005 to 8 August 2005, the Commission on Audit (COA) — through State Auditor III Lino A. Bautista (Auditor Bautista) — discovered that petitioner had incurred a cash shortage in the amount of ₱1,222,648.42.[3]

In an undated letter to petitioner, Auditor Bautista demanded the immediate production of the missing funds and the submission of a written explanation of the shortage.[4]

On 19 September 2005, petitioner replied with a letter addressed to the provincial auditor of Surigao del Sur, admitting therein that the former had personally used the amount of ₱652,000 to

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[1] The Resolution dated 05 June 2009 was penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Edgardo A. Camelo and Ruben C. Ayson, while the Resolution dated 16 July 2010 was penned by Associate Justice Edgardo A. Camelo and concurred in by Associate Justices Leoncia R. Dimagiba and Nina G. Antonio-Valenzuela.

[2] *Rollo,* p. 75; Annex K of Petition; Decision of the Ombudsman dated 30 April 2008, p. 1.

[3] *Id.* at 75-76; Annex K of Petition; Decision of the Ombudsman dated 30 April 2008, pp. 1-2.

[4] *Id.* at 76; p. 2.

put up a project to supplement his income, and that he had allowed other municipal officials and employees to use as cash advances his collections as municipal treasurer.[5]

On 15 March 2006, a Formal Charge for Violation of COA Rules and Regulations was filed against petitioner before the Bureau of Local Government Finance, Department of Finance (BLGF-DOF), CARAGA Administrative Region, Butuan City. The case was docketed as ADM Case No. BLGF-08-0108.[6]

Meanwhile, a letter-complaint dated 6 December 2006 was sent by the Regional Legal and Adjudication-Commission on Audit to the Deputy Ombudsman, Office of the Ombudsman-Mindanao (Ombudsman). It recommended the filing of a criminal case for malversation and an administrative case for dishonesty and grave misconduct against petitioner.[7]

In its Decision dated 2 October 2008, the BLGF-DOF found petitioner guilty of "simple neglect of duty." The dispositive portion of the Decision reads:

PREMISES CONSIDERED, [r]espondent Indoyon is hereby found guilty of **Simple Neglect of Duty**. Considering the evidence that Respondent has taken undue advantage of his position, the penalty imposed is the maximum period which is **six (6) months suspension** from the service without pay. Let copies hereof be furnished the parties concerned and this Bureau advised accordingly.

Let the copies hereof be furnished the parties concerned and this Bureau advised accordingly.

SO ORDERED.[8] (Emphasis supplied)

On 27 November 2008, petitioner filed a Request for Reconsideration of the BLGF-DOF Decision seeking a

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[5] *Id.*

[6] *Id.* at 40; Annex A of Petition; Formal Charge dated 15 March 2006.

[7] *Rollo,* p. 63; Annex G of Petition; letter-complaint to the Deputy Ombudsman dated 6 December 2006.

[8] *Id.* at 55; Annex D of Petition; Decision of the BLGF-DOF dated 2 October 2008, p. 5.

modification of the administrative penalty by the reduction thereof from suspension to the imposition of a fine.[9] The request was partially granted in a Resolution dated 2 February 2009. Thus, instead of a six-month suspension, a fine in an amount equivalent to the six-month salary of petitioner was imposed on him.[10]

Meanwhile, on 30 April 2008, the Ombudsman rendered a Decision in Case No. OMB-M-A-07-024-A finding petitioner guilty of serious dishonesty and grave misconduct and imposing upon him the penalty of dismissal from the service.[11] On 13 March 2009, he filed a Motion for Reconsideration of the Decision, alleging that the jurisdiction over the same administrative Complaint filed before the Ombudsman had first been acquired by the BLGF-DOF.[12] Petitioner alleged that the two administrative cases were one and the same because of their identity of issues, facts and parties. The Ombudsman, however, maintained that the two cases were not identical and accordingly denied petitioner's Motion for Reconsideration.[13]

To enjoin the implementation of the Ombudsman's Decision, petitioner filed a Petition for Review on *Certiorari* under Rule 43 with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction before the CA. The case was docketed as CA-G.R. SP No. 02855-MIN.[14] In a Resolution dated 5 June 2009, the Petition was dismissed on the ground that it suffered not just one technical infirmity, but

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[9] *Id.* at 56-59, Annex E of Petition; Request for Reconsideration dated 27 November 2008.

[10] *Id.* at 60-62, Annex F of Petition; Resolution of BLGF-DOF dated 2 February 2009.

[11] *Id.* at 75-86; Annex K of Petition; Decision of the Ombudsman dated 30 April 2008.

[12] *Id.* at 87-91; Annex L of Petition; Motion for Reconsideration dated 13 March 2009.

[13] *Rollo,* pp. 92-96; Annex M of Petition; Order of the Ombudsman dated 13 April 2009.

[14] *Id.* at 97-107; Annex N of Petition; CA Petition dated 7 April 2009.

several technical infirmities that violated various circulars and issuances of this Court.[15]

Petitioner's Motion for Reconsideration,[16] praying for the relaxation of the procedural rules in the interest of substantial justice, was denied by the CA in a Resolution dated 16 July 2010.[17]

In the meantime, on 24 February 2010, the BLGF-DOF sent a letter to the ICO-Regional Director, BLGF-DOF, Caraga, directing the implementation of the Ombudsman's Decision dated 30 April 2008 dismissing petitioner from the service.[18]

Hence this Petition.

The Solicitor General filed his Comment on 21 February 2011 and petitioner his Reply on 29 March 2011.

ISSUE

The issue for resolution is whether the CA committed grave abuse of discretion in dismissing petitioner's Rule 43 Petition for Review on *Certiorari* on the ground of noncompliance with the Rules of Court and Supreme Court circulars.

THE COURT'S RULING

The Petition is dismissed for being devoid of merit.

Discussion

This Petition invokes the liberality of the Court and considerations of substantial justice in seeking to overturn the Resolutions of the CA. For noncompliance with the Rules of Court and Supreme Court circulars, the Petition filed by petitioner

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[15] *Id.* at 108-110; Annex O of Petition; CA Resolution dated 5 June 2009.

[16] *Id.* at 111-118; Annex P of Petition; Motion for Reconsideration dated 1 July 2009.

[17] *Id.* at 140-143; Annex R of Petition; CA Resolution dated 16 July 2010.

[18] *Id.* at 136-137; Annex Q of Petition; BLGF-DOF Letter dated 24 February 2010.

with the CA was properly dismissed. And yet, in the instant Petition, he once again ignores the Rules of Court and a circular issued by this Court.

Under Section 1, Rule 45 of the Rules of Court, the proper remedy to question the CA's judgment, final order or resolution, as in the present case, is a petition for review on *certiorari*. The petition must be filed within fifteen (15) days from notice of the judgment, final order or resolution appealed from; or of the denial of petitioner's motion for reconsideration filed in due time after notice of the judgment.

By filing a special civil action for *certiorari* under Rule 65, petitioner therefore clearly availed himself of the wrong remedy. Under Supreme Court Circular 2-90,[19] an appeal taken to this Court or to the CA by a wrong or an inappropriate mode merits outright dismissal.[20] On this score alone, the instant Petition may be dismissed.

In *Ybanez v. Court of Appeals*,[21] we have said that the Court cannot tolerate this ignorance of the law on appeals. It has in fact reproached litigants who have sought to delegate to this Court the task of determining under which rule their petitions should fall. In the cited case, we emphasized that paragraph 4 (e) of Supreme Court Circular 2-90 specifically warns litigants' counsels to follow to the letter the requisites prescribed by law on appeals. This provision reads:

> Duty of counsel. — It is therefore incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether these be of fact or law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the requisites for appeal prescribed by law,

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[19] GUIDELINES TO BE OBSERVED IN APPEALS TO THE COURT OF APPEALS AND TO THE SUPREME COURT dated 9 March 1990.

[20] *Villaran v. Department of Agrarian Reform Adjudication Board,* G.R. No. 160882, 7 March 2012; *Sea Power Shipping Enterprises v. Court of Appeals,* 412 Phil. 603 (2001).

[21] 323 Phil. 643 (1996).

ever aware that any error or imprecision in compliance may well be fatal to his client's cause.

The inexcusability of this disregard for the rules becomes even more glaring, considering that petitioner has previously shown grave indifference to technical rules before the CA. As already explained above, the assailed CA Resolution properly dismissed his Petition for failure to comply with procedural rules. He should have learned his lesson from that experience instead of repeating the same disregard for the rules before this Court.

We reiterate that under Supreme Court Circular 2-90, the filing of an improper remedy of special civil action for *certiorari* under Rule 65, when the proper remedy should have been to file a petition for review on *certiorari* under Rule 45, merits the outright dismissal of a Petition such as this one.

We remind petitioner, as we have consistently reminded countless other litigants, that the invocation of substantial justice is not a magic potion that will automatically compel this Court to set aside technical rules.[22] This principle is especially true when a litigant, as in the present case, shows a predilection for utterly disregarding the Rules.

In any event, even if we were to be liberal and overlook our own Circular 2-90, we rule that there was no grave abuse of discretion on the part of the CA in dismissing, for technical infirmities, the Petition for Review on *Certiorari* filed by petitioner under Rule 43.

At the outset, we emphasize that a writ of *certiorari* is an extraordinary prerogative writ that is never demandable as a

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[22] *Panay Railways, Inc. v. Heva Management and Development Corporation,* G.R. No. 154061, 25 January 2012; *Daikoku Electronics Phils., Inc. v. Raza,* G.R. No. 181688, 5 June 2009, 588 SCRA 788; *Suzuki v. De Guzman,* 528 Phil. 1033 (2006); *Zaragoza v. Nobleza,* G.R. No. 144560, 13 May 2004, 428 SCRA 410; *El Reyno Homes, Inc. v. Ernesto Ong,* 445 Phil. 612 (2003); *Lazaro v. CA,* 386 Phil. 412 (2000); *Ginete, et al. v. CA,* 357 Phil. 36 (1998); *Ditching v. CA,* 331 Phil. 665 (1996); *Pedrosa v. Hill,* 327 Phil. 153 (1996); *Galang v. CA,* 276 Phil. 748 (1991).

matter of right.[23] To warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[24]

Applying the above definition to the instant case, we find that there is no basis to ask this Court to hold the CA guilty of grave abuse of discretion when the latter was simply implementing the rules that we ourselves have set forth in several circulars. We quote hereunder the pertinent part of the assailed CA Resolution:

> However, the Petition suffers from several infirmities rendering the Petition fatally defective.
>
> First, no Affidavit of Service was attached to the Petition, in violation of Supreme Court Revised Circular Nos. 1-88 and 19-91, and of Section 13 of Rule 13 of the Rules of Court. They respectively read:
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> Supreme Court Revised Circular Nos. 1-88:
>
> "(2) Form and Service of petition
>
> **A petition** file (under) Rule 45, or under Rule 65, or in a motion for extension **may be denied outright if** it is not clearly legible, or **there is no proof of service on the lower court, tribunal, or office concerned and on the adverse party** in accordance with Section 3, 5 and 10 of Rule 13, attached to the petition or motion for extension when filed." (Emphasis in the original)
>
> Supreme Court Revised Circular Nos. 19-91:
>
> "Effective September 15, 1991, henceforth, **a petition** or motion for extension filed **before this Court shall be dismissed/**

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[23] *Angeles v. Gutierrez,* G.R. Nos. 189161 & 189173, 12 March 2012.

[24] *Roquero v. The Chancellor of UP-Manila,* G.R. No. 181851, 9 March 2010, 614 SCRA 723.

denied outright if there is no such proof of service in accordance with Sections 3 and 5 in relation to Section 10 of Rule 13 of the Rules of Court attached to the petition/motion when filed." (Emphasis in the original)

Section 13 of Rule 13 of the Rules of Court:

"Sec. 13. Proof of Service.

Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If **service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office**. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee." (Emphasis in the original)

Second, The office of the Ombudsman is impleaded as nominal party in the Petition for Review, which is not in accordance with Section 6 of Rule 43 of the Rules of Court, stating as follows:

"SEC. 6. Contents of the Petition. — The petition for review shall (a) state the full names of the parties to the case, **without impleading the court or agencies** either as petitioners or respondents." (Emphasis in the original)

Last, the Court of Origin, as well as the Case Number and the Title of the action are not indicated in the Caption of the Petition. This is in contravention of Supreme Court Circular No. 28-91, which requires that:

"1. Caption of petition or complaint. **The caption of the petition or complaint must include the docket number of the case in the lower court of quasi-judicial agency whose order or judgment is sought to be reviewed.**

x x x x x x x x x

"3. Penalties.

(a) **Any violation of this Circular shall be a cause for the summary dismissal of the**, multiple **petition or complaint**; x x x

IN VIEW OF ALL THESE, the Petition is DISMISSED.

SO ORDERED."[25] (Emphasis in the original)

There is no question that the CA was simply applying the rules laid down by this Court. In fact, petitioner does not question the proper application of the technical rules by the CA. It is precisely for this reason that he is merely invoking the liberal application of those rules. We also note that not only one but several rules have not been complied with.

We emphasize that an appeal is not a matter of right, but of sound judicial discretion. Thus, an appeal may be availed of only in the manner provided by law and the rules.[26] Failure to follow procedural rules merits the dismissal of the case, especially when the rules themselves expressly say so, as in the instant case. While the Court, in certain cases, applies the policy of liberal construction, this policy may be invoked only in situations in which there is some excusable formal deficiency or error in a pleading, but not when the application of the policy results in the utter disregard of procedural rules, as in this case.[27]

We dread to think of what message may be sent to the lower courts if the highest Court of the land finds fault with them for properly applying the rules. That action will surely demoralize them. More seriously, by rendering for naught the rules that this Court itself has set, it would be undermining its own authority over the lower courts.

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[25] *Rollo,* pp. 108-110, CA Resolution dated 5 June 2009.

[26] *Muñoz v. People of the Philippines,* G.R. No. 162772, 14 March 2008, 548 SCRA 473.

[27] *BPI Family Savings Bank, Inc. v. Pryce Gases, Inc.,* G.R. No. 188365, 29 June 2011; *Dadizon v. Court of Appeals,* G.R. No. 159116, 30 September 2009, 601 SCRA 351.

Finally, we note that for a proper invocation of the remedy of *certiorari* under Rule 65 of the Revised Rules of Court, one of the essential requisites is that there be no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.

As already discussed earlier, the proper remedy of petitioner should have been to file a petition for review on *certiorari*. We cannot help but suspect that his failure to avail himself of that remedy within the reglementary period of 15 days was the reason he filed, instead, the present special civil action. A special civil action provides for a longer period of 60 days from notice of the assailed judgment, order or resolution. We note that the instant Petition was filed 35 days after that notice, by which time petitioner had therefore lost his appeal under Rule 45. In *Republic of the Philippines v. Court of Appeals*,[28] we dismissed a Rule 65 Petition on the ground that the proper remedy for the petitioner therein should have been an appeal under Rule 45 of the Rules of Court. In that case, we stressed how we had time and again reminded members of the bench and the bar that a special civil action for *certiorari* under Rule 65 lies only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Thus, *certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy. *Certiorari* is not a substitute for a lost appeal.[29]

WHEREFORE, premises considered, the instant Petition is **DISMISSED.** The 05 June 2009 and 16 July 2010 Resolutions of the Court of Appeals, Cagayan de Oro City in CA-G.R. SP No. 02855-MIN are hereby **AFFIRMED.**

SO ORDERED.

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

Perez, J., on official leave.

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[28] 379 Phil. 92 (2000).

[29] *Id.*

EN BANC

[G.R. No. 203302. March 12, 2013]

MAYOR EMMANUEL L. MALIKSI, *petitioner, vs.* **COMMISSION ON ELECTIONS and HOMER T. SAQUILAYAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHT TO DUE PROCESS; PETITIONER WAS NOT DENIED DUE PROCESS AS HE WAS AWARE OF THE DECRYPTION, PRINTING, AND EXAMINATION OF THE BALLOT IMAGES BY THE COMMISSION ON ELECTIONS (COMELEC) FIRST DIVISION AND EVEN RAISED HIS OBJECTIONS TO THE DECRYPTION IN HIS MOTION FOR RECONSIDERATION BEFORE THE COMELEC *EN BANC*; NO DENIAL OF DUE PROCESS WHERE THERE IS OPPORTUNITY TO BE HEARD, EITHER THROUGH ORAL ARGUMENTS OR THROUGH PLEADINGS.— The records also showed that Maliksi was aware of the decryption, printing, and examination of the ballot images by the COMELEC First Division. The COMELEC First Division issued an Order dated 28 March 2012 directing Saquilayan to deposit the required amount for expenses for the supplies, honoraria, and fee for the decryption of the CF cards, and a copy of the Order was personally delivered to Maliksi's counsel. Maliksi's counsel was likewise given a copy of Saquilayan's Manifestation of Compliance with the 28 March 2012 Order. In an Order dated 17 April 2012, the COMELEC First Division directed Saquilayan to deposit an additional amount for expenses for the printing of additional ballot images from four clustered precincts, and a copy of the Order was again personally delivered to Maliksi's counsel. The decryption took weeks to finish. Clearly, Maliksi was not denied due process. He received notices of the decryption, printing, and examination of the ballot images by the COMELEC First Division. In addition, Maliksi raised his objections to the decryption in his motion for reconsideration before the COMELEC *En Banc*. The Court has ruled: x x x. The essence of due process, we have consistently held, is simply

the opportunity to be heard; as applied to administrative proceedings, due process is the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial-type hearing is not at all times and in all instances essential. The requirement is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. x x x. There is no denial of due process where there is opportunity to be heard, either through oral arguments or pleadings. It is settled that "opportunity to be heard" does not only mean oral arguments in court but also written arguments through pleadings. Thus, the fact that a party was heard on his motion for reconsideration negates any violation of the right to due process. The Court has ruled that denial of due process cannot be invoked where a party was given the chance to be heard on his motion for reconsideration.

2. **ID.; ELECTIONS; ELECTION PROTEST; AUTOMATED ELECTION SYSTEM ACT (R.A. NO. 9369); EVIDENTIARY VALUE OF THE DIGITAL BALLOT IMAGES; THE BALLOT IMAGES IN THE COMPACT FLASH (CF) CARDS, AS WELL AS THE PRINTOUTS OF SUCH IMAGES, ARE THE FUNCTIONAL EQUIVALENT OF THE OFFICIAL BALLOTS FILLED UP BY THE VOTERS, AND MAY BE USED IN AN ELECTION PROTEST.—** We have already ruled that the ballot images in the CF cards, as well as the printouts of such images, are the functional equivalent of the official physical ballots filled up by the voters, and may be used in an election protest. In the recent consolidated cases of *Vinzons-Chato v. House of Representatives Electoral Tribunal and Panotes* and *Panotes v. House of Representatives Electoral Tribunal and Vinzons-Chato*, the Court ruled that "the picture images of the ballots, as scanned and recorded by the PCOS, are likewise 'official ballots' that faithfully capture in electronic form the votes cast by the voter, as defined by Section 2 (3) of R.A . No. 9369." The Court declared that the printouts of the ballot images in the CF cards "are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest." In short, both the ballot images in the CF cards and the printouts of such images have the same evidentiary value as the official physical ballots filled up by the voters. x x x Hence, the COMELEC First Division did

not gravely abuse its discretion in using the ballot images in the CF cards.

3. **ID.; ID.; ID.; ID.; UNDER A.M. NO. 01-7-01-SC, THE OFFICIAL PHYSICAL BALLOTS AND THE BALLOT IMAGES IN THE CF CARDS ARE BOTH ORIGINAL DOCUMENTS AND ARE NOT SECONDARY EVIDENCE.—** Maliksi further alleged that the ballot images in the CF cards should merely be considered as secondary evidence and should be resorted to only when the physical ballots are not available or could not be produced. Maliksi is mistaken. Rule 4 of A.M. No. 01-7-01-SC is clear on this issue. It states: SECTION 1. *Original of an Electronic Document.* - **An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means,** shown to reflect the data accurately. SECTION 2. *Copies as equivalent of the originals.* - When a document is in two or more copies executed at or about the same time with identical contents, or is **a counterpart produced by** the same impression as the original, or from the same matrix, or by mechanical or **electronic recording,** or by chemical reproduction, or by other equivalent techniques **which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.** Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if: (a) a genuine question is raised as to the authenticity of the original; or (b) in the circumstances it would be unjust or inequitable to admit the copy in lieu of the original. The ballot images, which are digital, are electronically generated and written in the CF cards when the ballots are fed into the PCOS machine. The ballot images are the counterparts produced by electronic recording which accurately reproduce the original, and thus are the equivalent of the original. As pointed out by the COMELEC, "[t]he digital images of the physical ballots are electronically and instantaneously generated by the PCOS machines once the physical ballots are fed into and read by the machines." Hence, the ballot images are not secondary evidence. The official physical ballots and the ballot images in the CF cards are both original documents. The ballot images in the CF cards have the same evidentiary weight as the official physical ballots. The Court notes that Maliksi did not raise any allegation that

the use of the ballot images falls under any of the exceptions under Section 2, Rule 4 of A.M. No. 01-7-01-SC that would make their use inadmissible as original ballots.

4. **ID.; ID.; ID.; ID.; THE TAMPERING OF BALLOTS AND BALLOT BOXES HAD BEEN FULLY ESTABLISHED AND IT JUSTIFIED THE DECRYPTION OF THE BALLOT IMAGES IN THE CF CARDS.—** Contrary to Maliksi's claim, Saquilayan questioned the integrity of the ballot boxes and election paraphernalia before the trial court. In an Urgent Manifestation of Concern and Objections dated 8 June 2010, Saquilayan manifested his serious concern regarding the integrity of the ballot boxes and election paraphernalia which remained under the effective control of Maliksi. Saquilayan informed the trial court that his watchers were being limited to the outside of the building where the ballot boxes and election paraphernalia were kept, thus preventing them from looking over the security of the ballot boxes and election paraphernalia. In the same manifestation, Saquilayan categorically stated that he was "questioning the integrity of the ballot boxes and other election paraphernalia." Saquilayan also alleged in the same manifestation that the trial court could have prescribed a procedure that would allow his watchers to view the ballot boxes and other election paraphernalia that "would have prevented to some degree the tampering of the boxes and election material[s]." Clearly, Saquilayan raised before the trial court the issue of tampering of the ballots and ballot boxes. Further, the COMELEC *En Banc* clarified in its Comment that the COMELEC First Division ordered the decryption, printing, and examination of the digital images because the COMELEC First Division "discovered upon inspection that the integrity of the ballots themselves was compromised and that the ballot boxes were tampered." The COMELEC First Division properly invoked Section 6(f), Rule 2 of the COMELEC Rules of Procedure which states: Sec. 6. Powers and Duties of the Presiding Commissioner. - The powers and duties of the Presiding Commissioner of a Division when discharging its functions in cases pending before the Division shall be as follows: x x x (f) To take such other measures as he may deem proper upon consultation with the other members of the Division. In this case, the

COMELEC *En Banc* categorically stated that the recounting of the physical ballots in the revision before the trial court yielded dubious results. x x x The tampering of the ballots and ballot boxes had been fully established and it justified the decryption of the ballot images in the CF cards.

5. **ID.; ID.; ID.; ID.; THERE IS NOTHING WRONG WITH THE INCLUSION OF THE MATTER OF INHIBITION OF COMMISSIONERS *SARMIENTO* AND *VELASCO* IN THE RESOLUTION.—** We see nothing wrong with the inclusion of the matter of inhibition in the Resolution. Commissioners Sarmiento and Velasco signed the Resolution which means they concurred with the COMELEC *En Banc's* ruling that the motion for their inhibition had no basis. Maliksi himself pointed out that the matter of inhibition is better left to the Commissioner's discretion and thus, he could not impose the inhibition of Commissioners Sarmiento and Velasco just because Commissioner Lim inhibited himself from the case. Commissioners Sarmiento and Velasco are not even required, although they are neither prohibited, to individually explain their vote or to individually answer the motion for inhibition, like what Commissioner Lim did. In this case, the COMELEC *En Banc* ruled on the motion for inhibition. Moreover, the dissent of Commissioners Lim and Velasco in SPR (AE) No. 106-2011 is not a prejudgment of EAC (AE) No. A-22-2011. While the two cases involved the same parties, the only issue in SPR (AE) No. 106-2011 is the issuance of a temporary restraining order to stop the execution of the trial court's decision pending appeal. Contrary to Maliksi's allegation, the ruling in SPR (AE) No. 106-2011 on the temporary restraining order is not a confirmation of the validity of the decision subject of the appeal in EAC (AE) No. A-22-2011. In the same manner, the fact that Commissioner Elias R. Yusoph did not take part in SPR (AE) No. 106-2011 does not mean he should also take no part in EAC (AE) No. A-22-2011 considering that they involve different issues.

BERSAMIN, *J., dissenting opinion:*

1. **POLITICAL LAW; ELECTION LAWS; AUTOMATED ELECTION SYSTEM ACT (R.A. NO. 9369); REVISION OF BALLOTS; THE RULES FOR THE REVISION OF BALLOTS STILL CONSIDER THE OFFICIAL BALLOTS**

TO BE THE PRIMARY OR BEST EVIDENCE OF THE VOTER'S WILL; THE PICTURE IMAGES OF THE BALLOTS ARE TO BE USED ONLY WHEN IT IS FIRST SHOWN THAT THE OFFICIAL BALLOTS ARE LOST OR THEIR INTEGRITY HAS BEEN COMPROMISED.— I submit that the proceedings conducted by the First Division, the results of which became the basis of the questioned resolution, were void and ineffectual for being in abject violation of Maliksi's right to due process of law. The picture images of the ballots are electronic documents that are regarded as the equivalents of the original official ballots themselves. In *Vinzons-Chato v. House of Representatives Electoral Tribunal,* the Court held that "the picture images of the ballots, as scanned and recorded by the PCOS, are likewise 'official ballots' that faithfully capture in electronic form the votes cast by the voter, as defined by Section 2(3) of R.A . No. 9369. As such, the printouts thereof are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest." That the two documents — the official ballot and its picture image — are considered "original documents" simply means that both of them are given equal probative weight. In short, when either is presented as evidence, one is not considered as weightier than the other. **But this juridical reality does not authorize the courts, the COMELEC, and the Electoral Tribunals to quickly and unilaterally resort to the printouts of the picture images of the ballots in the proceedings had before them without notice to the parties. Despite the equal probative weight accorded to the official ballots and the printouts of their picture images, the rules for the revision of ballots adopted for their respective proceedings still consider the official ballots to be the primary or best evidence of the voters' will. In that regard, the picture images of the ballots are to be used only when it is first shown that the official ballots are lost or their integrity has been compromised.**

2. ID.; ID.; ID.; ID.; ID.; THE RULES REQUIRE THAT THE DECRYPTION OF THE IMAGES STORED IN THE COMPACT FLASH (CF) CARDS AND THE PRINTING OF THE DECRYPTED IMAGES TAKE PLACE DURING THE REVISION OR RECOUNT PROCEEDINGS, AND THAT IT IS THE REVISION/RECOUNT COMMITTEE

THAT DETERMINES WHETHER THE BALLOTS ARE UNRELIABLE; IN CASE AT BAR, IT IS THE COMMISSION ON ELECTIONS (COMELEC) FIRST DIVISION THAT MADE THE FINDING THAT THE BALLOTS HAVE BEEN TAMPERED IN THE EXERCISE OF ITS APPELLATE JURISDICTION.— All the rules on revision of ballots stipulate that the printing of the picture images of the ballots may be resorted to only after the proper Revision/Recount Committee has first determined that the integrity of the ballots and the ballot box was not preserved. The foregoing rules further require that the decryption of the images stored in the CF cards and the printing of the decrypted images take place *during the revision or recount proceedings,* and that it is the Revision/ Recount Committee that determines whether the ballots are unreliable. There is a good reason for thus fixing where and by whom the decryption and the printing should be conducted. It is during the revision or recount conducted by the Revision/Recount Committee when the parties are allowed to be represented, with their representatives witnessing the proceedings and timely raising their objections in the course of the proceedings. Moreover, whenever the Revision/Recount Committee makes any determination that the ballots have been tampered and have become unreliable, the parties are immediately made aware of such determination. Here, however, it was not the Revision/Recount Committee or the RTC exercising its original jurisdiction over the protest that made the finding that the ballots had been tampered, but the First Division in the exercise of its appellate jurisdiction. Maliksi was not immediately made aware of that crucial finding because the First Division did not even issue any written resolution stating its reasons for ordering the printing of the picture images.

3. **ID.; ID.; ID.; ID.; ID.; THE FIRST DIVISION'S JUSTIFICATION IN RESORTING TO THE PICTURE IMAGES OF THE BALLOTS IN ITS SEPTEMBER 14, 2012 RESOLUTION DID NOT CURE THE LAPSE AND DID NOT ERASE THE IRREGULARITY THAT HAD ALREADY INVALIDATED ITS PROCEEDINGS.—** The parties were formally notified that the First Division had found that the ballots had been tampered only when they received the resolution of August 15, 2012, whereby the First Division

nullified the decision of the RTC and declared Saquilayan as the duly elected Mayor. Even so, the resolution of the First Division that effect was unusually mute about the factual bases for the finding of ballot box tampering, and did not also particularize how and why the First Division was concluding that the integrity of the ballots had been compromised. All that the First Division uttered as justification was a simple generality of the same being apparent from the allegations of ballot and ballot box tampering and upon inspection of the ballot boxes. x x x It was the COMELEC *En Banc's* assailed resolution of September 14, 2012 that later on provided the explanation to justify the First Division's resort to the picture images of the ballots, by observing that the "unprecedented number of double-votes" exclusively affecting the position of Mayor and the votes for Saquilayan had led to the belief that the ballots had been tampered. However, that observation did not cure the First Division's lapse and did not erase the irregularity that had already invalidated the First Division's proceedings.

4. **ID.; ID.; ID.; ID.; ID.; THE COMELEC'S FIRST DIVISION ARBITRARILY ARROGATED UNTO ITSELF THE CONDUCT OF THE REVISION/RECOUNT PROCEEDINGS AND RECOUNTED THE BALLOTS CONTRARY TO THE REGULAR PROCEDURE OF REMANDING THE PROTEST TO THE TRIAL COURT AND DIRECTING THE RECONSTITUTION OF THE REVISION COMMITTEE FOR THE DECRYPTION AND PRINTING OF THE PICTURE IMAGES AND THE REVISION OF THE BALLOTS ON THE BASIS THEREOF.—** As I see it, the First Division arbitrarily arrogated unto itself the conduct of the revision/recount proceedings and recounted the ballots, contrary to the regular procedure of remanding the protest to the RTC and directing the reconstitution of the Revision Committee for the decryption and printing of the picture images and the revision of the ballots on the basis thereof. Quite unexpectedly, the COMELEC *En Banc* upheld the First Division's unwarranted deviation from the standard procedures by invoking the COMELEC's power to "take such measures as [the Presiding Commissioner] may deem proper," and even citing the Court's minute resolution in *Alliance of Barangay Concerns (ABC) Party-List*

v. Commission on Elections to the effect that the "COMELEC has the power to adopt procedures that will ensure the speedy resolution of its cases. The Court will not interfere with its exercise of this prerogative so long as the parties are amply heard on their opposing claims."

5. **ID.; ID.; ID.; ID.; ID.; THERE WAS VAGUENESS AS TO WHAT RULE HAD BEEN FOLLOWED IN THE DECRYPTION AND PRINTING PROCEEDING.— The First Division denominated the proceedings it conducted as an "appreciation of ballots" like in *Mendoza*. Unlike in *Mendoza*, however, the proceedings conducted by the First Division were adversarial, in that the proceedings included the decryption and printing of the picture images of the ballots and the recount of the votes were to be based on the printouts of the picture images. The First Division did not simply review the findings of the RTC and the Revision Committee, but actually conducted its own recount proceedings using the printouts of the picture image of the ballots. As such, the First Division was bound to notify the parties to enable them to participate in the proceedings. We should not ignore that the parties' participation during the revision/recount proceedings would not benefit only the parties. Such participation was as vital and significant for the COMELEC as well, for only by their participation would the COMELEC's proceedings attain credibility as to the result. In this regard, the COMELEC was less than candid, and was even cavalier in its conduct of the decryption and printing of the picture images of the ballots and the recount proceedings. The COMELEC *En Banc* was merely content with listing the guidelines that the First Division had followed in the appreciation of the ballots and the results of the recount. In short, there was vagueness as to what rule had been followed in the decryption and printing proceeding.**

6. **ID.; ID.; ID.; ID.; ID.; NO EXISTING RULE OF PROCEDURE THAT ALLOWS THE COMELEC FIRST DIVISION TO CONDUCT A RECOUNT IN THE FIRST INSTANCE.— I respectfully point out that the First Division should not conduct the proceedings now being assailed because it was then exercising appellate jurisdiction as to which no existing rule of procedure allowed the First Division to conduct the**

recount in the first instance. The recount proceedings authorized under Section 6, Rule 15 of COMELEC Resolution No. 8804, are to be conducted by the COMELEC Divisions only in the exercise of their *exclusive original jurisdiction* over all election protests involving elective regional (the autonomous regions), provincial and city officials.

7. **ID.; ID.; ID.; ID.; ID.; SECTION 6 (1), RULE 15 OF COMELEC RESOLUTION NO. 8804, AS AMENDED BY COMELEC RESOLUTION NO. 9164, CLEARLY REQUIRES THE PARTIES' PRESENCE DURING THE PRINTING OF THE IMAGES OF THE BALLOT.—** On the other hand, we have Section 6 (l), Rule 15 of COMELEC Resolution No. 8804, as amended by COMELEC Resolution No. 9164, which clearly requires the parties' presence during the printing of the images of the ballots, thus: x x x x (l) In the event the Recount Committee determines that the integrity of the ballots has been violated or has not been preserved, or are wet and otherwise in such a condition that it cannot be recounted, the Chairman of the Committee shall request from the Election Records and Statistics Department (ERSD), the printing of the image of the ballots of the subject precinct stored in the CF card used in the May 10, 2010 elections **in the presence of the parties.** Printing of the ballot images shall proceed only upon prior authentication and certification by a duly authorized personnel of the Election Records and Statistics Department (ERSD) that the data or the images to be printed are genuine and not substitutes.

8. **ID.; CONSTITUTIONAL LAW; RIGHT TO DUE PROCESS; THE BLATANT DISREGARD OF PETITIONER'S RIGHT TO BE INFORMED OF THE DECISION TO PRINT THE PICTURE IMAGES OF THE BALLOTS AND TO CONDUCT THE RECOUNT PROCEEDINGS DURING THE APPELLATE STAGE CANNOT BE BRUSHED ASIDE BY THE INVOCATION OF THE FACT THAT PETITIONER WAS ABLE TO FILE, AFTER ALL, A MOTION FOR RECONSIDERATION.—** The blatant disregard of Maliksi's right to be informed of the decision to print the picture images of the ballots and to conduct the recount proceedings during the appellate stage cannot be brushed aside by the invocation of the fact that Maliksi was able to file,

after all, a motion for reconsideration. To be exact, the motion for reconsideration was actually directed against the entire resolution of the First Division, while Maliksi's claim of due process violation is directed only against the First Division's recount proceedings that resulted in the prejudicial result rendered against him. I note that the First Division did not issue any order directing the recount. Without the written order, Maliksi was deprived of the chance to seek any reconsideration or even to assail the irregularly-held recount through a seasonable petition for *certiorari* in this Court. In that context, he had no real opportunity to assail the conduct of the recount proceedings.

9. ID.; ID.; ID.; IT IS NOT TRUE THAT THE SERVICE OF ORDERS REQUIRING RESPONDENT TO MAKE THE CASH DEPOSITS FOR THE PRINTING OF THE PICTURE IMAGES MADE PETITIONER AWARE OF THE FIRST DIVISION'S DECISION TO PRINT THE PICTURE IMAGES; THE ORDERS STILL DID NOT MEET THE REQUIREMENT OF DUE PROCESS BECAUSE THEY DID NOT SPECIFICALLY INFORM PETITIONER THAT THE BALLOTS HAD BEEN FOUND TAMPERED.— I disagree that the service of the orders requiring Saquilayan to make the cash deposits for the printing of the picture images made Maliksi aware of the First Division's decision to print the picture images. The orders still did not meet the requirement of due process because they did not specifically inform Maliksi that the ballots had been found to be tampered. Nor did the orders offer the factual bases for the finding of tampering. Hence, to leave for Maliksi to surmise on the factual bases for finding the need to print the picture images still violated the principles of fair play, because the responsibility and the obligation to lay down the factual bases and to inform Maliksi as the party to be potentially prejudiced thereby firmly rested on the shoulders of the First Division.

10. ID.; ID.; ID.; THE COURT SHOULD NOT COUNTENANCE A DENIAL OF THE FUNDAMENTAL RIGHT TO DUE PROCESS, WHICH IS THE CORNERSTONE OF OUR LEGAL SYSTEM.— I write this dissent not to validate the victory of any of the parties in the 2010 Elections. That is not the concern of the Court as yet. I dissent only because the Court should not countenance a denial of the fundamental

right to due process, which is a cornerstone of our legal system. I am mindful of the urgent need to speedily resolve this protest because the term of the Mayoralty position involved is about to end. Accordingly, I urge that we quickly remand this case to the COMELEC, instead of to the RTC, for the conduct of the decryption, printing and recount proceedings, with due notice to all the parties and opportunity for them to be present and to participate during such proceedings. Nothing less serves the ideal objective safeguarded by the Constitution.

APPEARANCES OF COUNSEL

Hernandez Custodio Law Offices for petitioner.
The Solicitor General for public respondent.
Charles Perfecto A. Mercado for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for *certiorari*[1] assailing the 14 September 2012 Resolution[2] of the Commission on Elections (COMELEC) *En Banc* which affirmed the 15 August 2012 Resolution[3] of the COMELEC First Division in EAC (AE) No. A-22-2011.

The Antecedent Facts

Emmanuel L. Maliksi (Maliksi) and Homer T. Saquilayan (Saquilayan) were both mayoralty candidates for the Municipality of Imus, Cavite during the 10 May 2010 Automated National

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[1] Under Rule 64 in relation to Rule 65 of the Rules of Court.

[2] *Rollo,* pp. 59-64. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, and Elias R. Yusoph. Commissioner Lucenito N. Tagle took no part while Commissioner Christian Robert S. Lim inhibited himself from the case.

[3] *Id.* at 95-126. Signed by Commissioners Rene V. Sarmiento, Armando C. Velasco, and Christian Robert S. Lim.

and Local Elections. The Municipal Board of Canvassers (MBC) proclaimed Saquilayan as the duly elected municipal mayor garnering a total of 48,181 votes as against Maliksi's 39,682 votes. Thus, based on the MBC's canvass, Saquilayan won over Maliksi by 8,499 votes.

Maliksi filed an election protest before the Regional Trial Court of Imus, Cavite, Branch 22 (trial court), questioning the results of the elections in 209 clustered precincts. The case was docketed as Election Protest No. 009-10. In its 15 November 2011 Decision, the trial court declared Maliksi as the duly elected Municipal Mayor of Imus, Cavite. The trial court ruled that Maliksi garnered 41,088 votes as against Saquilayan's 40,423 votes. Thus, based on the trial court's recount, Maliksi won over Saquilayan by a margin of 665 votes. The dispositive portion of the trial court's decision reads:

> WHEREFORE, in view of all the foregoing, this Court finds the Election Protest filed by Emmanuel L. Maliksi meritorious. Accordingly, Emmanuel L. Maliksi is hereby DECLARED as the duly elected Mayor of the Municipality of Imus, Province of Cavite after having obtained the highest number of legal votes of 41,088 as against Protestant Homer T. Saquilayan's 40,423 votes or a winning margin of 665 votes in favor of the former.
>
> Thus, the election and proclamation of Homer T. Saquilayan as Mayor of Imus, Cavite is hereby ANNULLED and SET ASIDE and he is COMMANDED to immediately CEASE and DESIST from performing the duties and functions of said office.
>
> Finally, pursuant to Section 4, Rule 14 of A.M. 10-4-1-SC, the Clerk of Court is hereby DIRECTED to personally deliver the copy of the signed and promulgated decision on the counsels of the parties.
>
> SO ORDERED.[4]

Saquilayan filed an appeal before the COMELEC, docketed as EAC (AE) No. A-22-2011. Meanwhile, in a Special Order dated 28 November 2011, the trial court granted Maliksi's motion for execution pending appeal.

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[4] *Id.* at 95-96. The RTC decision was penned by Judge Cesar A. Mangrobang.

On 2 December 2011, Saquilayan also filed with the COMELEC a petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction and temporary restraining order or status quo order with prayer for early consideration, docketed as SPR (AE) No. 106-2011, assailing the trial court's Special Order of 28 November 2011 granting execution pending appeal. A COMELEC First Division Order dated 20 December 2011[5] enjoining the trial court from enforcing its 28 November 2011 Special Order was not implemented since only Presiding Commissioner Rene V. Sarmiento (Sarmiento) voted to grant the temporary restraining order while Commissioners Armando C. Velasco (Velasco) and Christian Robert S. Lim (Lim) dissented.

The Resolution of the COMELEC First Division

The COMELEC First Division, after inspecting the ballot boxes, ruled that it was apparent that the integrity of the ballots had been compromised. To determine the true will of the electorate, and since there was an allegation of ballot tampering, the COMELEC First Division examined the digital images of the contested ballots stored in the Compact Flash (CF) cards. The COMELEC First Division used the following guidelines in appreciating the contested ballots:

> 1. *On Marked Ballots.* — The rule is that no ballot should be discarded as marked unless its character as such is unmistakable. The distinction should always be between marks that were apparently, carelessly, or innocently made, which do not invalidate the ballot, and marks purposely placed thereon by the voter with a view to possible future identification of the ballot, which invalidate it. In the absence of any circumstance showing that the intention of the voter to mark the ballot is unmistakable, or any evidence *aliunde* to show that the words or marks were deliberately written or put therein to identify the ballots, the ballots should not be rejected.
>
> 2. *On ballots claimed to have been shaded by two or more persons.*— Unlike in the manual elections where it is easy to identify if a ballot has been written by two persons, in case of an

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

automated election, it would be very hard if not impossible to identify if two persons shaded a single ballot. The best way to identify if a ballot has been tampered is to go to the digital image of the ballot as the PCOS machine was able to capture such when the ballot was fed by the voter into the machine when he cast his vote. In the absence of any circumstance showing that the ballot was shaded by persons other than the voter, the ballots should not be rejected to give effect to the voter's intent.

3. *On ballots with ambiguous votes.* — It has been the position of the Commission to always take into consideration [that] the intent of the voter shall be given effect, taking aside any technicalities. A ballot indicates the voter's will. In the reading and appreciation of ballots, every ballot is presumed valid unless there is a clear reason to justify its rejection. The object in the appreciation of ballots is to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty.

4. *On spurious ballots.* — Ballots have security features like bar codes, ultra-violet inks and such other security marks to be able to preserve its integrity and the PCOS machines were programmed to accept genuine and valid ballots only. Further, the ballots used in the elections were precinct specific, meaning, the PCOS machine assigned to a specific precinct will only accept those ballots designated to such precinct. This follows that the digital images stored in the CF cards are digital images of genuine, authentic and valid ballots. In the absence of any evidence proving otherwise, the Commission will not invalidate a vote cast which will defeat the sovereign will of the electorate.

5. *On over-voting.* — It has been the position of the Commission that over-voting in a certain position will make the vote cast for the position stray but will not invalidate the entire ballot, so in case of over-voting for the contested position, such vote shall be considered stray and will not be credited to any of the contending parties.

6. *On rejected ballots.* — As correctly observed by [the] court *a quo,* with all the security features of the ballot, the PCOS machines will only accept genuine ballots and will reject it if, *inter alia,* fake, duplicate, ballots intended for another precinct, or has been fed an[d] accepted by the machines already. Bearing in mind the voter's will, rejected ballots can still be claimed by the parties

and be admitted as valid votes, if, upon further examination, it is found that the ballot is genuine and was inadvertently rejected by the machine.[6]

After the counting and appreciation of the ballot images in the CF cards of the appealed clustered precincts, the COMELEC First Division came up with the following findings:

Clustered Precinct No.	**Ruling of Trial Court**	**Ruling of COMELEC First Division**	**Votes for Saquilayan**	**Votes for Maliksi**
96	84 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	235	270
61	68 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	230	173
51	133 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded. 2 ballots were declared stray because the slots for Maliksi and	Upon examining the digital images of the ballots, there was no over-voting.	212	182

[6] *Id.* at 102-104.

	Astillero were both shaded.			
42	207 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded. 1 ballot was declared stray because the slots for Maliksi and Astillero were both shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	273	231
36	92 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Maliksi.	154	202
03	33 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the	73	89

		PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.		
49	172 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	279	265
50	153 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Maliksi.	313	275
34	155 ballots were declared stray because both slots for Maliksi and	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was	210	164

	Saquilayan were shaded. 1 ballot was declared stray because the slots for Maliksi and Dominguez were both shaded.	rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.		
35	215 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Saquilayan.	286	288
146	216 ballots were declared stray because both slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	305	271

120	246 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.	309	269
127	248 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	332	304
206	132 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 3 ballots (1 for Saquilayan, 2 for Maliksi) were rejected by the PCOS	136	116

		machine but it was clear that the intent of the voters was to vote for the candidate of choice.		
76	253 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	329	251
202	122 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	140	158
67	203 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that	246	180

		the intent of the voter was to vote for Saquilayan.		
209	168 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	220	171
81	181 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	329	194
87	107 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.	133	147

86	189 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 3 ballots (1 for Maliksi, 2 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.	246	239
91	95 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 3 ballots (2 for Maliksi, 1 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.	137	189

88	75 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Maliksi.	142	223
68	113 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	243	180
45	120 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was	216	211

		rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Maliksi.		
43	101 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 3 ballots (2 for Maliksi, 1 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.	256	182
85	89 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	184	213
74	114 ballots were declared stray because	Upon examining the digital images	179	161

	2 slots for the mayoralty position were shaded.	of the ballots, there was no over-voting. 7 ballots (2 for Maliksi, 5 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.		
47	186 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.	250	226
128	105 ballots were declared stray because 2 slots for the mayoralty	Upon examining the digital images of the ballots, there was no over-voting.	272	223

	position were shaded.			
107	77 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	127	178
97	220 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots (1 for Maliksi, 1 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.	280	299
99	114 ballots were declared	Upon examining the	243	354

	stray because 2 slots for the mayoralty position were shaded.	digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Saquilayan.		
208	154 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	200	163
204	119 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear	269	119

		that the intent of the voters was to vote for Saquilayan.		
201	108 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	143	131
207	338 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	419	117
109	136 ballots were declared stray because 2 slots for the mayoralty	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was	173	257

	position were shaded.	rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.		
131	140 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	297	165
52	98 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	118	87
117	146 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	302	265

100	90 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 3 ballots (2 for Maliksi, 1 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.	370	228
95	215 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	288	270
98	103 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.	218	304

94	257 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Maliksi.	270	150
93	105 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Maliksi.	205	167
64	117 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	170	162

44	169 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	273	200
41	262 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	368	176
130	156 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 3 ballots (2 for Maliksi, 1 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.	314	170

118	126 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 3 ballots (2 for Maliksi, 1 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.	310	248
56	127 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.	202	223
205	153 ballots were declared stray because 2 slots for the mayoralty	Upon examining the digital images of the ballots, there was no	185	242

	position were shaded.	over-voting. 3 ballots (1 for Maliksi, 2 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.		

The COMELEC First Division found that Maliksi obtained a total of 40,092 votes, broken down as follows: (a) 29,170 votes in the clustered precincts not appealed as per statement of votes by precinct, and (b) 10,922 votes in the appealed clustered precincts. On the other hand, Saquilayan obtained a total of 48,521 votes, broken down as follows: (a) 35,908 votes in the clustered precincts not appealed as per statement of votes by precinct, and (b) 12,613 votes obtained in the appealed clustered precincts. Saquilayan won over Maliksi by 8,429 votes. Thus, in a Resolution promulgated on 15 August 2012, the COMELEC First Division nullified the trial court's decision and declared Saquilayan as the duly-elected Municipal Mayor of Imus, Cavite. The COMELEC First Division noted that Maliksi attached a photocopy of an official ballot to his election protest. The COMELEC First Division stated that unless one of the clustered precincts had a photocopying machine, it could only mean that an official ballot was taken out of the polling place to be photocopied, in violation of Section 30 (a) of COMELEC Resolution No. 8786.[7] The dispositive portion of the 15 August 2012 Resolution reads:

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[7] Revised General Instructions for the Board of Election Inspectors (BEI) on the Voting, Counting, and Transmission of Results in Connection with the 10 May 2010 National and Local Elections.

WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to:

1. NULLIFY the pronouncement of the lower court that protestant-appellee EMMANUEL L. MALIKSI is the duly-elected Municipal Mayor of Imus, Cavite and HEREBY DECLARES HOMER T. SAQUILAYAN as the duly-elected Municipal Mayor of the above-mentioned municipality;

2. Further, the Law Department is hereby DIRECTED:

i. To conduct an investigation as to who were responsible for the tampering of the ballot boxes for purposes of filing the appropriate information for violation of election laws; and

ii. To conduct an investigation as to possible violation of election laws and Comelec Resolutions by herein protestant-appellee EMMANUEL L. MALIKSI as to how he was able to secure a photocopy of the official ballot which he attached in his Election Protest.

SO ORDERED.[8]

Maliksi filed a motion for reconsideration of the COMELEC First Division's Resolution and for the voluntary inhibition of Commissioners Sarmiento, Velasco, and Lim from further acting on the case.

The Resolution of the COMELEC *En Banc*

In its 14 September 2012 Resolution, the COMELEC *En Banc* denied Maliksi's motion for reconsideration and affirmed the 15 August 2012 Resolution of the COMELEC First Division.

The COMELEC *En Banc* ruled that the COMELEC First Division did not err in ordering the decryption, printing, and examination of the ballot images in the CF cards instead of recounting the physical ballots. The COMELEC *En Banc* stated that when the case was elevated to it on appeal, it immediately noted an "unprecedented number of double-votes involving 8,387 ballots — exclusively affecting the position of Mayor and

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[8] *Rollo,* pp. 125-126.

specifically affecting the ballots for Saquilayan."[9] The COMELEC *En Banc* further noted:

> x x x. Worth noting also is that these 8,387 ballots all came from 53 clustered precincts specifically pinpointed by Maliksi as his pilot precincts (which is 20% of the total precincts he protested) — thereby affecting a total of 33.38% or more than one-third (1/3) of the total ballots cast in those precincts. We find this too massive to have not been detected on election day, too specific to be random and too precise to be accidental — which leaves a reasonable mind no other conclusion except that those 8,387 cases of double-shading were purposely machinated. These dubious and highly suspicious circumstances left us with no other option but to dispense with the physical ballots and resort to their digital images. To recount the tampered ballots will only yield us tampered results defeating the point of this appeal.[10]

The COMELEC *En Banc* also ruled that it is free to adopt procedures that will ensure the speedy disposition of its cases as long as the parties are amply heard on their opposing claims. The COMELEC *En Banc* ruled that the decryption, printing, and examination of the ballot images in the CF cards are not without basis since a Division, through its Presiding Commissioner, may take such measures as he may deem proper to resolve cases pending before it. The COMELEC *En Banc* ruled that Maliksi was not denied due process because he never questioned the Order of decryption by the COMELEC First Division nor did he raise any objection in any of his pleadings. Further, the ballot images are not mere secondary images, as Maliksi claimed. The digital images of the physical ballots, which are instantaneously written in the CF cards by the PCOS[11] machines the moment the ballots are read and counted, are equivalent to the original for the purpose of the best evidence rule. The COMELEC *En Banc* accorded higher evidentiary value to the ballot images because their integrity are more secure for the following reasons:

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[9] *Id.* at 60.

[10] *Id.*

[11] Precinct Count Optical Scan.

(1) the digital images are encrypted to prevent unauthorized alteration or access;

(2 the ballot images cannot be decrypted or in anyway accessed without the necessary decryption key;

(3) the ballot images may only be decrypted using a special system designed by the COMELEC and not by any ordinary operating system or computer;

(4) the CF cards storing the digital images of all the ballots used in the 10 May 2010 elections are kept in a secured facility within the Commission to prevent unauthorized access.[12]

The COMELEC *En Banc* further ruled that the result of the revision proceedings in the trial court could not be admitted because of the finding by the COMELEC First Division that the recounted ballots were tampered. The COMELEC *En Banc* explained:

The allegation of post-election fraud of Saquilayan was in fact confirmed by the First Division when upon examination of the scanned digital images of all the double-shaded ballots, they were found to bear no traces of double-shading — instead they contain clear and unambiguous votes for Saquilayan. This finding of the First Division proves that double-votes did not exist when the PCOS machines counted them on election day, **[w]hich in turn proves that the ballots recounted and admitted by the trial court were tampered and were clear products of post-election fraud. Under these circumstances, the doctrines in *Rosal v. COMELEC* and *Varias v. COMELEC* edict that the tampered revision result which was the basis of the appealed decision cannot be admitted and cannot be used to overturn the the official count.**[13] (Emphasis in the original; citations omitted)

Finally, the COMELEC *En Banc* ruled that Maliksi had no basis to call for the inhibition of Commissioners Sarmiento and Velasco. Commissioner Lim voluntarily inhibited himself from the case.

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[12] *Rollo,* p. 62.

[13] *Id.*

The dispositive portion of the COMELEC *En Banc's* September 2012 Resolution reads:

> WHEREFORE, premises considered, the MOTION FOR RECONSIDERATION of *Protestant-Appellee* EMMANUEL L. MALIKSI is hereby DENIED for lack of merit. Consequently, we are AFFIRMING the August 15, 2012 Resolution of the First Division NULLIFYING the November 15, 2011 Decision of the Regional Trial Court, Branch 22 of Imus, Cavite.
>
> SO ORDERED.[14]

Hence, Maliksi filed the present petition before this Court.

In a Resolution dated 11 October 2012, this Court issued a temporary restraining order directing the COMELEC *En Banc* to desist from implementing its 14 September 2012 Resolution.

<u>The Issues</u>

The overriding issue in this petition for *certiorari* is whether the COMELEC *En Banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its assailed Resolution dated 14 September 2012. In resolving this issue, we shall examine:

(1) whether Maliksi was deprived of due process when the COMELEC First Division ordered on appeal the decryption, printing, and examination of the ballot images in the CF cards;

(2) whether the ballot images in the CF cards are mere secondary evidence that should only be used when the physical ballots are not available;

(3) whether the issue of tampering of ballots and ballot boxes was belatedly raised by Saquilayan; and

(4) whether there were grounds for the inhibition of Commissioners Sarmiento and Velasco.

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[14] *Id.* at 63.

The Ruling of this Court

We dismiss the petition.

The Alleged Violation of Due Process

Maliksi alleged that he was denied due process when the COMELEC First Division directed the decryption, printing, and examination of the ballot images in the CF cards for the first time on appeal without notice to him, thus depriving him of his right to be present and observe the decryption proceedings.

The records point to the contrary.

In a Motion dated 21 March 2011 filed before the trial court,[15] Saquilayan moved for the printing of the images of the ballots in the CF cards of the contested clustered precincts. Thus, it cannot be said that Saquilayan asked for decryption of the ballot images for the first time only on appeal. Saquilayan had called the attention of the trial court to the unusually large number of double-shaded ballots affecting only the position of Mayor, giving rise to a strong suspicion of tampering of the ballots and ballot boxes. However, the trial court did not immediately act on his motion, as shown by Saquilayan's Omnibus Motion to Resolve and for Issuance of Order[16] dated 14 April 2011.

In an Omnibus Order[17] dated 3 May 2011, the trial court granted Saquilayan's motion for the printing of the ballot images in the CF cards. The trial court gave Saquilayan a period of 30 days within which to accomplish the printing of the ballot images. Saquilayan received a copy of the Omnibus Order on 10 May 2011. On 11 May 2011, he sent a letter to the COMELEC requesting it to forward at the soonest time the CF cards of the protested precincts to the COMELEC Election Records and Statistics Department (ERSD) to enable the decrypting and printing of the ballot images. It turned out that the CF cards

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[15] *Id.* at 283-285, Motion to Print Picture Images of the Ballots Stored in the Memory Cards of the Clustered Precincts.

[16] *Id.* at 286-292.

[17] *Id.* at 293-295.

were still with the trial court. Thus, in a Manifestation and Request[18] dated 20 May 2011, Saquilayan asked the trial court to forward the CF cards of the protested precincts to the ERSD to enable the COMELEC to decrypt and print the ballot images.

In an Order[19] dated 17 June 2011, the trial court noted that the ERSD already specified the main and back-up CF cards that were used in the 10 May 2010 National and Local Elections in Imus, Cavite and the decryption and copying of the ballot images was scheduled to start on 21 June 2011. The trial court then requested the ERSD to specify the procedure that the ERSD would undertake for the decryption of the ballot images. In a letter[20] dated 20 June 2011, Maliksi wrote the ERSD requesting that further proceedings be deferred and held in abeyance in deference to the 17 June 2011 Order of the trial court requiring the ERSD to specify the procedure it would undertake for the decryption.

Thereafter, Maliksi filed a Motion to Consider That Period Has Lapsed to Print Ballot's Picture Images,[21] alleging that Saquilayan was only given a maximum of 30 days within which to accomplish the printing of the ballot images. Maliksi alleged that the period, which was until 22 June 2011, had lapsed and Saquilayan should be considered barred from having access to the electronic data in the COMELEC's back-up server to print the ballot images in the CF cards. The trial court granted Maliksi's motion in its Order dated 3 August 2011.[22] The trial court stated that Saquilayan should have included in his motion to have access to the electronic data a request for the trial court to turn over to the COMELEC the CF cards in its possession. As it turned out, the delay in the turn over of the CF cards likewise delayed the printing of the ballot images in the CF cards.

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[18] *Id.* at 298-300.

[19] *Id.* at 302-303.

[20] *Id.* at 304.

[21] *Id.* at 307-309.

[22] See *rollo,* p. 359. Omnibus Order dated 1 September 2011.

It is clear from the foregoing events that the delay in the printing of the ballot images could not be attributed to Saquilayan alone. In its 17 June 2011 Order, the trial court set a conference on 27 June 2011 upon Maliksi's motion to request the ERSD to specify the procedure it would undertake in decrypting the CF cards. Maliksi then requested for the deferment of the printing of the ballot images in his 20 June 2011 letter to ERSD. However, during the 27 June 2011 hearing, Maliksi's counsel filed in open court his Motion to Consider That Period Has Lapsed to Print Ballot's Picture Images. The trial court acted on the motion by requiring Saquilayan's counsel to comment within five days. The original reason for the hearing, which was for ERSD to specify the procedure it would undertake in decrypting the CF cards, was not even taken up. The trial court eventually granted Maliksi's motion and declared that the period given to Saquilayan had lapsed. The failure of the trial court to turn over the CF cards to the ERSD, as well as the move of Maliksi for the ERSD to specify the procedure in decrypting the CF cards, contributed significantly to the delay in the printing of the ballot images.

The records also showed that Maliksi was aware of the decryption, printing, and examination of the ballot images by the COMELEC First Division. The COMELEC First Division issued an Order[23] dated 28 March 2012 directing Saquilayan to deposit the required amount for expenses for the supplies, honoraria, and fee for the decryption of the CF cards, and a copy of the Order was personally delivered to Maliksi's counsel.[24] Maliksi's counsel was likewise given a copy of Saquilayan's Manifestation of Compliance with the 28 March 2012 Order.[25] In an Order[26] dated 17 April 2012, the COMELEC First Division directed Saquilayan to deposit an additional amount for expenses for the printing of additional ballot images from four clustered

[23] *Rollo,* p. 362.

[24] *Id.* at 361.

[25] *Id.* at 363.

[26] *Id.* at 366.

precincts, and a copy of the Order was again personally delivered to Maliksi's counsel.[27] The decryption took weeks to finish.

Clearly, Maliksi was not denied due process. He received notices of the decryption, printing, and examination of the ballot images by the COMELEC First Division. In addition, Maliksi raised his objections to the decryption in his motion for reconsideration before the COMELEC *En Banc*. The Court has ruled:

> x x x. The essence of due process, we have consistently held, is simply the opportunity to be heard; as applied to administrative proceedings, due process is the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial-type hearing is not at all times and in all instances essential. The requirement is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. x x x[28]

There is no denial of due process where there is opportunity to be heard, either through oral arguments or pleadings.[29] It is settled that "opportunity to be heard" does not only mean oral arguments in court but also written arguments through pleadings.[30] Thus, the fact that a party was heard on his motion for reconsideration negates any violation of the right to due process.[31] The Court has ruled that denial of due process cannot be invoked where a party was given the chance to be heard on his motion for reconsideration.[32]

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[27] *Id.* at 365.

[28] *Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections,* G.R. No. 190529, 29 April 2010, 619 SCRA 585, 596.

[29] *Atty. Octava v. Commission on Elections,* 547 Phil. 647 (2007).

[30] *Salonga v. CA,* 336 Phil. 514 (1997).

[31] See *German Management & Services, Inc. v. Court of Appeals,* 258 Phil. 289 (1989).

[32] *Mendiola v. Civil Service Commission,* G.R. No. 100671, 7 April 1993, 221 SCRA 295.

Evidentiary Value of the Digital Ballot Images

Maliksi assailed the use by the COMELEC First Division of the ballot images in the CF cards. He alleged that the best and most conclusive evidence are the physical ballots themselves, and when they cannot be produced or when they are not available, the election returns would be the best evidence of the votes cast.

We do not agree. We have already ruled that the ballot images in the CF cards, as well as the printouts of such images, are the functional equivalent of the official physical ballots filled up by the voters, and may be used in an election protest.

In the recent consolidated cases of *Vinzons-Chato v. House of Representatives Electoral Tribunal and Panotes* and *Panotes v. House of Representatives Electoral Tribunal and Vinzons-Chato*,[33] the Court ruled that "the picture images of the ballots, as scanned and recorded by the PCOS, are likewise 'official ballots' that faithfully capture in electronic form the votes cast by the voter, as defined by Section 2 (3) of R.A. No. 9369."[34] The Court declared that the printouts of the ballot images in the CF cards "are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest." In short, both the ballot images in the CF cards and the printouts of such images have the same evidentiary value as the official physical ballots filled up by the voters.

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[33] G.R. Nos. 199149 and 201350, 22 January 2013.

[34] Republic Act No. 9369 refers to "AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED 'AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, TO ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS AND ACCURACY OF ELECTIONS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 881, AS AMENDED, REPUBLIC ACT NO. 7166 AND OTHER RELATED ELECTIONS LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.'"

In *Vinzons-Chato* and *Panotes*, the Court explained in length:

Section 2 (3) of R.A. No. 9369 defines "official ballot" where AES is utilized as the "paper ballot, whether printed or generated by the technology applied, that faithfully captures or represents the votes cast by a voter recorded or to be recorded in electronic form."

An automated election system, or AES, is a system using appropriate technology which has been demonstrated in the voting, counting, consolidating, canvassing, and transmission of election result, and other electoral process. There are two types of AES identified under R.A. No. 9369: (1) paper-based election system; and (2) direct recording electronic system. A *paper-based election system,* such as the one adopted during the May 10, 2010 elections, is the type of AES that "use paper ballots, records and counts votes, tabulates, consolidates/canvasses and transmits electronically the results of the vote count. On the other hand, *direct recording electronic election system* "uses electronic ballots, records, votes by means of a ballot display provided with mechanical or electro-optical component that can be activated by the voter, processes data by means of computer programs, record voting data and ballot images, and transmits voting results electronically.

As earlier stated, the May 10, 2010 elections used a paper-based technology that allowed voters to fill out an official paper ballot by shading the oval opposite the names of their chosen candidates. Each voter was then required to personally feed his ballot into the Precinct Count Optical Scan (PCOS) machine which scanned both sides of the ballots simultaneously, meaning, in just one pass. As established during the required demo tests, the system captured the images of the ballots in encrypted format which, when decrypted for verification, were found to be digitized representations of the ballots cast.

We agree, therefore, with both the HRET and Panotes that the picture images of the ballots, as scanned and recorded by the PCOS, are likewise "official ballots" that faithfully captures (sic) in electronic form the votes cast by the voter, as defined by Section 2 (3) of R.A. No. 9369. As such, the printouts thereof are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest.

It bears stressing that the digital images of the ballots captured by the PCOS machine are stored in an encrypted format in the CF

cards. "Encryption is the process of encoding messages (or information) in such a way that eavesdroppers or hackers cannot read it, but that authorized parties can. In an encryption scheme, the message or information (referred to as plaintext) is encrypted using an encryption algorithm, turning it into an unreadable ciphertext. This is usually done with the use of an encryption key, which specifies how the message is to be encoded. Any adversary that can see the ciphertext, should not be able to determine anything about the original message. An authorized party, however, is able to decode the ciphertext using a decryption algorithm, that usually requires a secret decryption key, that adversaries do not have access to."[35] (Citations omitted)

Hence, the COMELEC First Division did not gravely abuse its discretion in using the ballot images in the CF cards.

Maliksi further alleged that the ballot images in the CF cards should merely be considered as secondary evidence and should be resorted to only when the physical ballots are not available or could not be produced.

Maliksi is mistaken.

Rule 4 of A.M. No. 01-7-01-SC[36] is clear on this issue. It states:

SECTION 1. *Original of an Electronic Document.* — **An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means,** shown to reflect the data accurately.

SECTION 2. *Copies as equivalent of the originals.* — **When a document is** in two or more copies executed at or about the same time with identical contents, or is a **counterpart produced** by the same impression as the original, or from the same matrix, or by mechanical or **electronic recording,** or by chemical reproduction, or by other equivalent techniques **which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.**

[35] *Supra* note 33.

[36] Rules on Electronic Evidence.

Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if:

(a) a genuine question is raised as to the authenticity of the original; or

(b) in the circumstances it would be unjust or inequitable to admit the copy in lieu of the original. (Emphasis supplied)

The ballot images, which are digital, are electronically generated and written in the CF cards when the ballots are fed into the PCOS machine. The ballot images are the counterparts produced by electronic recording which accurately reproduce the original, and thus are the equivalent of the original. As pointed out by the COMELEC, "[t]he digital images of the physical ballots are electronically and instantaneously generated by the PCOS machines once the physical ballots are fed into and read by the machines."[37] Hence, the ballot images are not secondary evidence. The official physical ballots and the ballot images in the CF cards are both original documents. The ballot images in the CF cards have the same evidentiary weight as the official physical ballots.

The Court notes that Maliksi did not raise any allegation that the use of the ballot images falls under any of the exceptions under Section 2, Rule 4 of A.M. No. 01-7-01-SC that would make their use inadmissible as original ballots.

Tampering of Ballots and Ballot Boxes

Maliksi alleged that there was no allegation of ballot and ballot box tampering before the trial court. He further alleged that the COMELEC First Division did not explain how it came to the conclusion that the integrity of the ballot boxes had been compromised or that there was ballot tampering.

The records reveal otherwise.

Contrary to Maliksi's claim, Saquilayan questioned the integrity of the ballot boxes and election paraphernalia before the trial court. In an Urgent Manifestation of Concern and

[37] *Rollo,* p. 507.

Objections[38] dated 8 June 2010, Saquilayan manifested his serious concern regarding the integrity of the ballot boxes and election paraphernalia which remained under the effective control of Maliksi. Saquilayan informed the trial court that his watchers were being limited to the outside of the building where the ballot boxes and election paraphernalia were kept, thus preventing them from looking over the security of the ballot boxes and election paraphernalia. In the same manifestation, Saquilayan categorically stated that he was "questioning the integrity of the ballot boxes and other election paraphernalia."[39] Saquilayan also alleged in the same manifestation that the trial court could have prescribed a procedure that would allow his watchers to view the ballot boxes and other election paraphernalia that "would have prevented to some degree the tampering of the boxes and election material[s]."[40] Clearly, Saquilayan raised before the trial court the issue of tampering of the ballots and ballot boxes.

Further, the COMELEC *En Banc* clarified in its Comment[41] that the COMELEC First Division ordered the decryption, printing, and examination of the digital images because the COMELEC First Division "discovered upon inspection that the integrity of the ballots themselves was compromised and that the ballot boxes were tampered."[42] The COMELEC First Division properly invoked Section 6 (f), Rule 2 of the COMELEC Rules of Procedure which states:

Sec. 6. Powers and Duties of the Presiding Commissioner. — The powers and duties of the Presiding Commissioner of a Division when discharging its functions in cases pending before the Division shall be as follows:

x x x x x x x x x

(f) To take such other measures as he may deem proper upon consultation with the other members of the Division.

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

[39] *Id.* at 262.

[40] *Id.* at 264.

[41] *Id.* at 484-516.

[42] *Id.* at 500.

In this case, the COMELEC *En Banc* categorically stated that the recounting of the physical ballots in the revision before the trial court yielded dubious results. The COMELEC *En Banc* stressed:

> **x x x Worth noting also is that these 8,387 ballots all came from 53 clustered precincts specifically pinpointed by Maliksi as his pilot precincts (which is 20% of the total precincts he protested) — thereby affecting a total of 33.38% or more than one-third (1/3) of the total ballots cast in those precincts. We find this too massive to have not been detected on election day, too specific to be random and too precise to be accidental — which leaves a reasonable mind no other conclusion except that those 8,387 cases of double-shading were purposely machinated. These dubious and highly suspicious circumstances left us with no other option but to dispense with the physical ballots and resort to their digital images. To recount the tampered ballots will only yield us tampered results defeating the point of this appeal.**[43] (Emphasis supplied)

The tampering of the ballots and ballot boxes had been fully established and it justified the decryption of the ballot images in the CF cards.

Inhibition of Commissioners Sarmiento and Velasco

Maliksi alleged that the COMELEC *En Banc* gravely abused its discretion when it included in the body of its 14 September 2012 Resolution a discussion of his motion for the inhibition of Commissioners Sarmiento and Velasco instead of leaving it to their own discretion and prerogative.

We see nothing wrong with the inclusion of the matter of inhibition in the Resolution. Commissioners Sarmiento and Velasco signed the Resolution which means they concurred with the COMELEC *En Banc's* ruling that the motion for their inhibition had no basis. Maliksi himself pointed out that the matter of inhibition is better left to the Commissioner's discretion and thus, he could not impose the inhibition of Commissioners Sarmiento and Velasco just because Commissioner Lim inhibited

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[43] *Id.* at 60.

himself from the case. Commissioners Sarmiento and Velasco are not even required, although they are neither prohibited, to individually explain their vote or to individually answer the motion for inhibition, like what Commissioner Lim did. In this case, the COMELEC *En Banc* ruled on the motion for inhibition. Moreover, the dissent of Commissioners Lim and Velasco in SPR (AE) No. 106-2011 is not a prejudgment of EAC (AE) No. A-22-2011. While the two cases involved the same parties, the only issue in SPR (AE) No. 106-2011 is the issuance of a temporary restraining order to stop the execution of the trial court's decision pending appeal. Contrary to Maliksi's allegation, the ruling in SPR (AE) No. 106-2011 on the temporary restraining order is not a confirmation of the validity of the decision subject of the appeal in EAC (AE) No. A-22-2011. In the same manner, the fact that Commissioner Elias R. Yusoph did not take part in SPR (AE) No. 106-2011 does not mean he should also take no part in EAC (AE) No. A-22-2011 considering that they involve different issues.

In sum, we find no grave abuse of discretion on the part of the COMELEC *En Banc* when it issued the assailed Resolution of 14 September 2012.

WHEREFORE, we **DISMISS** the petition. We **AFFIRM** the Resolution promulgated on 14 September 2012 by the Commission on Elections *En Banc* which affirmed the 15 August 2012 Resolution of the Commission on Elections First Division declaring **HOMER T. SAQUILAYAN** as the duly-elected Municipal Mayor of Imus, Cavite. We **LIFT** the temporary restraining order issued on 11 October 2012. This decision is **IMMEDIATELY EXECUTORY** considering that the remainder of Saquilayan's term of office is only less than five (5) months.

SO ORDERED.

Sereno, C.J., del Castillo, Abad, Villarama, Jr., Perlas-Bernabe, and *Leonen, JJ.,* concur.

Perez, J., the *C.J.* certifies that *J.* Perez left his vote of concurrence with the *ponencia* of *J.* Carpio.

Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Mendoza, and *Reyes, JJ.,* join the dissent of *J.* Bersamin.

Bersamin, J., see dissent.

DISSENTING OPINION

BERSAMIN, *J.*:

I DISSENT.

Petitioner Emmanuel L. Maliksi and respondent Homer T. Saquilayan vied for the position of Mayor of the Municipality of Imus, Cavite during the May 10, 2010 Elections. The Municipal Board of Canvassers (MBC) proclaimed Saquilayan as the winner garnering 48,181 votes, while Maliksi came in second with 39,682 votes. Maliksi filed an election protest in the Regional Trial Court (RTC) in Imus, Cavite, alleging discrepancies and irregularities in the counting of votes in 209 clustered precincts.

Based on the results of the revision, the RTC rendered its November 15, 2011 decision, declaring Maliksi as the duly-elected Mayor, thus:

x x x x x x x x x

WHEREFORE, in view of all the foregoing, this Court finds the Election Protest filed by Emmanuel L. Maliksi meritorious. Accordingly, Emmanuel L. Maliksi is hereby **DECLARED** as the duly elected Mayor of the Municipality of Imus, Province of Cavite after having obtained the highest number of legal votes of **41,088** as against Protestant Homer T. Saquilayan's **40,423** votes or a winning margin of **665** votes in favor of the former.

Thus, the election and proclamation of Homer T. Saquilayan as Mayor of Imus, Cavite is hereby **ANNULLED** and **SET ASIDE** and he is **COMMANDED** to immediately **CEASE** and **DESIST** from performing the duties and functions of said office.

Finally, pursuant to Section 4, Rule 14 of A.M. 10-4-1-SC, the Clerk of Court is hereby **DIRECTED** to personally deliver the copy of the signed and promulgated decision on the counsels of the parties.

SO ORDERED.[1]

Aggrieved, Saquilayan sought recourse from the Commission on Elections (COMELEC) by appeal (docketed as EAC (AE) No. A-22-2011).

In the meantime, Maliksi moved for execution pending appeal, and the RTC granted his motion. Thus, Maliksi was seated as Mayor, prompting Saquilayan to assail the grant of the motion *via* petition for *certiorari* in the COMELEC (docketed as SPR (AE) No. 106-2011).

After the parties filed their respective briefs in EAC (AE) No. A-22-2011, the COMELEC First Division issued an order dated March 28, 2012, requiring Saquilayan to deposit the amount necessary for the printing of the ballot images, thus:

x x x x x x x x x

In as much as the printing of ballot image in the instant case would entail expense for supplies, honoraria, one-time fee for the use of the system in the decryption of the CF cards, and storage fee for the ballot boxes, it is hereby **RESOLVED** that the appellant be directed to deposit to the Cash Division of the Commission, the amount of One Hundred Nineteen Thousand Seven Hundred Fourteen Pesos (₱119,714.00)

WHEREFORE, appellant shall deposit the required amount within three days from receipt hereof.

The Division Clerk of the Commission is **DIRECTED** to immediately purchase the necessary supplies needed in the printing of ballot image, hence, is authorized [to] withdraw the amount above

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[1] *Rollo,* pp. 95-96.

stated. She shall submit the liquidation report on the cash advance within thirty (30) days from termination of proceedings.

SO ORDERED.[2]

The First Division later issued another order dated April 17, 2012, requiring Saquilayan to augment his cash deposit.[3]

Finally, on August 15, 2012, the First Division issued a resolution nullifying the RTC's decision,[4] to wit:

x x x x x x x x x

WHEREFORE, premises considered, the Commission **RESOLVED** as it hereby **RESOLVES**, to:

1. **NULLIFY** the pronouncement of the lower court that protestant-appellee **EMMANUEL L. MALIKSI** is the duly-elected Municipal Mayor of Imus, Cavite and **HEREBY DECLARES HOMER T. SAQUILAYAN** as the duly-elected Municipal Mayor of the above-mentioned municipality;

2. Further, the Law Department is hereby **DIRECTED**:

i. To conduct an investigation as to who were responsible for the tampering of the ballot boxes for purposes of filing the appropriate information for violation of election laws; and

ii. To conduct an investigation as to possible violation of election laws and Comelec Resolutions by herein protestant-appellee **EMMANUEL L. MALIKSI** as to how he was able to secure a photocopy of the official ballot which he attached in his Election Protest.

SO ORDERED.[5]

In its resolution, the First Division ratiocinated that:

x x x x x x x x x

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[2] *Id.* at 362.

[3] *Id.* at 366.

[4] *Id.* at 95-126.

[5] *Id.* at 125.

The Commission (First Division) took into consideration the allegations of ballot and ballot box tampering and upon inspecting the ballot boxes, it is apparent that the integrity of the ballots had been compromised so, to be able to best determine the true will of the electorate, we decided to go over the digital image of the appealed ballots.

In appreciating the appealed ballots, the Commission used the following guidelines:

x x x x x x x x x

Pursuant to this principle, to be able to determine fully the true will of the electorate, we scrutinized the appealed ballots by using its digital images since there is an allegation of ballot tampering.

x x x x x x x x x

After counting and appreciation of the appealed clustered precincts by this Commission (First Division), protestant-appellee Maliksi got FORTY THOUSAND NINETY-TWO (40,092) votes while protestee-appellant Saquilayan got FORTY-EIGHT THOUSAND FIVE HUNDRED TWENTY-ONE (48,521) or a difference of EIGHT THOUSAND FOUR HUNDRED TWENTY-NINE (8,429) votes.[6]

x x x x x x x x x

Maliksi filed an omnibus motion,[7] seeking, *inter alia*, the reconsideration of the First Division Resolution based on the following arguments, namely: (*a*) the decryption proceedings violated his right to due process and were null and void for being held without notice to the parties; and (*b*) ballot images were secondary evidence that could be resorted to only in the event that the ballots were unavailable, or when sufficient proof existed that tampering or substitution had taken place.

On September 14, 2012, the COMELEC *En Banc* issued a resolution, disposing as follows:

x x x x x x x x x

[6] *Id.* at 102-124.

[7] *Id.* at 76-92.

WHEREFORE, premises considered, the MOTION FOR RECONSIDERATION of *Protestant-Appellee* EMMANUEL L. MALIKSI is hereby **DENIED** for lack of merit. Consequently, we are **AFFIRMING** the August 15, 2012 Resolution of the First Division **NULLIFYING** the November 15, 2011 Decision of the Regional Trial Court, Branch 22 of Imus, Cavite.

SO ORDERED.[8]

Maliksi brought this special civil action for *certiorari*, reiterating that: (*a*) his right to due process of law was violated when he was not notified of the decryption, printing and examination of the digital images of the ballots; and (*b*) the printouts of the picture images of the ballots were secondary evidence to be resorted to only when the ballots were not available, or when there was evidence that the integrity of the ballots had not been preserved.

I vote to grant the petition for *certiorari*.

I submit that the proceedings conducted by the First Division, the results of which became the basis of the questioned resolution, were void and ineffectual for being in abject violation of Maliksi's right to due process of law.

The picture images of the ballots are electronic documents that are regarded as the equivalents of the original official ballots themselves.[9] In *Vinzons-Chato v. House of Representatives*

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[8] *Id.* at 63.

[9] 2010 *Rules of Procedure for Municipal Election Contests,* Rule 1, Section 3 (r) defines "electronic document" as follows:

x x x x x x x x x

(r) Electronic document — refers to the record of information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally-signed documents and any printout or output, readable by sight or other means that accurately reflects the electronic document.

For purposes of these Rules, an **electronic document refers to either the picture image of the ballots** or the electronic copies of the electronic

Electoral Tribunal,[10] the Court held that "the picture images of the ballots, as scanned and recorded by the PCOS, are likewise 'official ballots' that faithfully capture in electronic form the votes cast by the voter, as defined by Section 2 (3) of R.A. No. 9369. As such, the printouts thereof are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest."

That the two documents — the official ballot and its picture image — are considered "original documents" simply means that both of them are given equal probative weight. In short, when either is presented as evidence, one is not considered as weightier than the other.

But this juridical reality does not authorize the courts, the COMELEC, and the Electoral Tribunals to quickly and unilaterally resort to the printouts of the picture images of the ballots in the proceedings had before them without notice

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returns, the statements of votes, the certificates of canvass, the audit log, and other electronic data processed by the PCOS and consolidation machines.

x x x x x x x x x

Likewise, COMELEC Resolution No. 8804 (*In Re: COMELEC Rules of Procedure on Disputes in an Automated Election System in Connection with the May 10, 2010 Elections*), Rule 2, Section 1 (q) defines "electronic document" as follows:

x x x x x x x x x

(q) Electronic document refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means which accurately reflects the electronic document.

For purposes of these Rules, **electronic documents refer to either the picture image of the ballots** and the electronic copies of the electronic returns, the statements of votes, the certificates of canvass, the audit log, and of the other electronic data relative to the processing done by the PCOS machines and the various consolidation machines.

x x x x x x x x x

[10] G.R. No. 199149, January 22, 2013.

to the parties. Despite the equal probative weight accorded to the official ballots and the printouts of their picture images, the rules for the revision of ballots adopted for their respective proceedings still consider the official ballots to be the primary or best evidence of the voters' will. In that regard, the picture images of the ballots are to be used only when it is first shown that the official ballots are lost or their integrity has been compromised.

For instance, Section 6, Rule 10 (*Conduct of Revision*) of the 2010 *Rules of Procedure for Municipal Election Contests,* which governs the proceedings in the Regional Trial Courts exercising original jurisdiction over election protests, provides:

> (m) In the event that the revision committee **determines that the integrity of the ballots and the ballot box have not been preserved**, as when **proof of tampering or substitutio**n exists, it shall proceed to instruct the printing of the picture image of the ballots stored in the data storage device for the precinct. **The court shall provide a non-partisan technical person who shall conduct the necessary authentication process to ensure that the data or image stored is genuine and not a substitute. Only after this determination can the printed picture image be used for the recount.**

A similar procedure is found in the 2010 *Rules of the Presidential Electoral Tribunal,* to wit:

> Rule 43. *Conduct of the revision.* — The revision of votes shall be done through the use of appropriate PCOS machines or manually and visually, as the Tribunal may determine, and according to the following procedures:
>
> x x x x x x x x x
>
> (q) In the event that the RC **determines that the integrity of the ballots and the ballot box was not preserved, as when there is proof of tampering or substitution**, it shall proceed to instruct the printing of the picture image of the ballots of the subject precinct stored in the data storage device for the same precinct. **The Tribunal may avail itself of the assistance of the COMELEC for the service of a non-partisan technical person who shall conduct the necessary authentication process to ensure that the data or images stored**

are genuine and not merely substitutes. It is only upon such determination that the printed picture image can be used for the revision of votes.

x x x x x x x x x

Also, the House of Representatives Electoral Tribunal's *Guidelines on the Revision of Ballots* requires a preliminary hearing to be held for the purpose of determining whether the integrity of the ballots and ballot boxes used in the May 10, 2010 elections was not preserved, as when there is proof of tampering or substitutions, to wit:

Section 10. *Revision of Ballots.*

x x x x x x x x x

(d) When it has been shown, in a **preliminary hearing** set by the parties or by the Tribunal, that the **integrity of the ballots and ballot boxes used in the May 10, 2010 elections was not preserved**, as when there is **proof of tampering or substitutions**, the Tribunal shall direct the printing of the picture images of the ballots of the subject precinct stored in the data storage device for the same precinct. The Tribunal shall provide a non-partisan technical person who shall conduct the necessary **authentication process** to ensure that the data or image stored is genuine and not a substitute. **It is only upon such determination that the printed picture image can be used for the revision**. *(as amended per Resolution of February 10, 2011).*

x x x x x x x x x

Section 6, Rule 15 of COMELEC Resolution No. 8804 *(In Re: Comelec Rules of Procedure on Disputes in An Automated Election System in Connection with the May 10, 2010 Elections)* itself requires that **"the Recount Committee determines that the integrity of the ballots has been violated or has not been preserved, or are wet and otherwise in such a condition that (the ballots) cannot be recounted" before the printing of the image of the ballots should be made, and that such printing should be done "in the presence of the parties,"** to wit:

x x x x x x x x x

(g) Only when the Recount Committee, through its chairman, determines that the integrity of the ballots has been preserved or that no signs of tampering of the ballots are present, will the recount proceed. In case there are signs that the ballots contained therein are tampered, compromised, wet or are otherwise in such a condition that it could not be recounted, the Recount Committee shall follow paragraph (l) of this rule.

x x x x x x x x x

(l) In the event the Recount Committee **determines that the integrity of the ballots has been violated or has not been preserved**, or are wet and otherwise in such a condition that it cannot be recounted, the Chairman of the Committee shall request from the Election Records and Statistics Department (ERSD), the printing of the image of the ballots of the subject precinct stored in the CF card used in the May 10, 2010 elections in the presence of the parties. Printing of the ballot images shall proceed only upon prior authentication and certification by a duly authorized personnel of the Election Records and Statistics Department (ERSD) that the data or the images to be printed are genuine and not substitutes. (*As amended by COMELEC Resolution No. 9164, March 16, 2011*)

x x x x x x x x x

All the foregoing rules on revision of ballots stipulate that the printing of the picture images of the ballots may be resorted to only after the proper Revision/Recount Committee has first determined that the integrity of the ballots and the ballot box was not preserved. The foregoing rules further require that the decryption of the images stored in the CF cards and the printing of the decrypted images take place *during the revision or recount proceedings,* and that it is the Revision/ Recount Committee that determines whether the ballots are unreliable.

There is a good reason for thus fixing where and by whom the decryption and the printing should be conducted. It is during the revision or recount conducted by the Revision/Recount Committee when the parties are allowed to be represented, with their representatives witnessing the proceedings and timely raising their objections in the course of the proceedings. Moreover,

whenever the Revision/Recount Committee makes any determination that the ballots have been tampered and have become unreliable, the parties are immediately made aware of such determination.

Here, however, it was not the Revision/Recount Committee or the RTC exercising its original jurisdiction over the protest that made the finding that the ballots had been tampered, but the First Division in the exercise of its appellate jurisdiction. Maliksi was not immediately made aware of that crucial finding because the First Division did not even issue any written resolution stating its reasons for ordering the printing of the picture images.

The parties were formally notified that the First Division had found that the ballots had been tampered only when they received the resolution of August 15, 2012, whereby the First Division nullified the decision of the RTC and declared Saquilayan as the duly elected Mayor. Even so, the resolution of the First Division that effect was unusually mute about the factual bases for the finding of ballot box tampering, and did not also particularize how and why the First Division was concluding that the integrity of the ballots had been compromised. All that the First Division uttered as justification was a simple generality of the same being apparent from the allegations of ballot and ballot box tampering and upon inspection of the ballot boxes, *viz.*:

x x x x x x x x x

The Commission (First Division) took into consideration the allegations of ballot and ballot box tampering and upon inspecting the ballot boxes, it is **apparent** that the integrity of the ballots had been compromised so, to be able to best determine the true will of the electorate, we decided to go over the digital image of the appealed ballots.[11] (Emphasis supplied)

x x x x x x x x x

It was the COMELEC *En Banc's* assailed resolution of September 14, 2012 that later on provided the explanation to

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[11] *Rollo,* p. 102.

justify the First Division's resort to the picture images of the ballots, by observing that the "unprecedented number of double-votes" exclusively affecting the position of Mayor and the votes for Saquilayan had led to the belief that the ballots had been tampered. However, that observation did not cure the First Division's lapse and did not erase the irregularity that had already invalidated the First Division's proceedings.

The blatant disregard of Maliksi's right to be informed of the decision to print the picture images of the ballots and to conduct the recount proceedings during the appellate stage cannot be brushed aside by the invocation of the fact that Maliksi was able to file, after all, a motion for reconsideration. To be exact, the motion for reconsideration was actually directed against the entire resolution of the First Division, while Maliksi's claim of due process violation is directed only against the First Division's recount proceedings that resulted in the prejudicial result rendered against him. I note that the First Division did not issue any order directing the recount. Without the written order, Maliksi was deprived of the chance to seek any reconsideration or even to assail the irregularly-held recount through a seasonable petition for *certiorari* in this Court. In that context, he had no real opportunity to assail the conduct of the recount proceedings.

I disagree that the service of the orders requiring Saquilayan to make the cash deposits for the printing of the picture images made Maliksi aware of the First Division's decision to print the picture images. The orders still did not meet the requirement of due process because they did not specifically inform Maliksi that the ballots had been found to be tampered. Nor did the orders offer the factual bases for the finding of tampering. Hence, to leave for Maliksi to surmise on the factual bases for finding the need to print the picture images still violated the principles of fair play, because the responsibility and the obligation to lay down the factual bases and to inform Maliksi as the party to be potentially prejudiced thereby firmly rested on the shoulders of the First Division.

As I see it, the First Division arbitrarily arrogated unto itself the conduct of the revision/recount proceedings and recounted the ballots, contrary to the regular procedure of remanding the protest to the RTC and directing the reconstitution of the Revision Committee for the decryption and printing of the picture images and the revision of the ballots on the basis thereof. Quite unexpectedly, the COMELEC *En Banc* upheld the First Division's unwarranted deviation from the standard procedures by invoking the COMELEC's power to "take such measures as [the Presiding Commissioner] may deem proper," and even citing the Court's minute resolution in *Alliance of Barangay Concerns (ABC) Party-List v. Commission on Elections*[12] to the effect that the "COMELEC has the power to adopt procedures that will ensure the speedy resolution of its cases. The Court will not interfere with its exercise of this prerogative so long as the parties are amply heard on their opposing claims."[13]

The COMELEC *En Banc* should not have upheld the deviation of the First Division. Based on the pronouncement in *Alliance of Barangay Concerns v. COMELEC,* the power of the COMELEC to adopt procedures that will ensure the speedy resolution of its cases should still be exercised only after giving to all the parties the opportunity to be heard on their opposing claims. The parties' right to be heard upon adversarial issues and matters is never to be waived or sacrificed, or to be treated so lightly because of the possibility of the substantial prejudice to be thereby caused to the parties, or to any of them.

Mendoza v. Commission on Elections[14] is instructive on when notice to and the participation of the parties are required. In that case, after the revision of the ballots and after the election protest case was submitted for decision, the ballots and ballot boxes were transferred to the Senate Electoral Tribunal (SET) in connection with a protest case pending therein. The petitioner later learned that the COMELEC, with the permission of the

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[12] G.R. No. 199050, August 28, 2012.

[13] *Rollo,* pp. 60-61.

[14] G.R. No. 188308, October 15, 2009, 603 SCRA 692.

SET, had meanwhile conducted proceedings within the SET's premises. The petitioner claimed that his right to due process was violated because he was not given notice by the COMELEC that it would be conducting further proceedings within the SET premises. The Court held otherwise, however, and pointed out:

> After consideration of the respondents' Comments and the petitioner's petition and Reply, we hold that the contested proceedings at the SET ("contested proceedings["]) are **no longer part of the adversarial aspects of the election contest that would require notice of hearing and the participation of the parties**. As the COMELEC stated in its Comment and without any contrary or disputing claim in the petitioner's Reply:
>
> > "However, contrary to the claim of petitioner, public respondent in the appreciation of the contested ballots in EPC No. 2007-44 simultaneously with the SET in SET Case No. 001-07 is not conducting "further proceedings" requiring notice to the parties. There is no revision or correction of the ballots because EPC No. 2007-04 was already submitted for resolution. Public respondent, in coordinating with the SET, is simply resolving the submitted protest case before it. The parties necessarily take no part in said deliberation, which require utmost secrecy. Needless to state, the actual decision-making process is supposed to be conducted only by the designated members of the Second Division of the public respondent in strict confidentiality."
>
> In other words, what took place at the SET were the internal deliberations of the COMELEC, as a quasi-judicial body, in the course of appreciating the evidence presented and deciding the provincial election contest on the merits. These deliberations are no different from judicial deliberations which are considered confidential and privileged. We find it significant that the private respondent's Comment fully supported the COMELEC's position and disavowed any participation in the contested proceeding the petitioner complained about. The petitioner, on the other hand, has not shown that the private respondent was ever present in any proceeding at the SET relating to the provincial election contest.
>
> To conclude, the rights to notice and to be heard are not material considerations in the COMELEC's handling of the Bulacan provincial election contest after the transfer of the ballot boxes to the SET; **no**

proceedings at the instance of one party or of COMELEC has been conducted at the SET that would require notice and hearing because of the possibility of prejudice to the other party. The COMELEC is under no legal obligation to notify either party of the steps it is taking in the course of deliberating on the merits of the provincial election contest. In the context of our standard of review for the petition, we see no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COMELEC in its deliberation on the Bulacan election contest and the appreciation of ballots this deliberation entailed.[15] (Emphasis supplied.)

Here, the First Division denominated the proceedings it conducted as an "appreciation of ballots" like in *Mendoza*. Unlike in *Mendoza*, however, the proceedings conducted by the First Division were adversarial, in that the proceedings included the decryption and printing of the picture images of the ballots and the recount of the votes were to be based on the printouts of the picture images. The First Division did not simply review the findings of the RTC and the Revision Committee, but actually conducted its own recount proceedings using the printouts of the picture image of the ballots. As such, the First Division was bound to notify the parties to enable them to participate in the proceedings.

We should not ignore that the parties' participation during the revision/recount proceedings would not benefit only the parties. Such participation was as vital and significant for the COMELEC as well, for only by their participation would the COMELEC's proceedings attain credibility as to the result. In this regard, the COMELEC was less than candid, and was even cavalier in its conduct of the decryption and printing of the picture images of the ballots and the recount proceedings. The COMELEC *En Banc* was merely content with listing the guidelines that the First Division had followed in the appreciation of the ballots and the results of the recount. In short, there was vagueness as to what rule had been followed in the decryption and printing proceeding.

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[15] *Id.* at 716-717.

Moreover, I respectfully point out that the First Division should not conduct the proceedings now being assailed because it was then exercising appellate jurisdiction as to which no existing rule of procedure allowed the First Division to conduct the recount in the first instance. The recount proceedings authorized under Section 6, Rule 15 of COMELEC Resolution No. 8804, are to be conducted by the COMELEC Divisions only in the exercise of their *exclusive original jurisdiction* over all election protests involving elective regional (the autonomous regions), provincial and city officials.[16]

On the other hand, we have Section 6 (l), Rule 15 of COMELEC Resolution No. 8804, as amended by COMELEC Resolution No. 9164, which clearly requires the parties' presence during the printing of the images of the ballots, thus:

x x x x x x x x x

(l) In the event the Recount Committee determines that the integrity of the ballots has been violated or has not been preserved, or are wet and otherwise in such a condition that it cannot be recounted, the Chairman of the Committee shall request from the Election Records and Statistics Department (ERSD), the printing of the image of the ballots of the subject precinct stored in the CF card used in the May 10, 2010 elections **in the presence of the parties**. Printing of the ballot images shall proceed only upon prior authentication and certification by a duly authorized personnel of the Election Records and Statistics Department (ERSD) that the data or the images to be printed are genuine and not substitutes. (Emphasis supplied.)

x x x x x x x x x

I write this dissent not to validate the victory of any of the parties in the 2010 Elections. That is not the concern of the Court as yet. I dissent only because the Court should not countenance a denial of the fundamental right to due process, which is a cornerstone of our legal system.[17]

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[16] COMELEC Resolution No. 8804, Rule 6, Section 1.

[17] *Pinlac v. Court of Appeals,* G.R. No. 91486, January 19, 2001, 349 SCRA 635.

I am mindful of the urgent need to speedily resolve this protest because the term of the Mayoralty position involved is about to end. Accordingly, I urge that we quickly remand this case to the COMELEC, instead of to the RTC, for the conduct of the decryption, printing and recount proceedings, with due notice to all the parties and opportunity for them to be present and to participate during such proceedings. Nothing less serves the ideal objective safeguarded by the Constitution.

IN VIEW OF THE FOREGOING, I vote to **GRANT** the petition for *certiorari*, and to **REMAND** the protest to the Commission on Elections for the decryption of the picture images of the ballots after due authentication, for the printing of the decrypted ballot images, and for the conduct of the recount proceedings using the printouts of the ballot images, with notice to and in the presence of the parties or their representatives.

SPECIAL FIRST DIVISION

[A.C. No. 9259. March 13, 2013]

JASPER JUNNO F. RODICA, *complainant, vs.* **ATTY. MANUEL "LOLONG" M. LAZARO, ATTY. EDWIN M. ESPEJO, ATTY. ABEL M. ALMARIO, ATTY. MICHELLE B. LAZARO, ATTY. JOSEPH C. TAN, and JOHN DOES,** *respondents.*

SYLLABUS

REMEDIAL LAW; ATTORNEYS; DISBARMENT; THE COURT HAS THE DISCRETION EITHER TO PROCEED WITH THE CASE BY REQUIRING PARTIES TO FILE RESPONSIVE PLEADINGS OR TO DISMISS THE SAME OUTRIGHT; CASE AT BAR.— The Court will outrightly dismiss a Complaint for disbarment when on its face, it is

clearly wanting in merit. Thus, in *International Militia of People Against Corruption & Terrorism v. Chief Justice Davide, Jr.* (*Ret*.) the Court, after finding the Complaint insufficient in form and substance, dismissed the same outright for utter lack of merit. It took the same stand in *Battad v. Senator Defensor-Santiago,* where the disbarment Complaint against respondent therein was *motu proprio* dismissed by this Court after finding "no sufficient justification for the exercise of [its] disciplinary power." In this case, the Court did not dismiss outright the disbarment Complaint. In fact, it even required the respondents to file their respective Answers. Then, after a judicious study of the records, it proceeded to resolve the same although not in complainant's favor. Based on the Complaint and the supporting affidavits attached thereto, and the respective Comments of the respondents, the Court found that the presumption of innocence accorded to respondents was not overcome. Moreover, the Court no longer required complainant to file a Reply since it has the discretion not to require the filing of the same when it can already judiciously resolve the case based on the pleadings thus far submitted. And contrary to complainant's mistaken notion, not all petitions or complaints reach reply or memorandum stage. Depending on the merits of the case, the Court has the discretion either to proceed with the case by first requiring the parties to file their respective responsive pleadings or to dismiss the same outright. Likewise, the Court can proceed to resolve the case without need of informing the parties that the case is already submitted for resolution.

APPEARANCES OF COUNSEL

Marcos Ochoa Serapio & Tan Law Firm for Joseph C. Tan.

R E S O L U T I O N

DEL CASTILLO, *J*.:

For resolution is the Motion for Reconsideration & Motion for Inhibition[1] filed by complainant Jasper Junno F. Rodica of

[1] *Rollo,* pp. 572-579.

our August 23, 2012 Resolution,[2] the dispositive portion of which reads:

> **WHEREFORE,** premises considered, the instant Complaint for disbarment against respondents Atty. Manuel "Lolong" M. Lazaro, Atty. Edwin M. Espejo, Atty. Abel M. Almario, Atty. Michelle B. Lazaro and Atty. Joseph C. Tan is **DISMISSED.** Atty. Edwin M. Espejo is **WARNED** to be more circumspect and prudent in his actuations.
>
> **SO ORDERED.**[3]

In her Motion for Reconsideration & Motion for Inhibition, complainant argues that this Court unfairly ignored the supporting affidavits attached to the Complaint and that this Court should expressly declare whether it is lending credence to said affidavits or not and why.[4]

Complainant next claims that this Court deviated from usual practice and procedure when it proceeded to resolve the disbarment Complaint after the separate Comments of the respondents have been filed without giving her the opportunity to file a Reply. She also faults the Court for deciding the case without first declaring the same to have already been submitted for resolution. To her, this constitutes denial of due process.[5]

Lastly, complainant asserts that this Court's reference to her Affidavit supposedly executed on July 21, 2011 as 'un-notarized' was misplaced. She also insists that the Court's observation that the withdrawal of pending cases should not have been limited "to the RTC case,"[6] is erroneous considering that there were no other pending cases to speak of at that time. She also maintains that the Court erroneously gave the impression that the decision of the Regional Trial Court in Kalibo had already become final.[7]

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[2] *Id.* at 581-598.

[3] *Id.* at 597.

[4] *Id.* at 573.

[5] *Id.* at 573-574.

[6] *Id.* at 621.

[7] *Id.* at 575-576.

Complainant also prays for the inhibition of the justices who participated in this case in the belief that they have been biased against her.

Complainant's Motion for Reconsideration & Motion for Inhibition are totally bereft of merit.

The Court considered the affidavits of Brimar F. Rodica, Timothy F. Rodica and Atty. Ramon S. Diño in resolving the case.

Contrary to complainant's contention, this Court considered the afore-mentioned affidavits as corroborative evidence of the allegations in the Complaint. Nonetheless, in the proper exercise of its discretion, the Court deemed it unnecessary to restate in its August 23, 2012 Resolution the material facts contained in each affidavit as the same would only be mere reiterations of the summarized allegations in the Complaint. In other words, this Court found no necessity to mention the allegations in each affidavit because they were already spelled out in the Complaint. Besides, this Court is under no obligation to specifically mention in its Decision or Resolution each and every piece of evidence of the parties. It would suffice if the Court's factual findings are distinctly stated and the bases for its conclusions clearly spelled out. The Court can validly determine which among the pieces of evidence it will accord credence and which it will ignore for being irrelevant and immaterial.

Complainant was not denied due process.

Complainant's contention that she was denied due process because she was not allowed to file a Reply deserves scant consideration. This is equally true of complainant's argument that this Court deviated from usual procedure when it resolved the disbarment Complaint without first declaring the case to have been submitted for resolution. The Court will outrightly dismiss a Complaint for disbarment when on its face, it is clearly wanting in merit. Thus, in *International Militia of People Against Corruption & Terrorism v. Chief Justice Davide, Jr.*

(Ret.)[8] the Court, after finding the Complaint insufficient in form and substance, dismissed the same outright for utter lack of merit. It took the same stand in *Battad v. Senator Defensor-Santiago,*[9] where the disbarment Complaint against respondent therein was *motu proprio* dismissed by this Court after finding "no sufficient justification for the exercise of [its] disciplinary power."[10] In this case, the Court did not dismiss outright the disbarment Complaint. In fact, it even required the respondents to file their respective Answers. Then, after a judicious study of the records, it proceeded to resolve the same although not in complainant's favor. Based on the Complaint and the supporting affidavits attached thereto, and the respective Comments of the respondents, the Court found that the presumption of innocence accorded to respondents was not overcome. Moreover, the Court no longer required complainant to file a Reply since it has the discretion not to require the filing of the same when it can already judiciously resolve the case based on the pleadings thus far submitted. And contrary to complainant's mistaken notion, not all petitions or complaints reach reply or memorandum stage. Depending on the merits of the case, the Court has the discretion either to proceed with the case by first requiring the parties to file their respective responsive pleadings or to dismiss the same outright. Likewise, the Court can proceed to resolve the case without need of informing the parties that the case is already submitted for resolution.

Also, contrary to complainant's contention, this Court is not mistaken in its reference to complainant's July 21, 2011 Affidavit as "un-notarized." The said Affidavit which was attached to the Complaint as Annex "A" consists only of nine pages with no accompanying jurat. The mention made by the complainant in page 1 of her Complaint that the July 21, 2011 was "acknowledged before Notary Public Joan Ibutnande and entered as Doc. 83, Page 18, Book No. VI, Series of 2011"[11] could not

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[8] 541 Phil. 188 (2007).

[9] A.C. No. 8519, February 22, 2010.

[10] *Id.*

[11] *Rollo,* p. 1.

take the place of the jurat itself as written in the Affidavit. Similarly, this Court finds no merit in complainant's argument that the Court's observation that "the withdrawal should not have been limited to the RTC case as it appears that there are other cases pending with other tribunals and agencies,"[12] is erroneous. She claims to be unaware of any other case pending in other tribunals and agencies. However, this contention is belied by complainant's own declaration in her Sworn Affidavit which was incorporated in her Complaint, *viz.*:

x x x x x x x x x

1. Sometime in 2010, I filed a civil case against Hillview Marketing Corporation, Stephanie Dornau and several others, regarding recovery of possession of [a] certain area that was lost on my property, the illegal encroachment on my property x x x, for recovery of damages and as indemnity x x x captioned as *JASPER J. F. RODICA vs. HILL VIEW MARKETING CORPORATION, et al.* and docketed as Civil Case No. 8987, and assigned at the Regional Trial Court Branch VI of [Kalibo] Aklan;

2. Earlier on, in 2009, I have also filed a case with the HLURB against Hillview Marketing Corporation/its officers, for unfair/ irregular real estate business practices, refund for the purchase price regarding the sale of the Boracay property made to me by Hillview, and some other matters.

x x x x x x x x x[13]

Moreover, in the Answer[14] filed by Atty. Joseph Tan (Atty. Tan) and Atty. Paolo Deston relative to CBD Case No. 12-3360 pending before the Integrated Bar of the Philippines, copy of which was attached to Atty. Tan's Manifestation,[15] several cases were mentioned.[16] Thus, we wonder how complainant could claim to be unaware of them.

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[12] *Id.* at 621.

[13] *Id.* at 2.

[14] *Id.* at 532-554.

[15] *Id.* at 529-531.

[16] a) *Rodica v. Hillview Marketing Corporation, Inc., et al.,* HLURB Case No. R-VI-REM-040709-003, *id*. at 535;

The Motion to Inhibit is denied for lack of basis.

"[An] inhibition must be for just and valid reason. The mere imputation of bias or partiality is not enough ground x x x to inhibit, especially when the charge is without basis."[17] In this case, complainant's imputation that her Complaint was decided by the magistrates of this Court with extreme bias and prejudice is baseless and clearly unfounded.

WHEREFORE, the Motion for Reconsideration & Motion for Inhibition are **DENIED** for lack of merit.

No further pleadings or motions shall be entertained in this case.

SO ORDERED.

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

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b) *Rodica v. Hillview Marketing Corporation, Inc., et al.,* Civil Case No. 8987, Regional Trial Court, Kalibo, Aklan, *id*. at 536;

c) G.R. No. 199108, *id*.;

d) I.S. Nos. INV-11-G-00341, 00342, 00343, 00351, 00352, 00362 and 00363, *id*. at 537;

e) I.S. Nos. INV-12C-00098, INV-12A-00010, INV-12A-00011, INV-12A-00012, INV-12C-00098, INV-12C-00107 and INV-11G-00350, *id*. at 538.

[17] *Spouses Hizon v. Spouses dela Fuente,* 469 Phil. 1076, 1081 (2004).

[*] Per Special Order No. 1226 dated May 30, 2012.

[**] Per Special Order No. 1227 dated May 30, 2012.

FIRST DIVISION

[A.C. No. 9612. March 13, 2013]

JOHNNY M. PESTO, *complainant, vs.* **MARCELITO M. MILLO,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE; VIOLATION IN CASE AT BAR.—** Every attorney owes fidelity to the causes and concerns of his clients. He must be ever mindful of the trust and confidence reposed in him by the clients. His duty to safeguard the clients' interests commences from his engagement as such, and lasts until his effective release by the clients. In that time, he is expected to take every reasonable step and exercise ordinary care as his clients' interests may require. Atty. Millo's acceptance of the sums of money from Johnny and Abella to enable him to attend to the transfer of title and to complete the adoption case initiated the lawyer-client relationship between them. From that moment on, Atty. Millo assumed the duty to render competent and efficient professional service to them as his clients. Yet, he failed to discharge his duty. He was inefficient and negligent in going about what the professional service he had assumed required him to do. He concealed his inefficiency and neglect by giving false information to his clients about having already paid the capital gains tax. In reality, he did not pay the capital gains tax, rendering the clients liable for a substantial financial liability in the form of penalties. Without doubt, Atty. Millo had the obligation to serve his clients with competence and diligence. Rule 18.03, Canon 18 of the Code of Professional Responsibility, expressly so demanded of him.

2. **REMEDIAL LAW; ATTORNEYS; DISBARMENT; A LAWYER WHO IS MADE RESPONDENT IN A DISBARMENT PROCEEDING SHOULD SUBMIT AN EXPLANATION, AND SHOULD MEET THE ISSUE AND OVERCOME THE EVIDENCE AGAINST HIM; FAILURE IN CASE AT BAR; PENALTY.—** A serious administrative complaint like this one

should not be taken for granted or lightly by any respondent attorney. Yet, Atty. Millo did not take the complaint of Johnny seriously enough, and even ignored it for a long period of time. Despite being given several opportunities to do so, Atty. Millo did not file any written answer. He thereby forfeited his right and chance to reasonably explain the circumstances behind the charges against him. Had the complaint been untrue and unfair, it would have been quite easy for him to refute it quickly and seasonably. Indeed, a refutation was the requisite response from any worthy and blameless respondent lawyer. His belated and terse characterization of the charge by claiming that the charge had emanated from a mere "misunderstanding" was not sufficient. He did not thereby refute the charge against him, which omission indicated that the complaint had substance. x x x It even seems very likely that Atty. Millo purposely disregarded the opportunity to answer the charges granted to him out of a desire to delay the investigation of the complaint until both Johnny and Abella, being residents in Canada, would have already lost interest in prosecuting it, or, as happened here, would have already departed this world and be no longer able to rebut whatever refutations he would ultimately make, whether true or not. But the Court is not about to condone such selfish disregard. Let it be emphasized to him and to others similarly disposed that an attorney who is made a respondent in a disbarment proceeding should submit an explanation, and should meet the issue and overcome the evidence against him. The obvious reason for the requirement is that an attorney thus charged must thereby prove that he still maintained that degree of morality and integrity expected of him at all times. x x x The IBP Board of Governors recommended suspension from the practice of law for two months as the penalty to be imposed. The recommended penalty is not well taken. We modify the penalty, because Atty. Millo displayed no remorse as to his misconduct, and could not be given a soft treatment. His professional misconduct warranted a longer suspension from the practice of law because he had caused material prejudice to the clients' interest. He should somehow be taught to be more ethical and professional in dealing with trusting clients like Johnny and Abella, who were innocently too willing to repose their utmost trust in his abilities as a lawyer and in his trustworthiness as a legal professional. He should remember that misconduct has no place

in the heart and mind of a lawyer who has taken the solemn oath to delay no man for money or malice, and to conduct himself as a lawyer according to the best of his knowledge and discretion. Under the circumstances, suspension from the practice of law for six months is the condign and commensurate penalty for him.

3. ID.; ID.; RETURN OF ATTORNEY'S FEES PLUS INTEREST ON THE BASIS THAT THE LAWYER DID NOT RENDER EFFICIENT SERVICE TO THE CLIENT, PROPER; CASE AT BAR.— The Court notes that Atty. Millo already returned the ₱14,000.00 received for the transfer of title. Although he ought also to refund the amount of ₱15,643.75 representing the penalty for the late payment of the capital gains tax, the Court cannot order him to refund that amount because it is not a collection agency. The Court may only direct the repayment of attorney's fees received on the basis that a respondent attorney did not render efficient service to the client. Consequently, Atty. Millo should refund the ₱10,000.00 given in connection with the adoption case, plus interest of 6% *per annum,* reckoned from the finality of this decision.

D E C I S I O N

BERSAMIN, *J.*:

An attorney who conceals his inefficiency and lack of diligence by giving wrong information to his client regarding the matter subject of their professional relationship is guilty of conduct unbecoming an officer of the Court. He thereby violates his Lawyer's Oath to conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his client. He also thereby violates Rule 18.03, Canon 18 of the Code of Professional Responsibility, by which he is called upon to serve his client with competence and diligence.

Antecedents

In this administrative case, Johnny Pesto (Johnny), a Canadian national, charged Atty. Marcelito M. Millo with conduct unbecoming an officer of the Court, misleading his client, bungling

the transfer of title, and incompetence and negligence in the performance of his duty as a lawyer.

Johnny averred that in May 1990, his wife Abella Pesto (Abella) retained the services of Atty. Millo to handle the transfer of title over a parcel of land to her name, and the adoption of her niece, Arvi Jane Dizon;[1] that Johnny and Abella gave to Atty. Millo the amounts of ₱14,000.00 for the transfer of title[2] and ₱10,000.00 for the adoption case;[3] that Atty. Millo thereafter repeatedly gave them false information and numerous excuses to explain his inability to complete the transfer of title; that Atty. Millo likewise made them believe that the capital gains tax for the property had been paid way back in 1991, but they found out upon their return to the country in February 1995 that he had not yet paid the tax; that when they confronted him, Atty. Millo insisted that he had already paid the same, but he could not produce any receipt for the supposed payment; that Atty. Millo reluctantly returned to Abella the amount of ₱14,000.00 only after he stormed out of Atty. Millo's office in exasperation over his stalling tactics; and that Atty. Millo then further promised in writing to assume the liability for the accrued penalties.[4]

Likewise, Johnny blamed Atty. Millo for letting the adoption case be considered closed by the Tarlac office of the Department of Social Welfare and Development (Tarlac DSWD) due to two years of inaction. He stated that Atty. Millo made him and his wife believe that an interview with the Tarlac DSWD had been scheduled on February 14, 1995, but when they arrived at the Tarlac DSWD they were dismayed to be told that no such interview had been scheduled; that adding to their dismay, Atty. Millo could not be reached at all; that it was only upon reaching home in Quezon City when he received word from Atty. Millo that a hearing had again been scheduled on February

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[1] *Rollo,* p. 2.

[2] *Id.* at 8.

[3] *Id.* at 9.

[4] *Id.* at 3.

23, 1995 at 10:00 a.m.; that when they went to the hearing, Atty. Millo could not be found; and that they learned after an hour of waiting in the courthouse in Tarlac that Atty. Millo had requested the hearing to be moved to the afternoon without their knowledge.[5]

Exasperated by Atty. Millo's neglect and ineptitude, Johnny brought this administrative complaint in the Integrated Bar of the Philippines (IBP) on March 14, 1995, praying for disciplinary action to be taken against Atty. Millo, and seeking the refund of ₱15,643.75 representing the penalties for the non-payment of the capital gains tax, and of the ₱10,000.00 given for the adoption case. Being a resident of Canada, he constituted one Tita Lomotan as his attorney-in-fact to represent him during his and his wife's absence from the country.

On July 10, 1995, the IBP ordered Atty. Millo to file his answer.[6] Although an extension of the period to file was granted at his instance,[7] he filed no answer in the end.[8] He did not also appear at the hearings despite due notice.[9]

In the meantime, the IBP required Johnny through Lomotan to engage a counsel. The proceedings were held in abeyance to await the appropriate motion from Johnny's counsel.[10]

The administrative matter did not move for several years. The long delay prompted Johnny to write to the President of the IBP on October 28, 1998.[11] It was only on April 2, 2001, however, that the IBP Commission on Bar Discipline (IBP-CBD) scheduled another hearing on June 29, 2001.[12] At that

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[5] *Id.*

[6] *Id.* at 15.

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

[8] *Id.* at 34.

[9] *Id.* at 34, 35 and 43.

[10] *Id.* at 43.

[11] *Id.* at 55-57.

[12] *Id.* at 59.

hearing, Atty. Millo appeared through a representative, and presented a manifestation/motion,[13] whereby he claimed that Johnny had meanwhile died, and that Abella would be withdrawing the complaint against him.

On October 11, 2001, the IBP-CBD, through Commissioner Victoria Gonzalez-de los Reyes, deemed the case submitted for resolution.[14]

On October 4, 2010, Investigating Commissioner Victor C. Fernandez, to whom the case had been meanwhile transferred, submitted a report and recommendation, whereby he found Atty. Millo liable for violating Canon 18 of the Code of Professional Responsibility, and recommended his suspension from the practice of law for six months.[15]

In Resolution No. XX-2011-235 adopted on November 19, 2011,[16] the IBP Board of Governors affirmed the findings of Investigating Commissioner Fernandez, but lowered the suspension to two months; and ordered Atty. Millo to return the amount of ₱16,000.00, 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 guilty of the charges level(led) against him, Atty. Marcelito Millo is hereby SUSPENDED from the practice of law for a period of two (2) months and is ordered to return the amount of ₱16,000.00 to complainant.

On March 27, 2012, Atty. Millo moved for a reconsideration, stating that he had honestly believed that Abella had already caused the withdrawal of the complaint prior to her own death; that he had already caused the preparation of the documents

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[13] *Id.* at 60.

[14] *Id.* at 70.

[15] *Id.* at 73-80.

[16] *Id.* at 82.

necessary for the transfer of the certificate of title, and had also returned the ₱14,000.00 paid by Johnny; that the adoption case had been finally granted by the trial court; that he had lost contact with Johnny and Abella who resided in Canada; that Juan Daquis, Abella's brother, could have confirmed that the charge had arisen from a simple misunderstanding, and that Abella would cause the withdrawal of the complaint, except that Daquis had meanwhile died in November 2011.[17]

On June 9, 2012, the IBP Board of Governors denied Atty. Millo's motion for reconsideration.[18]

Ruling

We affirm Resolution No. XX-2011-235, but modify the penalty.

Every attorney owes fidelity to the causes and concerns of his clients. He must be ever mindful of the trust and confidence reposed in him by the clients. His duty to safeguard the clients' interests commences from his engagement as such, and lasts until his effective release by the clients. In that time, he is expected to take every reasonable step and exercise ordinary care as his clients' interests may require.[19]

Atty. Millo's acceptance of the sums of money from Johnny and Abella to enable him to attend to the transfer of title and to complete the adoption case initiated the lawyer-client relationship between them. From that moment on, Atty. Millo assumed the duty to render competent and efficient professional service to them as his clients. Yet, he failed to discharge his duty. He was inefficient and negligent in going about what the professional service he had assumed required him to do. He concealed his inefficiency and neglect by giving false information to his clients about having already paid the capital gains tax. In reality, he did not pay the capital gains tax, rendering the clients liable for a substantial financial liability in the form of penalties.

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[17] *Id.* at 81-83.

[18] *Id.* at 87.

[19] *Dizon v. Laurente,* A.C. No. 6597, September 23, 2005, 470 SCRA 595, 600-601.

Without doubt, Atty. Millo had the obligation to serve his clients with competence and diligence. Rule 18.03, Canon 18 of the Code of Professional Responsibility, expressly so demanded of him, to wit:

> CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.
>
> x x x x x x x x x
>
> Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

A serious administrative complaint like this one should not be taken for granted or lightly by any respondent attorney. Yet, Atty. Millo did not take the complaint of Johnny seriously enough, and even ignored it for a long period of time. Despite being given several opportunities to do so, Atty. Millo did not file any written answer. He thereby forfeited his right and chance to reasonably explain the circumstances behind the charges against him. Had the complaint been untrue and unfair, it would have been quite easy for him to refute it quickly and seasonably. Indeed, a refutation was the requisite response from any worthy and blameless respondent lawyer. His belated and terse characterization of the charge by claiming that the charge had emanated from a mere "misunderstanding" was not sufficient. He did not thereby refute the charge against him, which omission indicated that the complaint had substance. It mattered little now that he had in the meantime returned the amount of ₱14,000.00 to the clients, and that the application for adoption had been eventually granted by the trial court. Such events, being not only *post facto,* but also inevitable from sheer passage of time, did not obliterate his liability based on the neglect and ineptitude he had inflicted on his clients. The severe lesson that he must now learn is that he could not ignore without consequences the liberal opportunity the Court and the IBP allowed him to justify his neglect and ineptitude in serving his clients' concerns. Towards him the Court now stays its hand of leniency, lest the Court be unfairly seen as too willing to forego the exaction of

responsibility upon a lawyer as neglectful and inept as he had been towards his clients.

It even seems very likely that Atty. Millo purposely disregarded the opportunity to answer the charges granted to him out of a desire to delay the investigation of the complaint until both Johnny and Abella, being residents in Canada, would have already lost interest in prosecuting it, or, as happened here, would have already departed this world and be no longer able to rebut whatever refutations he would ultimately make, whether true or not. But the Court is not about to condone such selfish disregard. Let it be emphasized to him and to others similarly disposed that an attorney who is made a respondent in a disbarment proceeding should submit an explanation, and should meet the issue and overcome the evidence against him.[20] The obvious reason for the requirement is that an attorney thus charged must thereby prove that he still maintained that degree of morality and integrity expected of him at all times.

Atty. Millo made his situation even worse by consistently absenting himself from the scheduled hearings the IBP had set for his benefit. His disregard of the IBP's orders requiring his attendance in the hearings was not only irresponsible, but also constituted utter disrespect for the Judiciary and his fellow lawyers. Such conduct was absolutely unbecoming of a lawyer, because lawyers are particularly called upon to obey Court orders and processes and are expected to stand foremost in complying with orders from the duly constituted authorities.[21] Moreover, in *Espiritu v. Ulep,*[22] the Court saw the respondent attorney's odious practice of repeatedly and apparently deliberately not appearing in the scheduled hearings as his means of wiggling out from the duty to explain his side. A similar treatment of Atty. Millo's disregard is justified. Indeed, he thereby manifested evasion, a bad trait that no worthy member of the Legal profession should nurture in himself.

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[20] *Camara v. Reyes,* A.C. No. 6121, July 31, 2009, 594 SCRA 484, 488-489.

[21] *Gone v. Ga,* A.C. No. 7771, April 6, 2011, 647 SCRA 243, 249-250.

[22] A.C. No. 5808, May 4, 2005, 458 SCRA 1, 9-10.

Surprisingly, Atty. Millo claimed that his belated response to the charge was due to the assurances of Abella that she would be withdrawing the complaint. The Court disbelieves him, however, and treats his claim as nothing but a belated attempt to save the day for himself. He ought to remember that the withdrawal of an administrative charge for suspension or disbarment based on an attorney's professional misconduct or negligence will not furnish a ground to dismiss the charge. Suspension or disbarment proceedings that are warranted will still proceed regardless of the lack or loss of interest on the part of the complainant. The Court may even entirely ignore the withdrawal of the complaint, and continue to investigate in order to finally determine whether the charge of professional negligence or misconduct was borne out by the record.[23] This approach bespeaks the Court's consistent view that the Legal Profession is not only a lofty and noble calling, but also a rare privilege reserved only for the deserving.

Verily, disciplinary proceedings against attorneys are unlike civil suits where the complainants are the plaintiffs and the respondent attorneys are the defendants. They neither involve private interests nor afford redress for private grievances. They are undertaken and prosecuted solely for the public welfare, for the purpose of preserving the courts of justice from the official ministration of persons unfit to practice law before them. Every attorney is called to answer for every misconduct he commits as an officer of the Court. The complainant or any other person who has brought the attorney's misconduct to the attention of the Court is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.[24]

The IBP Board of Governors recommended suspension from the practice of law for two months as the penalty to be imposed.

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[23] *Camara v. Reyes, supra* note 20, at 484, 489.

[24] *Bautista v. Bernabe,* A.C. No. 6963, February 9, 2006, 482 SCRA 1, 8, citing *Rayos-Ombac v. Rayos,* A.C. No. 2884, January 28, 1998, 285 SCRA 93, 101.

The recommended penalty is not well taken. We modify the penalty, because Atty. Millo displayed no remorse as to his misconduct, and could not be given a soft treatment. His professional misconduct warranted a longer suspension from the practice of law because he had caused material prejudice to the clients' interest.[25] He should somehow be taught to be more ethical and professional in dealing with trusting clients like Johnny and Abella, who were innocently too willing to repose their utmost trust in his abilities as a lawyer and in his trustworthiness as a legal professional. He should remember that misconduct has no place in the heart and mind of a lawyer who has taken the solemn oath to delay no man for money or malice, and to conduct himself as a lawyer according to the best of his knowledge and discretion. Under the circumstances, suspension from the practice of law for six months is the condign and commensurate penalty for him.

The Court notes that Atty. Millo already returned the ₱14,000.00 received for the transfer of title. Although he ought also to refund the amount of ₱15,643.75 representing the penalty for the late payment of the capital gains tax, the Court cannot order him to refund that amount because it is not a collection agency.[26] The Court may only direct the repayment of attorney's fees received on the basis that a respondent attorney did not render efficient service to the client. Consequently, Atty. Millo should refund the ₱10,000.00 given in connection with the adoption case, plus interest of 6% *per annum,* reckoned from the finality of this decision.

WHEREFORE, the Court **FINDS** and **HOLDS Atty. MARCELITO M. MILLO** guilty of violating Canon 18, Rule 18.03 of the Code of Professional Responsibility and the Lawyer's Oath; **SUSPENDS** him from the practice of law for a period of six months effective from notice, with the **STERN WARNING** that any similar infraction in the future will be

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[25] Agpalo, *Legal Ethics,* 2009 ed., p. 518.

[26] *Hanrieder v. De Rivera,* A.M. No. P-05-2026, August 2, 2007, 529 SCRA 46, 52.

dealt with more severely; **ORDERS** him to return to the heirs of Johnny and Abella Pesto within ten days from notice the sum of ₱10,000.00, plus legal interest of 6% *per annum* reckoned from the finality of this decision until full payment; and **DIRECTS** him to promptly submit to this Court written proof of his compliance within thirty days from notice of this decision.

Let copies of this decision be furnished to the Office of the Bar Confidant, to be appended to Atty. Marcelito M. Millo's personal record as an attorney; to the Integrated Bar of the Philippines; and to the Office of the Court Administrator for dissemination to all courts throughout the country for their information and guidance.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 167530. March 13, 2013]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **HYDRO RESOURCES CONTRACTORS CORPORATION,** *respondent*.

[G.R. No. 167561. March 13, 2013]

ASSET PRIVATIZATION TRUST, *petitioner, vs.* **HYDRO RESOURCES CONTRACTORS CORPORATION,** *respondent*.

[G.R. No. 167603. March 13, 2013]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **HYDRO RESOURCES CONTRACTORS CORPORATION,** *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION CODE; CORPORATION; PRINCIPLE OF LIMITED LIABILITY; THE CORPORATE DEBT OR CREDIT IS NOT THE DEBT OF THE STOCKHOLDER; RATIONALE.—** A corporation is an artificial entity created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected. As a consequence of its status as a distinct legal entity and as a result of a conscious policy decision to promote capital formation, a corporation incurs its own liabilities and is legally responsible for payment of its obligations. In other words, by virtue of the separate juridical personality of a corporation, the corporate debt or credit is not the debt or credit of the stockholder. This protection from liability for shareholders is the principle of limited liability.

2. **ID.; ID.; ID.; DOCTRINE OF PIERCING THE CORPORATE VEIL; THE CORPORATE MASK MAY BE REMOVED WHEN THE CORPORATION IS JUST AN ALTER EGO OF A PERSON OR OF ANOTHER CORPORATION.—** Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an *alter ego* of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons. However, the rule is that a court should be careful in assessing the milieu where the doctrine of the corporate veil may be applied. Otherwise an injustice, although unintended, may result from its erroneous application. Thus, cutting through the corporate cover requires an approach characterized by due care and caution: x x x *Sarona v. National Labor Relations Commission* has defined the scope of application of the doctrine of piercing the corporate veil: The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate

entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

3. ID.; ID.; ID.; ID.; ALTER EGO THEORY (INSTRUMENTALITY THEORY); ELEMENTS; NOT PRESENT IN CASE AT BAR.— [C]ase law lays down a three-pronged test to determine the application of the *alter ego* theory, which is also known as the instrumentality theory, namely: (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and (3) The aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of. x x x To summarize, piercing the corporate veil based on the *alter ego* theory requires the concurrence of three elements: control of the corporation by the stockholder or parent corporation, fraud or fundamental unfairness imposed on the plaintiff, and harm or damage caused to the plaintiff by the fraudulent or unfair act of the corporation. **The absence of any of these elements prevents piercing the corporate veil.** This Court finds that none of the tests has been satisfactorily met in this case. In applying the *alter ego* doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation. With respect to the control element, it refers not to paper or formal control by majority or even complete stock control but actual control which amounts to "such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal." In addition, the control must be shown to have been exercised at the time the acts complained of took place.

APPEARANCES OF COUNSEL

Dennis R. Giron for PNB.

DBP Office of the Legal Counsel for DBP.

Law Firm of Tanjuatco & Partners for Hydro Resources Contractors Corp.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

These petitions for review on *certiorari*[1] assail the Decision[2] dated November 30, 2004 and the Resolution[3] dated March 22, 2005 of the Court of Appeals in CA-G.R. CV No. 57553. The said Decision affirmed the Decision[4] dated November 6, 1995 of the Regional Trial Court (RTC) of Makati City, Branch 62, granting a judgment award of ₱8,370,934.74, plus legal interest, in favor of respondent Hydro Resources Contractors Corporation (HRCC) with the modification that the Privatization and Management Office (PMO), successor of petitioner Asset Privatization Trust (APT),[5] has been held solidarily liable with Nonoc Mining and Industrial Corporation (NMIC)[6] and petitioners Philippine National Bank (PNB) and Development Bank of the Philippines (DBP), while the Resolution denied reconsideration separately prayed for by PNB, DBP, and APT.

Sometime in 1984, petitioners DBP and PNB foreclosed on certain mortgages made on the properties of Marinduque Mining

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

[2] *Rollo* (G.R. No. 167530), pp. 56-68; penned by Associate Justice Romeo A. Brawner with Associate Justices Mariano C. del Castillo (now a member of this Court) and Magdangal M. de Leon, concurring.

[3] *Id.* at 70.

[4] *Id.* at 122-136; penned by Judge Roberto C. Diokno.

[5] For purposes of these petitions, the PMO will be referred to as the APT.

[6] Now, the Philnico Processing Corporation. (*Rollo* [G.R. No. 167561], p. 46.)

and Industrial Corporation (MMIC). As a result of the foreclosure, DBP and PNB acquired substantially all the assets of MMIC and resumed the business operations of the defunct MMIC by organizing NMIC.[7] DBP and PNB owned 57% and 43% of the shares of NMIC, respectively, except for five qualifying shares.[8] As of September 1984, the members of the Board of Directors of NMIC, namely, Jose Tengco, Jr., Rolando Zosa, Ruben Ancheta, Geraldo Agulto, and Faustino Agbada, were either from DBP or PNB.[9]

Subsequently, NMIC engaged the services of Hercon, Inc., for NMIC's Mine Stripping and Road Construction Program in 1985 for a total contract price of ₱35,770,120. After computing the payments already made by NMIC under the program and crediting the NMIC's receivables from Hercon, Inc., the latter found that NMIC still has an unpaid balance of ₱8,370,934.74.[10] Hercon, Inc. made several demands on NMIC, including a letter of final demand dated August 12, 1986, and when these were not heeded, a complaint for sum of money was filed in the RTC of Makati, Branch 136 seeking to hold petitioners NMIC, DBP, and PNB solidarily liable for the amount owing Hercon, Inc.[11] The case was docketed as Civil Case No. 15375.

Subsequent to the filing of the complaint, Hercon, Inc. was acquired by HRCC in a merger. This prompted the amendment of the complaint to substitute HRCC for Hercon, Inc.[12]

Thereafter, on December 8, 1986, then President Corazon C. Aquino issued Proclamation No. 50 creating the APT for the expeditious disposition and privatization of certain government corporations and/or the assets thereof. Pursuant to the said Proclamation, on February 27, 1987, DBP and PNB executed

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[7] *Rollo* (G.R. No. 167530), p. 57.

[8] *Id.* at 65.

[9] *Id.* at 135.

[10] *Id.* at 57.

[11] *Id.* at 123 and 133.

[12] *Id.* at 122.

their respective deeds of transfer in favor of the National Government assigning, transferring and conveying certain assets and liabilities, including their respective stakes in NMIC.[13] In turn and on even date, the National Government transferred the said assets and liabilities to the APT as trustee under a Trust Agreement.[14] Thus, the complaint was amended for the second time to implead and include the APT as a defendant.

In its answer,[15] NMIC claimed that HRCC had no cause of action. It also asserted that its contract with HRCC was entered into by its then President without any authority. Moreover, the said contract allegedly failed to comply with laws, rules and regulations concerning government contracts. NMIC further claimed that the contract amount was manifestly excessive and grossly disadvantageous to the government. NMIC made counterclaims for the amounts already paid to Hercon, Inc. and attorney's fees, as well as payment for equipment rental for four trucks, replacement of parts and other services, and damage to some of NMIC's properties.[16]

For its part, DBP's answer[17] raised the defense that HRCC had no cause of action against it because DBP was not privy to HRCC's contract with NMIC. Moreover, NMIC's juridical personality is separate from that of DBP. DBP further interposed a counterclaim for attorney's fees.[18]

PNB's answer[19] also invoked lack of cause of action against it. It also raised estoppel on HRCC's part and laches as defenses, claiming that the inclusion of PNB in the complaint was the first time a demand for payment was made on it by HRCC. PNB also invoked the separate juridical personality

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[13] *Rollo* (G.R. No. 167561), pp. 78-103 and 104-113, respectively.

[14] *Rollo* (G.R. No. 167530), pp. 116-121.

[15] Records, Vol. I, pp. 79-87.

[16] *Id.* at 81-85.

[17] *Id.* at 56-64.

[18] *Id.* at 58-60.

[19] *Id.* at 47-51.

of NMIC and made counterclaims for moral damages and attorney's fees.[20]

APT set up the following defenses in its answer:[21] lack of cause of action against it, lack of privity between Hercon, Inc. and APT, and the National Government's preferred lien over the assets of NMIC.[22]

After trial, the RTC of Makati rendered a Decision dated November 6, 1995 in favor of HRCC. It pierced the corporate veil of NMIC and held DBP and PNB solidarily liable with NMIC:

On the issue of whether or not there is sufficient ground to pierce the veil of corporate fiction, this Court likewise finds for the plaintiff.

From the documentary evidence adduced by the plaintiff, some of which were even adopted by defendants and DBP and PNB as their own evidence (Exhibits "I", "I-1", "I-2", "I-3", "I-4", "I-5", "I-5-A", "I-5-B", "I-5-C", "I-5-D" and submarkings, inclusive), it had been established that except for five (5) qualifying shares, [NMIC] is owned by defendants DBP and PNB, with the former owning 57% thereof, and the latter 43%. As of September 24, 1984, all the members of [NMIC]'s Board of Directors, namely, Messrs. Jose Tengco, Jr., Rolando M. Zosa, Ruben Ancheta, Geraldo Agulto, and Faustino Agbada are either from DBP or PNB (Exhibits "I-5", "I-5-C", "I-5-D").

The business of [NMIC] was then also being conducted and controlled by both DBP and PNB. In fact, it was Rolando M. Zosa, then Governor of DBP, who was signing and entering into contracts with third persons, on behalf of [NMIC].

In this jurisdiction, it is well-settled that "where it appears that the business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third persons, disregard legal fiction that two (2) corporations are distinct entities, and treat them as identical." (*Phil. Veterans Investment Development Corp. vs. CA,* 181 SCRA 669).

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[20] *Id.* at 49-50.

[21] *Id.,* Vol. II, pp. 432-436.

[22] *Id.* at 434.

From all indications, it appears that [NMIC] is a mere adjunct, business conduit or alter ego of both DBP and PNB. Thus, the DBP and PNB are jointly and severally liable with [NMIC] for the latter's unpaid obligations to plaintiff.[23]

Having found DBP and PNB solidarily liable with NMIC, the dispositive portion of the Decision of the trial court reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff HYDRO RESOURCES CONTRACTORS CORPORATION and against the defendant[s] NONOC MINING AND INDUSTRIAL CORPORATION, DEVELOPMENT BANK OF THE PHILIPPINES and PHILIPPINE NATIONAL BANK, ordering the aforenamed defendants, to pay the plaintiff jointly and severally, the sum of ₱8,370,934.74 plus legal interest thereon from date of demand, and attorney's fees equivalent to 25% of the judgment award.

The complaint against APT is hereby dismissed. However, APT, as trustee of NONOC MINING AND INDUSTRIAL CORPORATION is directed to ensure compliance with this Decision.[24]

DBP and PNB filed their respective appeals in the Court of Appeals. Both insisted that it was wrong for the RTC to pierce the veil of NMIC's corporate personality and hold DBP and PNB solidarily liable with NMIC.[25]

The Court of Appeals rendered the Decision dated November 30, 2004, affirmed the piercing of the veil of the corporate personality of NMIC and held DBP, PNB, and APT solidarily liable with NMIC. In particular, the Court of Appeals made the following findings:

In the case before Us, it is indubitable that [NMIC] was owned by appellants DBP and PNB to the extent of 57% and 43% respectively; that said two (2) appellants are the only stockholders, with the

[23] *Rollo* (G.R. No. 167530), p. 135.

[24] *Id.* at 136.

[25] Briefs for Defendant-Appellants Philippine National Bank and Development Bank of the Philippines. (CA *rollo*, pp. 104-127 and 167-190, respectively.)

qualifying stockholders of five (5) consisting of its own officers and included in its charter merely to comply with the requirement of the law as to number of incorporators; and that the directorates of DBP, PNB and [NMIC] are interlocked.

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We find it therefore correct for the lower court to have ruled that:

> "From all indications, it appears that [NMIC] is a mere adjunct, business conduit or alter ego of both DBP and PNB. Thus, the DBP and PNB are jointly and severally liable with [NMIC] for the latter's unpaid obligation to plaintiff."[26] (Citation omitted.)

The Court of Appeals then concluded that, "in keeping with the concept of justice and fair play," the corporate veil of NMIC should be pierced, ratiocinating:

For to treat [NMIC] as a separate legal entity from DBP and PNB for the purpose of securing beneficial contracts, and then using such separate entity to evade the payment of a just debt, would be the height of injustice and iniquity. Surely that could not have been the intendment of the law with respect to corporations. . . . .[27]

The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the Decision appealed from is hereby **MODIFIED**. The judgment in favor of appellee Hydro Resources Contractors Corporation in the amount of ₱8,370,934.74 with legal interest from date of demand is hereby AFFIRMED, but the dismissal of the case as against Assets Privatization Trust is REVERSED, and its successor the Privatization and Management Office is **INCLUDED** as one of those jointly and severally liable for such indebtedness. The award of attorney's fees is DELETED.

All other claims and counter-claims are hereby DISMISSED.

Costs against appellants.[28]

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[26] *Rollo* (G.R. No. 167530), pp. 65-66.

[27] *Id.* at 66.

[28] *Id.* at 67.

The respective motions for reconsideration of DBP, PNB, and APT were denied.[29]

Hence, these consolidated petitions.[30]

All three petitioners assert that NMIC is a corporate entity with a juridical personality separate and distinct from both PNB and DBP. They insist that the majority ownership by DBP and PNB of NMIC is not a sufficient ground for disregarding the separate corporate personality of NMIC because NMIC was not a mere adjunct, business conduit or *alter ego* of DBP and PNB. According to them, the application of the doctrine of piercing the corporate veil is unwarranted as nothing in the records would show that the ownership and control of the shareholdings of NMIC by DBP and PNB were used to commit fraud, illegality or injustice. In the absence of evidence that the stock control by DBP and PNB over NMIC was used to commit some fraud or a wrong and that said control was the proximate cause of the injury sustained by HRCC, resort to the doctrine of "piercing the veil of corporate entity" is misplaced.[31]

DBP and PNB further argue that, assuming they may be held solidarily liable with NMIC to pay NMIC's exclusive and separate corporate indebtedness to HRCC, such liability of the two banks was transferred to and assumed by the National Government through the APT, now the PMO, under the respective deeds of transfer both dated February 27, 1997 executed by DBP and PNB pursuant to Proclamation No. 50 dated December 8, 1986 and Administrative Order No. 14 dated February 3, 1987.[32]

For its part, the APT contends that, in the absence of an unqualified assumption by the National Government of all

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[29] *Id.* at 70.

[30] Upon motion of HRCC, the petitions separately filed by DBP, PNB, and APT have been consolidated pursuant to this Court's Resolution dated September 26, 2005.

[31] *Rollos* (G.R. No. 167530), pp. 40-46 (G.R. No. 167561), pp. 42-46 and (G.R. No. 167603), pp. 37-44.

[32] *Rollos* (G.R. No. 167530), pp. 46-50 and (G.R. No. 167603), pp. 45-47.

liabilities incurred by NMIC, the National Government through the APT could not be held liable for NMIC's contractual liability. The APT asserts that HRCC had not sufficiently shown that the APT is the successor-in-interest of all the liabilities of NMIC, or of DBP and PNB as transferors, and that the adjudged liability is included among the liabilities assigned and transferred by DBP and PNB in favor of the National Government.[33]

HRCC counters that both the RTC and the CA correctly applied the doctrine of "piercing the veil of corporate fiction." It claims that NMIC was the *alter ego* of DBP and PNB which owned, conducted and controlled the business of NMIC as shown by the following circumstances: NMIC was owned by DBP and PNB, the officers of DBP and PNB were also the officers of NMIC, and DBP and PNB financed the operations of NMIC. HRCC further argues that a parent corporation may be held liable for the contracts or obligations of its subsidiary corporation where the latter is a mere agency, instrumentality or adjunct of the parent corporation.[34]

Moreover, HRCC asserts that the APT was properly held solidarily liable with DBP, PNB, and NMIC because the APT assumed the obligations of DBP and PNB as the successor-in-interest of the said banks with respect to the assets and liabilities of NMIC.[35] As trustee of the Republic of the Philippines, the APT also assumed the responsibility of the Republic pursuant to the following provision of Section 2.02 of the respective deeds of transfer executed by DBP and PNB in favor of the Republic:

SECTION 2. TRANSFER OF BANK'S LIABILITIES

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2.02 With respect to the Bank's liabilities which are contingent and those liabilities where the Bank's creditors consent to the transfer

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[33] *Rollo* (G.R. No. 167561), pp. 49-50.

[34] *Rollo* (G.R. No. 167530), pp. 185-188.

[35] *Id.* at 188.

thereof is not obtained, said liabilities shall remain in the books of the BANK with the GOVERNMENT funding the payment thereof.[36]

After a careful review of the case, this Court finds the petitions impressed with merit.

A corporation is an artificial entity created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence.[37] It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected.[38] As a consequence of its status as a distinct legal entity and as a result of a conscious policy decision to promote capital formation,[39] a corporation incurs its own liabilities and is legally responsible for payment of its obligations.[40] In other words, by virtue of the separate juridical personality of a corporation, the corporate debt or credit is not the debt or credit of the stockholder.[41] This protection from liability for shareholders is the principle of limited liability.[42]

Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an *alter ego* of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate

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[36] *Id.* at 84.

[37] *Sarona v. National Labor Relations Commission,* G.R. No. 185280, January 18, 2012, 663 SCRA 394, 416.

[38] *Francisco v. Mallen, Jr.,* G.R. No. 173169, September 22, 2010, 631 SCRA 118, 125.

[39] Rands, William, *Domination of a Subsidiary by a Parent,* 32 Ind. L. Rev. 421, 423 (1999) citing Philip I. Blumberg, *Limited Liability and Corporate Groups,* 11 J. Corp. L. 573, 575-576 (1986) and Stephen Presser, *Thwarting the Killing of the Corporation: Limited Liability, Democracy and Economics,* 87 NW. U. L. Rev. 148, 155 (1992).

[40] *Id.*

[41] *Good Earth Emporium, Inc. v. Court of Appeals,* G.R. No. 82797, February 27, 1991, 194 SCRA 544, 550.

[42] Rands, William, *supra* note 39.

veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.[43]

However, the rule is that a court should be careful in assessing the milieu where the doctrine of the corporate veil may be applied. Otherwise an injustice, although unintended, may result from its erroneous application.[44] Thus, cutting through the corporate cover requires an approach characterized by due care and caution:

> Hence, **any application of the doctrine of piercing the corporate veil should be done with caution**. A court should be mindful of the milieu where it is to be applied. **It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established**; it cannot be presumed. x x x[45] (Emphases supplied; citations omitted.)

Sarona v. National Labor Relations Commission[46] has defined the scope of application of the doctrine of piercing the corporate veil:

> The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. (Citation omitted.)

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[43] *Philippine National Bank v. Andrada Electric & Engineering Company,* 430 Phil. 882, 894 (2002).

[44] *Francisco Motors Corporation v. Court of Appeals,* 368 Phil. 374, 386 (1999).

[45] *Philippine National Bank v. Andrada Electric Engineering Company, supra* note 43 at 894-895.

[46] *Supra* note 37 at 417.

Here, HRCC has alleged from the inception of this case that DBP and PNB (and the APT as assignee of DBP and PNB) should be held solidarily liable for using NMIC as *alter ego*.[47] The RTC sustained the allegation of HRCC and pierced the corporate veil of NMIC pursuant to the *alter ego* theory when it concluded that NMIC "is a mere adjunct, business conduit or alter ego of both DBP and PNB."[48] The Court of Appeals upheld such conclusion of the trial court.[49] In other words, both the trial and appellate courts relied on the *alter ego* theory when they disregarded the separate corporate personality of NMIC.

In this connection, case law lays down a three-pronged test to determine the application of the *alter ego* theory, which is also known as the instrumentality theory, namely:

> (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
>
> (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and
>
> (3) The aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of.[50] (Emphases omitted.)

The first prong is the "instrumentality" or "control" test. This test requires that the subsidiary be completely under the

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[47] See paragraphs 8 (b) and 9 of the original Complaint and of the first and second Amended Complaints. (Records, Vol. I, pp. 3-4, 190-191 and 334-335, respectively.)

[48] *Rollo* (G.R. No. 167530), p. 135.

[49] *Id.* at 66.

[50] *Concept Builders, Inc. v. National Labor Relations Commission,* 326 Phil. 955, 966 (1996).

control and domination of the parent.[51] It examines the parent corporation's relationship with the subsidiary.[52] It inquires whether a subsidiary corporation is so organized and controlled and its affairs are so conducted as to make it a mere instrumentality or agent of the parent corporation such that its separate existence as a distinct corporate entity will be ignored.[53] It seeks to establish whether the subsidiary corporation has no autonomy and the parent corporation, though acting through the subsidiary in form and appearance, "is operating the business directly for itself."[54]

The second prong is the "fraud" test. This test requires that the parent corporation's conduct in using the subsidiary corporation be unjust, fraudulent or wrongful.[55] It examines the relationship of the plaintiff to the corporation.[56] It recognizes that piercing is appropriate only if the parent corporation uses the subsidiary in a way that harms the plaintiff creditor.[57] As such, it requires a showing of "an element of injustice or fundamental unfairness."[58]

The third prong is the "harm" test. This test requires the plaintiff to show that the defendant's control, exerted in a fraudulent, illegal or otherwise unfair manner toward it, caused

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[51] Reed, Bradley, *Clearing Away the Mist: Suggestions for Developing a Principled Veil Piercing Doctrine in China,* Vanderbilt Journal of International Law 39: 1643, citing Stephen Presser, PIERCING THE CORPORATE VEIL, § 1:6, West (2004).

[52] *Id.,* citing *White v. Jorgenson,* 322 N.W.2d 607, 608 (Minn. 1982) and *Multimedia Publishing of South Carolina, Inc. v. Mullins,* 431 S.E.2d 569, 571 (S.C. 1993).

[53] *Id*. citing Maurice Wormser, DISREGARD OF THE CORPORATE FICTION AND ALLIED CORPORATE PROBLEMS (1929).

[54] *Id.*

[55] *Id.*

[56] *White v. Jorgenson, supra* note 52.

[57] Reed, Bradley, *supra* note 51.

[58] *White v. Jorgenson, supra* note 52, citing *Victoria Elevator Co. v. Meriden Grain Co.,* 283 N.W.2d 509, 512 (Minn. 1979).

the harm suffered.[59] A causal connection between the fraudulent conduct committed through the instrumentality of the subsidiary and the injury suffered or the damage incurred by the plaintiff should be established. The plaintiff must prove that, unless the corporate veil is pierced, it will have been treated unjustly by the defendant's exercise of control and improper use of the corporate form and, thereby, suffer damages.[60]

To summarize, piercing the corporate veil based on the *alter ego* theory requires the concurrence of three elements: control of the corporation by the stockholder or parent corporation, fraud or fundamental unfairness imposed on the plaintiff, and harm or damage caused to the plaintiff by the fraudulent or unfair act of the corporation. **The absence of any of these elements prevents piercing the corporate veil**.[61]

This Court finds that none of the tests has been satisfactorily met in this case.

In applying the *alter ego* doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation.[62] With respect to the control element, it refers not to paper or formal control by majority or even complete stock control but actual control which amounts to "such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal."[63] In addition, the control must be shown to have been exercised at the time the acts complained of took place.[64]

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[59] Olthoff, Mark, *Beyond the Form: Should the Corporate Veil Be Pierced?,* 64 UMKC L. Rev. 311, 318 (1995).

[60] *Id.*

[61] *Concept Builders, Inc. v. National Labor Relations Commission, supra* note 50 at 966.

[62] *Nisce v. Equitable PCI Bank, Inc.,* 545 Phil. 138, 166 (2007).

[63] *Concept Builders, Inc. v. National Labor Relations Commission, supra* note 50 at 966.

[64] *Id.*

Both the RTC and the Court of Appeals applied the *alter ego* theory and penetrated the corporate cover of NMIC based on two factors: (1) the ownership by DBP and PNB of effectively all the stocks of NMIC, and (2) the alleged interlocking directorates of DBP, PNB and NMIC.[65] Unfortunately, the conclusion of the trial and appellate courts that the DBP and PNB fit the *alter ego* theory with respect to NMIC's transaction with HRCC on the premise of complete stock ownership and interlocking directorates involved a quantum leap in logic and law exposing a gap in reason and fact.

While ownership by one corporation of all or a great majority of stocks of another corporation and their interlocking directorates may serve as indicia of control, by themselves and without more, however, these circumstances are insufficient to establish an *alter ego* relationship or connection between DBP and PNB on the one hand and NMIC on the other hand, that will justify the puncturing of the latter's corporate cover. This Court has declared that "mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality."[66] This Court has likewise ruled that the "existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations."[67]

True, the findings of fact of the Court of Appeals are conclusive and cannot be reviewed on appeal to this Court, provided they are borne out of the record or are based on substantial evidence.[68] It is equally true that the question of whether one corporation is merely an *alter ego* of another is purely one of fact. So is the question of whether a corporation is a paper company, a sham

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[65] *Rollo* (G.R. No. 167530), p. 65.

[66] *Francisco v. Mejia,* 415 Phil. 153, 170 (2001).

[67] *Velarde v. Lopez, Inc.,* 464 Phil. 525, 538 (2004).

[68] *Republic v. Hon. Mangotara,* G.R. No. 170375, July 7, 2010, 624 SCRA 360, 431.

or subterfuge or whether the requisite quantum of evidence has been adduced warranting the piercing of the veil of corporate personality.[69] Nevertheless, it has been held in *Sarona v. National Labor Relations Commission*[70] that this Court has the power to resolve a question of fact, such as whether a corporation is a mere *alter ego* of another entity or whether the corporate fiction was invoked for fraudulent or malevolent ends, if the findings in the assailed decision are either not supported by the evidence on record or based on a misapprehension of facts.

In this case, nothing in the records shows that the corporate finances, policies and practices of NMIC were dominated by DBP and PNB in such a way that NMIC could be considered to have no separate mind, will or existence of its own but a mere conduit for DBP and PNB. On the contrary, the evidence establishes that HRCC knew and acted on the knowledge that it was dealing with NMIC, not with NMIC's stockholders. The letter proposal of Hercon, Inc., HRCC's predecessor-in-interest, regarding the contract for NMIC's mine stripping and road construction program was addressed to and accepted by NMIC.[71] The various billing reports, progress reports, statements of accounts and communications of Hercon, Inc./ HRCC regarding NMIC's mine stripping and road construction program in 1985 concerned NMIC and NMIC's officers, without any indication of or reference to the control exercised by DBP and/or PNB over NMIC's affairs, policies and practices.[72]

HRCC has presented nothing to show that DBP and PNB had a hand in the act complained of, the alleged undue disregard

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[69] *Sarona v. National Labor Relations Commission, supra* note 37 at 414.

[70] *Id.*

[71] Exhibits "A" (letter proposal dated January 31, 1985 of Hercon, Inc., through Earl Pitcock, Hercon's President) and "B" (letter of acceptance dated February 11, 1985 by the NMIC, through Rolando Zosa, the NMIC's President. (Records, Vol. II, pp. 737-742.)

[72] Exhibits "C", "C-1" to "C-22" and their respective submarkings, "D" and "D-1" and its submarkings. (*Id.* at 743-838.)

by NMIC of the demands of HRCC to satisfy the unpaid claims for services rendered by HRCC in connection with NMIC's mine stripping and road construction program in 1985. On the contrary, the overall picture painted by the evidence offered by HRCC is one where HRCC was dealing with NMIC as a distinct juridical person acting through its own corporate officers.[73]

Moreover, the finding that the respective boards of directors of NMIC, DBP, and PNB were interlocking has no basis. HRCC's Exhibit "I-5",[74] the initial General Information Sheet submitted by NMIC to the Securities and Exchange Commission, relied upon by the trial court and the Court of Appeals may have proven that DBP and PNB owned the stocks of NMIC to the extent of 57% and 43%, respectively. However, nothing in it supports a finding that NMIC, DBP, and PNB had interlocking directors as it only indicates that, of the five members of NMIC's board of directors, four were nominees of either DBP or PNB and only one was a nominee of both DBP and PNB.[75] Only two members of the board of directors of NMIC, Jose Tengco, Jr. and Rolando Zosa, were established to be members of the board of governors of DBP and none was proved to be a member of the board of directors of PNB.[76] No director of NMIC was shown to be also sitting simultaneously in the board of governors/ directors of both DBP and PNB.

In reaching its conclusion of an *alter ego* relationship between DBP and PNB on the one hand and NMIC on the other hand, the Court of Appeals invoked *Sibagat Timber Corporation v. Garcia*,[77] which it described as "a case under a similar factual

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[73] *Id.*

[74] *Id.* at 903-904.

[75] *Id.* In particular, those listed as members of the board of directors of NMIC were Jose Tengco, Jr. (DBP), Rolando M. Zosa (DBP), Ruben Ancheta (DBP/PNB), Geraldo Agulto (PNB), and Faustino Agbada (DBP).

[76] This fact was admitted by NMIC and DBP in their respective answers and in paragraph 6 of DBP's Reply to Request for Admission of HRCC. (Records, Vol. I, pp. 56, 73 and 308.)

[77] G.R. No. 98185, December 11, 1992, 216 SCRA 470, 474.

milieu."[78] However, in *Sibagat Timber Corporation,* this Court took care to enumerate the circumstances which led to the piercing of the corporate veil of Sibagat Timber Corporation for being the *alter ego* of Del Rosario & Sons Logging Enterprises, Inc. Those circumstances were as follows: holding office in the same building, practical identity of the officers and directors of the two corporations and assumption of management and control of Sibagat Timber Corporation by the directors/officers of Del Rosario & Sons Logging Enterprises, Inc.

Here, DBP and PNB maintain an address different from that of NMIC.[79] As already discussed, there was insufficient proof of interlocking directorates. There was not even an allegation of similarity of corporate officers. Instead of evidence that DBP and PNB assumed and controlled the management of NMIC, HRCC's evidence shows that NMIC operated as a distinct entity endowed with its own legal personality. Thus, what obtains in this case is a factual backdrop different from, not similar to, *Sibagat Timber Corporation*.

In relation to the second element, to disregard the separate juridical personality of a corporation, the wrongdoing or unjust act in contravention of a plaintiff's legal rights must be clearly and convincingly established; it cannot be presumed. Without a demonstration that any of the evils sought to be prevented by the doctrine is present, it does not apply.[80]

In this case, the Court of Appeals declared:

> We are not saying that PNB and DBP are guilty of fraud in forming [NMIC], nor are we implying that [NMIC] was used to conceal fraud. x x x[81]

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[78] *Rollo* (G.R. No. 167530), p. 65.

[79] Paragraph 2 of the original Complaint and of the first and second Amended Complaints identify the address of NMIC as "2283 Pasong Tamo Ext., Makati, Metro Manila;" that of DBP as "Makati Avenue corner Sen. Gil J. Puyat Avenue, Makati, Metro Manila;" and that of PNB as "Escolta, Manila." (Records, Vol. I, pp. 1, 188 and 332, respectively.)

[80] *Yamamoto v. Nishino Leather Industries, Inc.,* G.R. No. 150283, April 16, 2008, 551 SCRA 447, 454-455.

[81] *Rollo* (G.R. No. 167530), p. 65.

Such a declaration clearly negates the possibility that DBP and PNB exercised control over NMIC which DBP and PNB used "to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights." It is a recognition that, even assuming that DBP and PNB exercised control over NMIC, there is no evidence that the juridical personality of NMIC was used by DBP and PNB to commit a fraud or to do a wrong against HRCC.

There being a total absence of evidence pointing to a fraudulent, illegal or unfair act committed against HRCC by DBP and PNB under the guise of NMIC, there is no basis to hold that NMIC was a mere *alter ego* of DBP and PNB. As this Court ruled in *Ramoso v. Court of Appeals*:[82]

> As a general rule, a corporation will be looked upon as a legal entity, unless and until sufficient reason to the contrary appears. When the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. Also, the corporate entity may be disregarded in the interest of justice in such cases as fraud that may work inequities among members of the corporation internally, involving no rights of the public or third persons. In both instances, **there must have been fraud, and proof of it**. For the separate juridical personality of a corporation to be disregarded, the wrongdoing must be clearly and convincingly established. It cannot be presumed.

As regards the third element, in the absence of both control by DBP and PNB of NMIC and fraud or fundamental unfairness perpetuated by DBP and PNB through the corporate cover of NMIC, no harm could be said to have been proximately caused by DBP and PNB on HRCC for which HRCC could hold DBP and PNB solidarily liable with NMIC.

Considering that, under the deeds of transfer executed by DBP and PNB, the liability of the APT as transferee of the rights, titles and interests of DBP and PNB in NMIC will attach

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[82] 400 Phil. 1260, 1268 (2000).

only if DBP and PNB are held liable, the APT incurs no liability for the judgment indebtedness of NMIC. Even HRCC recognizes that "as assignee of DBP and PNB's loan receivables," the APT simply "stepped into the shoes of DBP and PNB with respect to the latter's rights and obligations" in NMIC.[83] As such assignee, therefore, the APT incurs no liability with respect to NMIC other than whatever liabilities may be imputable to its assignors, DBP and PNB.

Even under Section 2.02 of the respective deeds of transfer executed by DBP and PNB which HRCC invokes, the APT cannot be held liable. The contingent liability for which the National Government, through the APT, may be held liable under the said provision refers to contingent liabilities of DBP and PNB. Since DBP and PNB may not be held solidarily liable with NMIC, no contingent liability may be imputed to the APT as well. Only NMIC as a distinct and separate legal entity is liable to pay its corporate obligation to HRCC in the amount of ₱8,370,934.74, with legal interest thereon from date of demand.

As trustee of the assets of NMIC, however, the APT should ensure compliance by NMIC of the judgment against it. The APT itself acknowledges this.[84]

WHEREFORE, the petitions are hereby **GRANTED.**

The complaint as against Development Bank of the Philippines, the Philippine National Bank, and the Asset Privatization Trust, now the Privatization and Management Office, is **DISMISSED** for lack of merit. The Asset Privatization Trust, now the Privatization and Management Office, as trustee of Nonoc Mining and Industrial Corporation, now the Philnico Processing Corporation, is **DIRECTED** to ensure compliance by the Nonoc Mining and Industrial Corporation, now the Philnico Processing Corporation, with this Decision.

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[83] Paragraph 14 of Amended Complaint. (Records, Vol. I, p. 336.)

[84] *Rollo* (G.R. No. 167561), pp. 47-48.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172588. March 13, 2013]

ISABEL N. GUZMAN, *petitioner, vs.* **ANIANO N. GUZMAN and PRIMITIVA G. MONTEALTO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE FILING OF A SECOND MOTION FOR RECONSIDERATION RESULTS TO THE PARTY'S LOSING THE RIGHT TO APPEAL; RATIONALE.— The petitioner's resort to a Rule 65 petition for *certiorari* to assail the RTC decision and orders is misplaced. When the RTC issued its decision and orders, it did so in the exercise of its appellate jurisdiction; the proper remedy therefrom is a Rule 42 petition for review. Instead, the petitioner filed a second motion for reconsideration and thereby lost her right to appeal; a second motion for reconsideration being a prohibited pleading pursuant to Section 5, Rule 37 of the Rules of Court. The petitioner's subsequent motions for reconsideration should be considered as mere scraps of paper, not having been filed at all, and unable to toll the reglementary period for an appeal. The RTC decision became final and executory after fifteen (15) days from receipt of the denial of the first motion for reconsideration. It is elementary that once a decision becomes final and executory, it is "immutable and unalterable, and can no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering

it or by the highest court of the land." Thus, the RTC decision, even if allegedly erroneous, can no longer be modified.

2. **ID.; ID.; APPEAL TO THE REGIONAL TRIAL COURTS (RTC) FOR EJECTMENT CASES; THE RTC IS MANDATED TO DECIDE THE APPEAL BASED ON THE ENTIRE RECORD OF THE MTC PROCEEDINGS; APPLICATION IN CASE AT BAR.—** The RTC acted within its jurisdiction in considering the matter of the petitioner's transfer of rights, even if it had not been raised as an error. Under Section 18, Rule 70 of the Rules of Court, the RTC is mandated to decide the appeal based on the entire record of the MTC proceedings and such pleadings submitted by the parties or required by the RTC. Nonetheless, even without this provision, an appellate court is clothed with ample authority to review matters, even if they are not assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a just decision of the case, or is closely related to an error properly assigned, or upon which the determination of the question raised by error properly assigned is dependent. The matter of the petitioner's transfer of rights, which was in the records of the case, was the basis for the RTC's decision.

3. **ID.; ID.; ID.; STRICTLY ENFORCING THE REQUIREMENT OF NOTICE OF HEARING, SUSTAINED.—** The RTC did not also commit a grave abuse of discretion in strictly enforcing the requirement of notice of hearing. The requirement of notice of hearing is an integral component of procedural due process that seeks to avoid "surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution by the court." Given the purpose of the requirement, a motion unaccompanied by a notice of hearing is considered a mere scrap of paper that does not toll the running of the period to appeal. This requirement of notice of hearing equally applies to the petitioner's motion for reconsideration. The petitioner's alleged absence of counsel is not a valid excuse or reason for non-compliance with the rules.

4. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN PROPER.—** *Certiorari*, by its very nature, is proper only when appeal is not available to the aggrieved party; the remedies of appeal and *certiorari* are mutually exclusive, not alternative

or successive. It cannot substitute for a lost appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. x x x It should be noted that as a legal recourse, *certiorari* is a limited form of review. It is restricted to resolving errors of jurisdiction and grave abuse of discretion, not errors of judgment. Indeed, as long as the lower courts act within their jurisdiction, alleged errors committed in the exercise of their discretion will amount to mere errors of judgment correctable by an appeal or a petition for review.

5. **ID.; ID.; FORCIBLE ENTRY AND UNLAWFUL DETAINER; NATURE THEREOF, EXPLAINED.—** Ejectment cases are summary proceedings intended to provide an expeditious means of protecting actual possession or right of possession of property. Title is not involved, hence, it is a special civil action with a special procedure. The only issue to be resolved in ejectment cases is the question of entitlement to the physical or material possession of the premises or possession *de facto*. Thus, any ruling on the question of ownership is only provisional, made solely for the purpose of determining who is entitled to possession *de facto*. Accordingly, any ruling on the validity of the petitioner's transfer of rights is provisional and should be resolved in a proper proceeding.

APPEARANCES OF COUNSEL

Raymond R. Lauigan for petitioner.
Marciano Iringan for private respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*,[1] filed by petitioner Isabel N. Guzman, assailing the February 3, 2006 decision[2] and the April 17, 2006 resolution[3] of the Court of

[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 9-31.

[2] Penned by Associate Justice Andres B. Reyes, Jr., and concurred in by Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa; *id*. at 36-44.

[3] *Id.* at 46.

Appeals (CA) in CA-G.R. SP No. 90799. The CA decision dismissed the petitioner's petition for *certiorari* for being the wrong mode of appeal and for lack of merit. The CA resolution denied the petitioner's motion for reconsideration for lack of merit.

THE FACTUAL ANTECEDENTS

On June 15, 2000, the petitioner filed with the Municipal Trial Court (*MTC*) of Tuguegarao City, Cagayan, Branch 4, a complaint for ejectment against her children, respondents Aniano N. Guzman and Primitiva G. Montealto.[4] The petitioner alleged that she and Arnold N. Guzman owned the 6/7th and 1/7th portions, respectively, of a 1,446-square meter parcel of land, known as Lot No. 2419-B, in Tuguegarao City, Cagayan, under Transfer Certificate of Title No. T-74707;[5] the respondents occupied the land by tolerance; the respondents did not comply with her January 17, 2000 written demand to vacate the property;[6] and subsequent *barangay* conciliation proceedings failed to settle the differences between them.[7]

In their answer,[8] the respondents countered that the petitioner transferred, in a December 28, 1996 document,[9] all her property rights in the disputed property, except her usufructuary right, in favor of her children, and that the petitioner engaged in forum shopping since she already raised the issue of ownership in a petition for cancellation of adverse claim against the respondents, pending with Branch 4 of the Regional Trial Court (*RTC*) of Tuguegarao City, Cagayan.[10]

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[4] Docketed as Civil Case No. 2095; records, pp. 1-3.

[5] *Id.* at 4-5.

[6] *Id.* at 6.

[7] *Id.* at 7.

[8] *Id.* at 172-177.

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

[10] *Id.* at 183-184.

THE MTC's RULING

In a November 27, 2002 decision,[11] the MTC found the petitioner to be the lawful owner of the land with a right to its possession since the respondents had no vested right to the land since they are merely the petitioner's children to whom no ownership or possessory rights have passed. It held that the petitioner committed no forum shopping since she asserted ownership only to establish her right of possession, and the lower courts can *provisionally* resolve the issue of ownership to determine who has the better right of possession. The MTC directed the respondents to vacate the land and surrender possession to the petitioner, and to pay ₱5,000.00 as monthly rental from January 2000 until possession is surrendered, plus ₱15,000.00 as moral and exemplary damages.

The respondents appealed to the RTC of Tuguegarao City, Cagayan, Branch 1.[12] They argued that: (a) the MTC had no jurisdiction over the case; (b) the petitioner has no cause of action against the respondents; (c) the petitioner engaged in forum shopping; and (d) the MTC erred in deciding the case in the petitioner's favor.[13]

THE RTC's RULING

In its May 19, 2005 decision,[14] the RTC rejected the respondents' arguments, finding that the MTC has jurisdiction over ejectment cases under Section 33 (2) of Batas Pambansa Bilang 129;[15] the petitioner has a valid cause of action against the respondents since the complaint alleged the petitioner's ownership, the respondents' possession by tolerance, and the respondents' refusal to vacate upon the petitioner's demand; and, the petitioner did not engage in forum shopping since the

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[11] *Id.* at 244-246.

[12] Docketed as Civil Case No. 6117; *id*. at 270.

[13] *Id.* at 277-278.

[14] *Id.* at 311-315.

[15] The Judiciary Reorganization Act of 1980.

petition for the cancellation of adverse claim has a cause of action totally different from that of ejectment.

The RTC, however, still ruled for the respondents and set aside the MTC ruling. It took into account the petitioner's transfer of rights in the respondents' favor which, it held, could not be unilaterally revoked without a court action. It also noted that the petitioner failed to allege and prove that earnest efforts at a compromise have been exerted prior to the filing of the complaint.[16] Thus, the RTC ordered the petitioner to pay the respondents ₱25,000.00 as attorney's fees and ₱25,000.00 as litigation expenses.

On June 16, 2005, the petitioner received a copy of the RTC decision.[17] On June 30, 2005, the petitioner filed her **first motion for reconsideration**.[18] In its July 6, 2005 order,[19] the RTC denied the petitioner's motion for reconsideration for lack of the required notice of hearing.[20]

On July 14, 2005, the petitioner filed a **second motion for reconsideration**.[21] In its July 15, 2005 order,[22] the RTC denied the second motion for reconsideration for having been filed out of time.

On July 20, 2005, the petitioner filed a **third motion for reconsideration**.[23] In its July 22, 2005 order,[24] the RTC denied the third motion for reconsideration with finality.

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[16] Pursuant to Article 151 of the Family Code.

[17] Records, p. 315 (back page).

[18] *Id.* at 318-321.

[19] *Id.* at 327.

[20] Under Sections 4 and 5, Rule 15 of the Rules of Court.

[21] Records, pp. 330-333.

[22] *Id.* at 350-351.

[23] *Id.* at 352-353.

[24] *Id.* at 357. The petitioner received a copy of the July 22, 2005 order on July 29, 2005; *id*. at 357 (back page).

On August 8, 2005, the petitioner filed a Rule 65 petition for *certiorari* with the CA, alleging that the RTC committed a grave abuse of discretion: (a) in deciding the case based on matters not raised as issues on appeal; (b) in finding that the transfer of rights could not be unilaterally revoked without a court action; (c) in holding that the petitioner failed to prove that earnest efforts at a compromise have been exerted prior to the filing of the complaint; and (d) in denying the petitioner's motion for reconsideration on a mere technicality.

THE CA's RULING

In its February 3, 2006 decision,[25] the CA dismissed the petition. The CA noted that a Rule 42 petition for review, not a Rule 65 petition for *certiorari*, was the proper remedy to assail an RTC decision rendered in the exercise of its appellate jurisdiction. It found that the petitioner lost her chance to appeal when she filed a second motion for reconsideration, a prohibited pleading under Section 5, Rule 37 of the Rules of Court. The CA also held that the petitioner cannot validly claim that the respondents occupied the properties through mere tolerance since they were co-owners of the property as compulsory heirs of Alfonso Guzman, the original owner.

When the CA denied[26] the motion for reconsideration[27] that followed, the petitioner filed the present Rule 45 petition.

THE PETITION

The petitioner justifies the filing of a Rule 65 petition for *certiorari* with the CA by claiming that the RTC judge acted with grave abuse of discretion in passing on issues not raised in the appeal and in not relaxing the rule on the required notice of hearing on motions. She further argues that the CA's finding of co-ownership is bereft of factual and legal basis.

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[25] *Supra* note 2.

[26] *Supra* note 3.

[27] CA *rollo*, pp. 122-131.

THE CASE FOR THE RESPONDENTS

The respondents submit that the proper remedy for appealing a decision of the RTC, exercising appellate jurisdiction, is a Rule 42 petition for review, and that a Rule 65 petition for *certiorari* is not a substitute for a lost appeal.

THE ISSUE

The case presents to us the issue of whether the CA committed a reversible error in dismissing the petitioner's petition for *certiorari*.

THE COURT's RULING

The petition lacks merit.

The petitioner availed of the wrong remedy

The petitioner's resort to a Rule 65 petition for *certiorari* to assail the RTC decision and orders is misplaced. When the RTC issued its decision and orders, it did so in the exercise of its appellate jurisdiction; the proper remedy therefrom is a Rule 42 petition for review.[28] Instead, the petitioner filed a second motion for reconsideration and thereby lost her right to appeal; a second motion for reconsideration being a prohibited pleading pursuant to Section 5, Rule 37 of the Rules of Court.[29] The petitioner's subsequent motions for reconsideration should be considered as mere scraps of paper, not having been filed at all, and unable to toll the reglementary period for an appeal.

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[28] Section 1. *How appeal taken; time for filing*. — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals. x x x The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. [italics supplied]

[29] Section 5. *Second motion for new trial.* — x x x

x x x x x x x x x

No party shall be allowed a second motion for reconsideration of a judgment or final order. [italics supplied]

The RTC decision became final and executory after fifteen (15) days from receipt of the denial of the first motion for reconsideration. It is elementary that once a decision becomes final and executory, it is "immutable and unalterable, and can no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land."[30] Thus, the RTC decision, even if allegedly erroneous, can no longer be modified.

Apparently, to resurrect her lost appeal, the petitioner filed a Rule 65 petition for *certiorari*, imputing grave abuse of discretion on the RTC for deciding the case against her. *Certiorari*, by its very nature, is proper only when appeal is not available to the aggrieved party; the remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive.[31] It cannot substitute for a lost appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse.[32]

No grave abuse of discretion

In any case, even granting that the petition can be properly filed under Rule 65 of the Rules of Court, we hold that it was bound to fail.

It should be noted that as a legal recourse, *certiorari* is a limited form of review.[33] It is restricted to resolving errors of

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[30] *Land Bank of the Philippines v. Suntay,* G.R. No. 188376, December 14, 2011, 662 SCRA 614, 643. See *Gallardo-Corro v. Gallardo,* 403 Phil. 498, 511 (2001).

[31] *Philippine Amusement and Gaming Corporation v. Court of Appeals,* G.R. No. 185668, December 13, 2011, 662 SCRA 294, 304; and *Catindig v. Vda. De Meneses,* G.R. Nos. 165851 and 168875, February 2, 2011, 641 SCRA 350, 363.

[32] *Teh v. Tan,* G.R. No. 181956, November 22, 2010, 635 SCRA 593, 604.

[33] *Home Development Mutual Fund (HDMF) v. See,* G.R. No. 170292, June 22, 2011, 652 SCRA 478, 488; and *Heirs of Lourdes Padilla v. Court of Appeals,* 469 Phil. 196, 204 (2004).

jurisdiction and grave abuse of discretion, not errors of judgment.[34] Indeed, as long as the lower courts act within their jurisdiction, alleged errors committed in the exercise of their discretion will amount to mere errors of judgment correctable by an appeal or a petition for review.[35]

In this case, the imputed errors pertained to the RTC's appreciation of matters not raised as errors on appeal, specifically, the transfer of rights and subsequent unilateral revocation, and the strictly enforced rule on notice of hearing. These matters involve only the RTC's appreciation of facts and its application of the law; the errors raised do not involve the RTC's jurisdiction, but merely amount to a claim of erroneous exercise of judgment.

Besides, the RTC acted within its jurisdiction in considering the matter of the petitioner's transfer of rights, even if it had not been raised as an error. Under Section 18, Rule 70 of the Rules of Court,[36] the RTC is mandated to decide the appeal based on the entire record of the MTC proceedings and such pleadings submitted by the parties or required by the RTC. Nonetheless, even without this provision, an appellate court is clothed with ample authority to review matters, even if they are not assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a just decision of the case, or is closely related to an error properly assigned, or upon which the determination of the question raised by error properly assigned is dependent.[37] The matter of the petitioner's transfer

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[34] *Pilipino Telephone Corporation v. Radiomarine Network, Inc.,* G.R. No. 152092, August 4, 2010, 626 SCRA 702, 732; and *Apostol v. Court of Appeals,* G.R. No. 141854, October 15, 2008, 569 SCRA 80, 92.

[35] *Pilipino Telephone Corporation v. Radiomarine Network, Inc., supra,* at 732.

[36] Section 18. *Judgment conclusive only on possession; not conclusive in actions involving title or ownership.* — x x x The judgment or final order shall be appealable to the appropriate Regional Trial Court which shall decide the same on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Court. [italics supplied]

[37] *Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio,* G.R. No. 169454, December 27, 2007, 541 SCRA 479, 503.

of rights, which was in the records of the case, was the basis for the RTC's decision.

The RTC did not also commit a grave abuse of discretion in strictly enforcing the requirement of notice of hearing. The requirement of notice of hearing is an integral component of procedural due process that seeks to avoid "surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution by the court."[38] Given the purpose of the requirement, a motion unaccompanied by a notice of hearing is considered a mere scrap of paper that does not toll the running of the period to appeal. This requirement of notice of hearing equally applies to the petitioner's motion for reconsideration.[39] The petitioner's alleged absence of counsel is not a valid excuse or reason for non-compliance with the rules.

A final point

Ejectment cases are summary proceedings intended to provide an expeditious means of protecting actual possession or right of possession of property. Title is not involved, hence, it is a special civil action with a special procedure. The only issue to be resolved in ejectment cases is the question of entitlement to the physical or material possession of the premises or possession *de facto*. Thus, any ruling on the question of ownership is only provisional, made solely for the purpose of determining who is entitled to possession *de facto*.[40] Accordingly, any ruling on the validity of the petitioner's transfer of rights is provisional and should be resolved in a proper proceeding.

WHEREFORE, we hereby **DENY** the appeal. The February 3, 2006 decision and the April 17, 2006 resolution of the Court of Appeals in CA-G.R. SP No. 90799 are **AFFIRMED.** Costs against petitioner Isabel N. Guzman.

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[38] *Jehan Shipping Corporation v. National Food Authority,* 514 Phil. 166, 173 (2005).

[39] *Sembrano v. Judge Ramirez,* 248 Phil. 260, 266-267 (1988).

[40] *Go, Jr. v. Court of Appeals,* 415 Phil. 172, 183-184 (2001).

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 173166. March 13, 2013]

PURIFICACION ESTANISLAO and RUPERTO ESTANISLAO, *petitioners, vs.* **SPOUSES NORMA GUDITO and DAMIANO GUDITO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; A NOTARIZED DOCUMENT HAS IN ITS FAVOR THE PRESUMPTION OF REGULARITY WITH RESPECT TO ITS DUE EXECUTION; CASE AT BAR.—** It is a settled rule in our jurisdiction that a notarized document has in its favor the presumption of regularity and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence and is entitled to full faith and credit upon its face. Having been prepared and acknowledged before a notary public, the said Deed is vested with public interest, the sanctity of which deserves to be upheld unless overwhelmed by clear and convincing evidence. Thus, the donation made by the Vasquez couple is a valid exercise of their right as owners of the subject property and respondents are legally entitled to the said property as donees.

2. **LABOR AND SOCIAL LEGISLATION; PRESIDENTIAL DECREE NO. 1517 (URBAN LAND REFORM ACT), AS AMENDED; THE LESSEE IS GIVEN THE RIGHT OF**

* Designated as Acting Member in lieu of Associate Justice Jose P. Perez per Special Order No. 1426 dated March 8, 2013.

FIRST REFUSAL OVER THE LAND THEY LEASED AND OCCUPIED FOR MORE THAN TEN YEARS ONLY WHEN THE OWNER OF THE PROPERTY HAS INTENTION TO SELL IT.— Petitioners cannot use P.D. 1517 as a shield to deny respondents of their inherent right to possess the subject property. The CA correctly opined that "under P.D. 1517, in relation to P.D. 2016, the lessee is given the right of first refusal over the land they have leased and occupied for more than ten years and on which they constructed their houses. But the right of first refusal applies only to a case where the owner of the property intends to sell it to a third party. If the owner of the leased premises does not intend to sell the property in question but seeks to eject the tenant on the ground that the former needs the premises for residential purposes, the tenant cannot invoke the land reform law." Clearly, the circumstances required for the application of P.D. 1517 are lacking in this case, since respondents had no intention of selling the subject property to third parties, but seek the eviction of petitioners on the valid ground that they need the property for residential purposes.

APPEARANCES OF COUNSEL

Esteban B. Nancho for petitioners.
Medina Lebatique & Associates for respondents.

D E C I S I O N

PERALTA,[**] *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks the reversal of the Decision[1] dated October 25, 2005, and Resolution[2] dated June 16, 2006 of the Court of Appeals (*CA*) in CA-G.R. SP No. 46323.

[**] Per Special Order No. 1429 dated March 12, 2013.

[1] Penned by Associate Justice Danilo B. Pine, with Associate Justices Marina L. Buzon and Aurora Santiago-Lagman, concurring; *rollo*, pp. 44-55.

[2] *Rollo,* pp. 57-58.

The factual antecedents are as follows:

Respondents are the owners of a residential lot being leased by petitioners on a month-to-month basis. Petitioners had been renting and occupying the subject lot since 1934 and were the ones who built the house on the subject lot in accordance with their lease agreement with one Gaspar Vasquez. When Gaspar Vasquez died, the portion of the lot on which petitioners' house was erected was inherited by his son Victorino Vasquez, married to Ester Vasquez (*Vasquez couple*).

In the 1980's, the Vasquez couple wanted the Estanislao family and the other tenants to vacate the said property, but the tenants refused because of laws allegedly prohibiting their ejectment therefrom. Resultantly, the Vasquez couple refused to accept their rental payments. Thus, petitioner Purificacion Estanislao, with due notice to Ester Vasquez, deposited the amount of her monthly rentals at Allied Banking Corporation under a savings account in the name of Ester Vasquez as lessor.

In the interim, a Deed of Donation was executed by the Vasquez couple in favor of respondent Norma Vasquez Gudito. Hence, in October 1994, respondents notified petitioners to remove their house and vacate the premises within three months or up to January 31, 1995, because of their urgent need of the residential lot. In a letter dated March 5, 1995, respondents reiterated the demand and gave petitioners another three months or up to June 30, 1995, within which to remove their house, vacate the subject lot and pay the rental arrearages. However, petitioners failed to comply.

Accordingly, on November 10, 1995, respondents filed a Complaint for Unlawful Detainer/Ejectment against petitioners before the Metropolitan Trial Court (*MeTC*) of Manila.

On March 6, 1996, the MeTC of Manila rendered a Decision[3] in favor of respondents, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants ordering:

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[3] *Id.* at 78-81.

(1) The defendants and all persons claiming rights under them to immediately vacate the subject premises known as 2351 Pasig Line, Sta. Ana, Manila, and surrender its peaceful possession to the plaintiffs;

(2) The defendants to pay reasonable compensation for the use and occupancy of the subject premises in the amount of ₱500.00 a month beginning October 1985 and every month thereafter until they shall have finally and actually vacated the subject premises;

(3) To pay the plaintiffs the sum of ₱5,000.00 for and as attorney's fees;

(4) To pay the costs of suit.

SO ORDERED.[4]

Thereafter, petitioners elevated the case before the Regional Trial Court (*RTC*) of Manila.

On November 28, 1997, the RTC of Manila rendered a Decision[5] reversing the MeTC's decision. The *fallo* states:

WHEREFORE, premises considered, the Decision dated March 6, 1996 rendered by the court *a quo* is hereby **REVERSED** and SET ASIDE and a new judgment is hereby rendered as follows:

(1) The instant complaint filed by the Guditos is hereby DISMISSED;

(2) The "Guditos" are hereby enjoined to respect the lease agreement as well as the possession of the "Estanislaos" over the leased premises. Should the "Guditos" decide to sell or otherwise dispose of the same property to third parties, the "Estanislaos" are given the right of first refusal pursuant to PDs 1517 and 2018 or; should the "Guditos" need the same property for residential purposes, they can avail of the remaining 205.50 square meters of the same lot wherein they can build their house.

(3) The present monthly rental is hereby fixed at ₱500 per month;

(4) Attorney's fees at ₱20,000 plus the cost of suit; and

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[4] *Id.* at 80-81.

[5] *Id.* at 82-91.

(5) Other claims and counter-claims are hereby dismissed for lack of merit.

SO ORDERED.[6]

Dissatisfied, respondents interposed an appeal before the CA.

In a Decision[7] dated October 25, 2005, the CA annulled and set aside the RTC's decision and reinstated the MeTC's decision. It held as follows:

WHEREFORE, the Decision of Branch 47 of the Regional Trial Court of Manila, in Civil Case No. 96-77804 dated November 28, 1998 is hereby **ANNULLED** and **SET ASIDE**. Consequently, the Decision of Branch 11 of the Metropolitan Trial Court of Manila in Civil Case No. 149805-CV dated March 6, 1996 is hereby **REINSTATED** with the **MODIFICATION** that the respondents are ordered to pay reasonable compensation for the use and occupancy of the subject premises in the amount of Five Hundred Pesos a month beginning November 1995, and every month thereafter until they have finally vacated the subject premises.

SO ORDERED.[8]

Hence, petitioners filed the instant petition raising the following issues for our resolution:

1. Whether or not the assailed decision of the Court of Appeals violates Presidential Decree No. 2016, in relation to Presidential Decree No. 1517, expressly prohibiting the eviction of legitimate tenants from land proclaimed as Areas for Priority Development or as Urban Land Reform Zones.

2. Whether or not Batas Pambansa Blg. 877, relied upon by the Court of Appeals in its decision, can prevail over P.D. 2016, in relation to P.D. No. 1517, a special law and a later enactment, considering that P.D. No. 2016 expressly repeals, amends or modifies accordingly any law inconsistent with it.

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

[7] *Id.* at 44-55.

[8] *Id.* at 54-55. (Emphasis in the original)

3. Whether or not a legitimate tenant covered by P.D. Nos. 1517 and 2016 can be evicted if the owner of the leased land does not intend to sell his property as affirmatively held by the Court of Appeals.

4. Whether or not respondents as lessors can adequately use the leased lot for the alleged personal need without ejecting petitioners who occupy only a very small portion thereof.

5. Whether or not the donation of the leased lot to respondents can defeat petitioners' protected right under P.D. Nos. 1517 and 2016.[9]

The pertinent issue in this case is who has the better right of possession over the subject property.

Petitioners strongly argue that respondents cannot evict them from the subject property pursuant to Presidential Decree (P.D.) 1517, in relation to P.D. 2016, as the subject property is allegedly within one of the 245 Proclaimed Area for Priority Development and/or Urban Land Reform No. 1967, as amended by Presidential Proclamation No. 2284. Petitioners further contend that they were not aware that the subject property had been acquired by respondents *via* a Deed of Donation executed by the Vasquez couple. Thus, they assail that said donation was merely simulated in order to deprive them of their right of first refusal to buy the subject property.

Conversely, respondents maintain P.D. 1517 cannot be appropriately applied to the present case, since the same applies only to a case where the owners intend to sell the property to a third party. They argue that in the instant case they are seeking the eviction of petitioners solely on the ground that they need the property for residential purposes. Lastly, they assert that they have sufficiently established a better right of possession over the disputed property than the petitioners.

We deny the petition.

To begin with, the only question that the courts must resolve in an unlawful detainer or ejectment suit is — who between the

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[9] *Id.* at 126-127.

parties is entitled to the physical or material possession of the property in dispute.[10]

In the case under review, respondents have overwhelmingly established their right of possession by virtue of the Deed of Donation made in their favor. Moreover, they have complied with the provisions of the law in order for them to legally eject the petitioners. Section 5 (c) of *Batas Pambansa Blg.* 25 states:

> Sec. 5. *Grounds for judicial ejectment.* — Ejectment shall be allowed on the following grounds:
>
> x x x x x x x x x
>
> (c) Legitimate need of owner/lessor to repossess his property for his own use or for the use of any immediate member of his family as a residential unit, such owner or immediate member not being the owner of any other available residential unit within the same city or municipality: Provided, however, that the lease for a definite period has expired: Provided, further, that the lessor has given the lessee formal notice within three (3) months in advance of the lessor's intention to repossess the property: Provided, finally, that the owner/lessor is prohibited from leasing the residential unit or allowing its use by a third party for at least one year.

Here, it is undisputed that respondents do not own any other lot or real property except the herein subject lot. They have urgent need of the same to build their own house to be used as their residence. Also, petitioners had already been asked to leave the premises as early as 1982, but sternly refused, hence, its former owners refused to accept their rental payments. When the same property was donated to respondents, petitioners were allowed to continue occupying the subject lot since respondents did not as yet have the money to build a house of their own. But now that respondents have sufficient money to build their own house, petitioners still rebuff respondents' demand to vacate the premises and to remove or demolish their house. Clearly, since respondents have complied with the requirements of the

[10] *Pajuyo v. Court of Appeals,* G.R. No. 146364, June 3, 2004, 430 SCRA 492, 510-511.

law, their right to possess the subject property for their own use as family residence cannot be denied.

It is also worthy to note that petitioners have failed to prove that the transfer of the subject property was merely a ploy designed to defeat and circumvent their right of first refusal under the law. As emphasized by the CA, the Deed of Donation executed in favor of respondents was signed by the parties and their witnesses, and was even notarized by a notary public.

Veritably, it is a settled rule in our jurisdiction that a notarized document has in its favor the presumption of regularity and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence and is entitled to full faith and credit upon its face.[11] Having been prepared and acknowledged before a notary public, the said Deed is vested with public interest, the sanctity of which deserves to be upheld unless overwhelmed by clear and convincing evidence.[12] Thus, the donation made by the Vasquez couple is a valid exercise of their right as owners of the subject property and respondents are legally entitled to the said property as donees.

By the same token, this Court is not persuaded with petitioners' insistence that they cannot be evicted in view of Section 6 of P.D. 1517, which states —

SECTION 6. *Land Tenancy in Urban Land Reform Areas.* — Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and **shall be allowed the right of first refusal to purchase the same within a reasonable time** and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree. (Emphasis and underscoring supplied)

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[11] *Ilao-Quianay v. Mapile,* G.R. No. 154087, October 25, 2005, 474 SCRA 246, 255; 510 Phil. 736, 747 (2005).

[12] *Rollo,* p. 50.

As can be gleaned from the foregoing, petitioners cannot use P.D. 1517 as a shield to deny respondents of their inherent right to possess the subject property. The CA correctly opined that "under P.D. 1517, in relation to P.D. 2016, the lessee is given the right of first refusal over the land they have leased and occupied for more than ten years and on which they constructed their houses. But the right of first refusal applies only to a case where the owner of the property intends to sell it to a third party. If the owner of the leased premises does not intend to sell the property in question but seeks to eject the tenant on the ground that the former needs the premises for residential purposes, the tenant cannot invoke the land reform law."[13]

Clearly, the circumstances required for the application of P.D. 1517 are lacking in this case, since respondents had no intention of selling the subject property to third parties, but seek the eviction of petitioners on the valid ground that they need the property for residential purposes.

WHEREFORE, premises considered, the Decision dated October 25, 2005, and Resolution dated June 16, 2006 of the Court of Appeals in CA-G.R. SP No. 46323 are hereby **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro,[*] *Abad, Mendoza*, and *Leonen, JJ.*, concur.

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[13] *Id.* at 53.

[*] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1430 dated March 12, 2013.

SECOND DIVISION

[G.R. No. 180636. March 13, 2013]

LORENZO T. TANGGA-AN,* *petitioner, vs.* **PHILIPPINE TRANSMARINE CARRIERS, INC., UNIVERSE TANKSHIP DELAWARE LLC, and CARLOS C. SALINAS,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 8042 (MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); MONEY CLAIMS; WHEN THE ILLEGALLY DISMISSED EMPLOYEE'S EMPLOYMENT CONTRACT HAS A TERM OF LESS THAN ONE YEAR, HE SHALL BE ENTITLED TO RECOVERY OF SALARIES REPRESENTING THE UNEXPIRED PORTION OF HIS EMPLOYMENT CONTRACT; APPLICATION IN CASE AT BAR.—** The Labor Arbiter, NLRC, and the CA all took the view that the complaining employee was entitled to his salary for the unexpired portion of his contract, but limited to only three months pursuant to Section 10 of RA 8042. The Court did not agree and hence modified the judgment in said case. It held that, following the wording of Section 10 and its ruling in *Marsaman Manning Agency, Inc. v. National Labor Relations Commission,* when the illegally dismissed employee's employment contract has a term of less than one year, he/she shall be entitled to recovery of salaries representing the unexpired portion of his/her employment contract. x x x At this juncture, the courts, especially the CA, should be reminded to read and apply this Court's labor pronouncements with utmost care and caution, taking to mind that in the very heart of the judicial system, labor cases occupy a special place. More than the State guarantees of protection of labor and security of tenure, labor disputes involve the fundamental survival of the employees and their families, who depend upon the former for all the basic necessities in life. Thus, petitioner must be awarded his

* Also spelled as Tanga-an in some parts of the records.

salaries corresponding to the unexpired portion of his six-months employment contract, or equivalent to four months. This includes all his corresponding monthly vacation leave pay and tonnage bonuses which are expressly provided and guaranteed in his employment contract as part of his *monthly* salary and benefit package. These benefits were guaranteed to be paid on a monthly basis, and were not made contingent. x x x As we have time and again held, "[i]t is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working."

2. **ID.; LABOR RELATIONS; ILLEGAL DISMISSAL; GRANT OF ATTORNEY'S FEES, SUSTAINED.—** The Court's discussion on the award of attorney's fees in *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc*., speaking through Justice Brion, is instructive, *viz*: Article 111 of the Labor Code, as amended, governs the grant of attorney's fees in labor cases: x x x We explained in *PCL Shipping Philippines, Inc. v. National Labor Relations Commission* that there are two commonly accepted **concepts of attorney's fees** – the ordinary and extraordinary. In its **ordinary concept,** an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its **extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party.** x x x We also held in *PCL Shipping* that Article 111 of the Labor Code, as amended, contemplates **the extraordinary concept of attorney's fees and that Article 111 is an exception to the declared policy of strict construction in the award of attorney's fees. Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages.** x x x In this case, it is already settled that petitioner's employment was illegally terminated. As a result, his wages as well as allowances were withheld without valid and legal basis. Otherwise stated, he was not paid his lawful wages without any valid justification. Consequently, he was impelled to litigate

to protect his interests. Thus, pursuant to the above ruling, he is entitled to receive attorney's fees. An award of attorney's fees in petitioner's favor is in order in the amount of US$3,280 (or US$32,800 x 10%).

APPEARANCES OF COUNSEL

Puracan Law Office & Associates for petitioner.
Manalo Jocson & Enriquez Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Court's labor pronouncements must be read and applied with utmost care and caution, taking to mind that in the very heart of the judicial system, labor cases occupy a special place. More than the State guarantees of protection of labor and security of tenure, labor disputes involve the fundamental survival of the employees and their families, who depend upon the former for all the basic necessities in life.

This Petition for Review on *Certiorari*[1] seeks a modification of the November 30, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 00806. Also assailed is the November 15, 2007 Resolution[3] denying petitioner's Motion for Reconsideration.

Factual Antecedents

The facts, as found by the CA, are as follows:

This is a case for illegal dismissal with a claim for the payment of salaries corresponding to the unexpired term of the contract,

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[1] *Rollo,* pp. 9-44.

[2] CA *rollo*, pp. 187-197; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Arsenio J. Magpale and Antonio L. Villamor.

[3] *Id.* at 223-224; penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier.

damages and attorney's fees filed by private respondent [Lorenzo T. Tangga-an] against the petitioners [Philippine Transmarine Carriers, Inc., Universe Tankship Delaware LLC, and Carlos C. Salinas[4] or herein respondents].

In his position paper, [Tangga-an] alleged that on January 31, 200[2], he entered into an overseas employment contract with Philippine Transmarine Carriers, Inc. (PTC) for and in behalf of its foreign employer, Universe Tankship Delaware, LLC. Under the employment contract, he was to be employed for a period of six months as chief engineer of the vessel the S.S. "Kure". He was to be paid a basic salary of US$5,000.00; vacation leave pay equivalent to 15 days a months [sic] or US$2,500.00 per month and tonnage bonus in the amount of US$700.00 a month.

On February 11, 2002, [Tangga-an] was deployed. While performing his assigned task, he noticed that while they were loading liquid cargo at Cedros, Mexico, the vessel suddenly listed too much at the bow. At that particular time both the master and the chief mate went on shore leave together, which under maritime standard was prohibited. To avoid any conflict, he chose to ignore the unbecoming conduct of the senior officers of the vessel.

On or about March 13, 2002, the vessel berthed at a port in Japan to discharge its cargo. Thereafter, it sailed to the U.S.A. While the vessel was still at sea, the master required [Tangga-an] and the rest of the Filipino Engineer Officers to report to his office where they were informed that they would be repatriated on account of the delay in the cargo discharging in Japan, which was principally a duty belonging to the deck officers. He imputed the delay to the non-readiness of the turbo generator and the inoperation of the boom, since the turbo generator had been prepared and synchronized for 3.5 hours or even before the vessel arrived in Japan. Moreover, upon checking the boom, they found the same [sic] operational. Upon verification, they found out that when the vessel berthed in Japan, the cargo hold was not immediately opened and the deck officers concerned did not prepare the stock. Moreover, while cargo discharging was ongoing, both the master and the chief mate again went on shore leave together at 4:00 in the afternoon and returned to the vessel only after midnight. To save face, they harped on the Engine Department for their mistake. [Tangga-an] and the other

[4] President of Philippine Transmarine Carriers, Inc.

Engineering [O]fficers were ordered to disembark from the vessel on April 2, 2002 and thereafter repatriated. Thence, the complaint.

[Philippine Transmarine Carriers, Inc., Universe Tankship Delaware LLC, and Carlos C. Salinas] on the other hand, contended that sometime on [sic] March 2002, during a test of the cargo discharging conveyor system, [Tangga-an] and his assistant engineers failed to start the generator that supplied power to the conveyor. They spent 3 hours trying to start the generator but failed. It was only the third assistant engineer who previously served in the same vessel who was able to turn on the generator. When the master tried to call the engine room to find out the problem, [Tangga-an] did not answer and merely hang [sic] up. The master proceeded to the engine room to find out the problem by [sic] [Tangga-an] and his assistant engineers were running around trying to appear [busy].

At another time, during a cargo discharging operation requiring the use of a generator system and the conveyor boom, [Tangga-an] was nowhere to be found. Apparently, he went on shore leave resulting in a delay of 2 hours because the machine could not be operated well. Both incidents were recorded in the official logbook. Due to the delay, protests were filed by the charter [sic]. The master required [Tangga-an] to submit a written explanation to which he did but blamed the captain and the chief officer. He failed to explain why he did not personally supervise the operation of the generator system and the conveyor boom during the cargo discharging operations. His explanation not having been found satisfactory, [respondents] decided to terminate [Tangga-an's] services. Thus, a notice of dismissal was issued against [Tangga-an]. He arrived in the Philippines on April 4, 2002.[5]

Tangga-an filed a Complaint[6] for illegal dismissal with prayer for payment of salaries for the unexpired portion of his contract, leave pay, exemplary and moral damages, attorney's fees and interest.

On January 27, 2004, Labor Arbiter Jose G. Gutierrez rendered a Decision[7] finding petitioner to have been illegally dismissed.

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[5] CA *rollo*, pp. 188-189.

[6] NLRC records, pp. 1-2.

[7] *Id.* at 49-55.

The Labor Arbiter noted that in petitioner's letter to respondent Universe Tankship Delaware, LLC dated April 1, 2002[8] he categorically denied any negligence on his part relative to the delay in the discharge of the cargo while the vessel was berthed in Japan. In view thereof, the Labor Arbiter opined that an investigation should have been conducted in order to ferret out the truth instead of dismissing petitioner outright. Consequently, petitioner's dismissal was illegal for lack of just cause and for failure to comply with the twin requirements of notice and hearing.[9]

As regards petitioner's claim for back salaries, the Labor Arbiter found petitioner entitled not to four months which is equivalent to the unexpired portion of his contract, but only to three months, inclusive of vacation leave pay and tonnage bonus (or US$8,200 x 3 months = US$24,600) pursuant to Section 10 of Republic Act (RA) No. 8042 or The Migrant Workers and Overseas Filipinos Act of 2005.

Regarding petitioner's claim for damages, the same was denied for failure to prove bad faith on the part of the respondents. However, attorney's fees equivalent to 10% of the total back salaries was awarded because petitioner was constrained to litigate.

The dispositive portion of the Labor Arbiter's Decision, reads:

> ***WHEREFORE*****,** the foregoing premises considered, judgment is hereby rendered finding [Tangga-an] illegally dismissed from his employment and directing the respondent Phil. Transmarine Carriers, Inc. to pay [Tangga-an] the amount of **US$24,600.00 PLUS US$2,460.00** attorney's fees or a total aggregate amount of **US Dollars: TWENTY SEVEN THOUSAND SIXTY (US$27,060.00)** or its peso equivalent at the exchange rate prevailing at the time of payment.
>
> **SO ORDERED.**[10]

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[8] *Id.* at 27.

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

[10] *Id.* at 54. Emphases in the original.

Ruling of the National Labor Relations Commission

Respondents appealed to the National Labor Relations Commission (NLRC). They claimed that the Labor Arbiter committed grave abuse of discretion in finding that petitioner was illegally dismissed; in awarding unearned vacation leave pay and tonnage bonus when the law and jurisprudence limit recovery to the employee's basic salary; and in awarding attorney's fees despite the absence of proof of bad faith on their part.

On August 25, 2004, the NLRC issued its Decision,[11] the dispositive portion of which reads:

> **WHEREFORE,** the Decision dated January 27, 2004 of the Labor Arbiter is **AFFIRMED**.
>
> Respondents-appellants['] Memorandum of Appeal, dated 23 March 2004 is **DISMISSED** for lack of merit.
>
> **SO ORDERED.**[12]

The NLRC affirmed the finding of illegal dismissal. It held that no notice of hearing was served upon petitioner, and no hearing whatsoever was conducted on the charges against him. It ruled that respondents could not dispense with the twin requirements of notice and hearing, which are essential elements of procedural due process. For this reason, no valid cause for termination has been shown. The NLRC likewise found respondents guilty of bad faith in illegally dismissing petitioner's services.

On the issue covering the award of unearned vacation leave pay and tonnage bonus, the NLRC struck down respondents' arguments and held that in illegal dismissal cases, the employee is entitled to all the salaries, allowances and other benefits or their monetary equivalents from the time his compensation is withheld from him until he is actually reinstated, in effect citing

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[11] *Id.* at 147-150; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Edgardo M. Enerlan and Oscar S. Uy.

[12] *Id*. at 150. Emphases in the original.

Article 279[13] of the Labor Code. It held that vacation leave pay and tonnage bonus are provided in petitioner's employment contract, which thus entitles the latter to the same in the event of illegal dismissal.

Finally, on the issue of attorney's fees, the NLRC held that since respondents were found to be in bad faith for the illegal dismissal and petitioner was constrained to litigate with counsel, the award of attorney's fees is proper.

Respondents moved for reconsideration which was denied by the NLRC in its March 18, 2005 Resolution.[14]

Ruling of the Court of Appeals

Respondents went up to the CA by Petition for *Certiorari*,[15] seeking to annul the Decision of the NLRC, raising essentially the same issues taken up in the NLRC.

On November 30, 2006, the CA rendered the assailed Decision, the dispositive portion of which reads, as follows:

> **WHEREFORE,** premises considered, the instant petition is **PARTIALLY GRANTED**. The Decision of public respondent is **MODIFIED** in the following manner:
>
> a. [Tangga-an] is entitled to three (3) months salary representing the unexpired portion of his contract in the total amount of US$15,000.00 or its peso equivalent at the exchange rate prevailing at the time of payment;
>
> b. [Tangga-an's] placement fee should be reimbursed with 12% interest per annum;

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[13] Article 279. *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[14] NLRC records, pp. 174-176.

[15] CA *rollo*, pp. 6-22.

c. [T]he award of attorney's fees is deleted.

SO ORDERED.[16]

The CA adhered to the finding of illegal dismissal. But on the subject of monetary awards, the CA considered only petitioner's monthly US$5,000.00 basic salary and disregarded his monthly US$2,500.00 vacation leave pay and US$700.00 tonnage bonus. It likewise held that petitioner's "unexpired portion of contract" for which he is entitled to back salaries should only be three months pursuant to Section 10[17] of RA 8042. In addition, petitioner should be paid back his placement fee with interest at the rate of twelve *per cent* (12%) *per annum*.

As to attorney's fees, the CA did not agree with the NLRC's finding that bad faith on the part of respondents was present to justify the award of attorney's fees. It held that there is nothing from the facts and proceedings to suggest that respondents acted with dishonesty, moral obliquity or conscious doing of wrong in terminating petitioner's services.

Petitioner filed a Motion for (Partial) Reconsideration,[18] which was denied in the assailed November 15, 2007 Resolution. Thus, he filed the instant Petition.

Issues

In this Petition, Tangga-an seeks a modification of the CA Decision and the reinstatement of the monetary awards as decreed in the Labor Arbiter's January 27, 2004 Decision, or in the alternative, the grant of back salaries equivalent to four months which corresponds to the unexpired portion of the contract,

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[16] *Id.* at 196. Emphases in the Original.

[17] SEC. 10. MONEY CLAIMS. — x x x

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

[18] CA *rollo,* pp. 198-221.

inclusive of vacation leave pay and tonnage bonus, plus 10% thereof as attorney's fees.[19]

Petitioner submits the following issues for resolution:

I. Whether x x x the CA's issuance of the writ of *certiorari* reversing the NLRC decision is in accordance with law[;]

II. Whether x x x the indemnity provided in Section 10, R. A. 8042 x x x be limited only to the seafarer's basic monthly salary or x x x include, based on civil law concept of damages as well as Labor Code concept of backwages, allowances/benefits or their monetary equivalent as a further relief to restore the seafarer's income that was lost by reason of his unlawful dismissal[;]

III. Whether x x x the indemnity awarded by the CA in petitioner's favor consisting only of 3 months' basic salaries [conform] with the proper interpretation of Section 10 R. A. 8042 and with the ruling in *Skippers Pacific, Inc. v. Mira, et al.,* G.R. No. 144314, November 21, 2002 and related cases or is petitioner entitled to at least 4 months salaries being the unexpired portion of his contract[; and]

IV. Whether x x x the CA's disallowance of the award of attorney's fees, based on the alleged absence of bad faith on the part of respondent, is in accordance with law or is the attorney's fees awarded by the NLRC to petitioner, who was forced to litigate to enforce his rights, justified x x x[.][20]

Petitioner's Arguments

Petitioner essentially contends that respondents' resort to an original Petition for *Certiorari* in the CA is erroneous because the issues they raised did not involve questions of jurisdiction but of fact and law. He adds that the CA Decision went against the factual findings of the labor tribunals which ought to be binding, given their expertise in matters falling within their jurisdiction.

Petitioner likewise contends that the CA erred in excluding his vacation leave pay and tonnage bonus in the computation

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[19] *Rollo,* p. 43.

[20] *Id.* at 326-327.

of his back salaries as they form part of his salaries and benefits under his employment contract with the respondents, a covenant which is deemed to be the law governing their relations. He adds that under Article 279 of the Labor Code, he is entitled to full backwages inclusive of allowances and other benefits or their monetary equivalent from the time his compensation was withheld up to the time he is actually reinstated.

Petitioner accuses the CA of misapplying the doctrine laid down in *Skippers Pacific, Inc. v. Skippers Maritime Services, Ltd.*[21] He points out that the CA wrongly interpreted and applied what the Court said in the case, and that the pronouncement therein should have benefited him rather than the respondents.

Petitioner would have the Court reinstate the award of attorney's fees, on the argument that the presence of bad faith is not necessary to justify such award. He maintains that the grant of attorney's fees in labor cases constitutes an exception to the general requirement that bad faith or malice on the part of the adverse party must first be proved.

Finally, petitioner prays that this Court reinstate the Labor Arbiter's monetary awards in his January 27, 2004 Decision or, in the alternative, to grant him full back salaries equivalent to the unexpired portion of his contract, or four months, plus 10% thereof as attorney's fees.

Respondents' Arguments

In seeking affirmance of the assailed CA issuances, respondents basically submit that the CA committed no reversible error in excluding petitioner's claims for vacation leave pay, tonnage bonus, and attorney's fees. They support and agree with the CA's reliance upon *Skippers Pacific, Inc. v. Skippers Maritime Services, Ltd.,*[22] and emphasize that in the absence of bad faith on their part, petitioner may not recover attorney's fees.

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[21] 440 Phil. 906 (2002).

[22] *Id.*

Our Ruling

The Court grants the Petition.

There remains no issue regarding illegal dismissal. In spite of the consistent finding below that petitioner was illegally dismissed, respondents did not take issue, which thus renders all pronouncements on the matter final.

In resolving petitioner's monetary claims, the CA utterly misinterpreted the Court's ruling in *Skippers Pacific, Inc. v. Skippers Maritime Services, Ltd.,*[23] using it to support a view which the latter case precisely ventured to strike down. In that case, the employee was hired as the vessel's Master on a six-month employment contract, but was able to work for only two months, as he was later on illegally dismissed. The Labor Arbiter, NLRC, and the CA all took the view that the complaining employee was entitled to his salary for the unexpired portion of his contract, but limited to only three months pursuant to Section 10[24] of RA 8042. The Court did not agree and hence modified the judgment in said case. It held that, following the wording of Section 10 and its ruling in *Marsaman Manning Agency, Inc. v. National Labor Relations Commission,*[25] when the illegally dismissed employee's employment contract has a term of less than one year, he/she shall be entitled to recovery of salaries representing the unexpired portion of his/her employment contract. Indeed, there was nothing even vaguely confusing in the Court's citation therein of *Marsaman*:

> In *Marsaman Manning Agency, Inc. vs. NLRC,* involving Section 10 of Republic Act No. 8042, we held:
>
> > [W]e cannot subscribe to the view that private respondent is entitled to three (3) months salary only. A plain reading of Sec. 10 clearly reveals that the choice of which amount to award an illegally dismissed overseas contract worker, *i.e.,* whether his salaries for the unexpired portion of his employment

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[23] *Id.*

[24] *Supra* note 17.

[25] 371 Phil. 827 (1999).

> contract or three (3) months salary for every year of the unexpired term, whichever is less, **comes into play only when the employment contract concerned has a term of at least one (1) year or more**. This is evident from the [wording] "for every year of the unexpired term" which follows the [wording] "salaries x x x for three months." To follow petitioners' thinking that private respondent is entitled to three (3) months salary only simply because it is the lesser amount is to completely disregard and overlook some words used in the statute while giving effect to some. This is contrary to the well-established rule in legal hermeneutics that in interpreting a statute, care should be taken that every part or word thereof be given effect since the lawmaking body is presumed to know the meaning of the words employed in the statute and to have used them advisedly. *Ut res magis valeat quam pereat.*
>
> **It is not disputed that private respondent's employment contract in the instant case was for six (6) months. Hence, we see no reason to disregard the ruling in *Marsaman* that private respondent should be paid his salaries for the unexpired portion of his employment contract**.[26] (Emphases supplied)

At this juncture, the courts, especially the CA, should be reminded to read and apply this Court's labor pronouncements with utmost care and caution, taking to mind that in the very heart of the judicial system, labor cases occupy a special place. More than the State guarantees of protection of labor and security of tenure, labor disputes involve the fundamental survival of the employees and their families, who depend upon the former for all the basic necessities in life.

Thus, petitioner must be awarded his salaries corresponding to the unexpired portion of his six-month employment contract, or equivalent to four months. This includes all his corresponding monthly vacation leave pay and tonnage bonuses which are expressly provided and guaranteed in his employment contract as part of his *monthly* salary and benefit package. These benefits were guaranteed to be paid on a monthly basis, and were not made contingent. In fact, their monetary equivalent was fixed

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[26] *Skippers Pacific, Inc. v. Skippers Maritime Services, Ltd., supra* note 21 at 922-923.

under the contract: US$2,500.00 for vacation leave pay and US$700.00 for tonnage bonus each month. Thus, petitioner is entitled to back salaries of US$32,800 (or US$5,000 + US$2,500 + US$700 = US$8,200 x 4 months). "Article 279 of the Labor Code mandates that an employee's full backwages shall be inclusive of allowances and other benefits or their monetary equivalent."[27] As we have time and again held, "[i]t is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working."[28] This well-defined principle has likewise been lost on the CA in the consideration of the case.

The CA likewise erred in deleting the award of attorney's fees on the ground that bad faith may not readily be attributed to the respondents given the circumstances. The Court's discussion on the award of attorney's fees in *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.,*[29] speaking through Justice Brion, is instructive, *viz*:

> Article 111 of the Labor Code, as amended, governs the grant of attorney's fees in labor cases:
>
> > 'Art. 111. *Attorney's fees.* — (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.
> >
> > (b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery

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[27] *Equitable Banking Corporation (EQUITABLE-PCI BANK) v. Sadac,* 523 Phil. 781, 811, (2006).

[28] *Sarona v. National Labor Relations Commission,* G.R. No. 185280, January 18, 2012, 663 SCRA 394, 424, citing *St. Louis College of Tuguegarao v. National Labor Relations Commission,* 257 Phil. 1002, 1008 (1989) and *East Asiatic Co., Ltd. v. Court of Industrial Relations,* 148-B Phil. 401, 429 (1971).

[29] G.R. No. 174179, November 16, 2011, 660 SCRA 263.

of wages, attorney's fees which exceed ten percent of the amount of wages recovered.'

Section 8, Rule VIII, Book III of its Implementing Rules also provides, *viz.*:

'Section 8. *Attorney's fees.* — Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.'

We explained in *PCL Shipping Philippines, Inc. v. National Labor Relations Commission* that there are two commonly accepted **concepts of attorney's fees** — the ordinary and extraordinary. In its **ordinary concept**, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its **extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party**. The instances when these may be awarded are enumerated in Article 2208 of the Civil Code, specifically in its paragraph 7 on actions for recovery of wages, and is ***payable not to the lawyer but to the client,*** **unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation.**

We also held in *PCL Shipping* that Article 111 of the Labor Code, as amended, contemplates the **extraordinary concept** of attorney's fees and that **Article 111 is an exception to the declared policy of strict construction in the award of attorney's fees. Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. x x x**

We similarly so ruled in *RTG Construction, Inc. v. Facto* and in *Ortiz v. San Miguel Corporation*. In *RTG Construction*, we specifically stated:

'Settled is the rule that in actions for recovery of wages, or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interests, a monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code; Section 8, Rule VIII, Book III of its

> Implementing Rules; and paragraph 7, Article 2208 of the Civil Code. **The award of attorney's fees is proper, and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.'**

In *PCL Shipping,* we found the award of attorney's fees due and appropriate since the respondent therein incurred legal expenses after he was forced to file an action for recovery of his lawful wages and other benefits to protect his rights. From this perspective and the above precedents, we conclude that the CA erred in ruling that a finding of the employer's malice or bad faith in withholding wages must precede an award of attorney's fees under Article 111 of the Labor Code. To reiterate, a plain showing that the lawful wages were not paid without justification is sufficient.[30]

In this case, it is already settled that petitioner's employment was illegally terminated. As a result, his wages as well as allowances were withheld without valid and legal basis. Otherwise stated, he was not paid his lawful wages without any valid justification. Consequently, he was impelled to litigate to protect his interests. Thus, pursuant to the above ruling, he is entitled to receive attorney's fees. An award of attorney's fees in petitioner's favor is in order in the amount of US$3,280 (or US$32,800 x 10%).

WHEREFORE, the Petition is **GRANTED.** Petitioner Lorenzo T. Tangga-an is hereby declared **ENTITLED** to back salaries for the unexpired portion of his contract, inclusive of vacation leave pay and tonnage bonus which is equivalent to US$32,800 plus US$3,280 as attorney's fees or a total of US$36,080 or its peso equivalent at the exchange rate prevailing at the time of payment.

SO ORDERED.

Carpio (Chairperson), Brion, Villarama, Jr.,[**] and *Perlas-Bernabe, JJ.,* concur.

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[30] *Id.* at 273-275. Emphases in the original. Citations omitted.

[**] Per Special Order No. 1426 dated March 8, 2013.

FIRST DIVISION

[G.R. No. 184520. March 13, 2013]

ROLANDO DS. TORRES, *petitioner, vs.* **RURAL BANK OF SAN JUAN, INC., ANDRES CANO CHUA, JOBEL GO CHUA, JESUS CANO CHUA, MEINRADO DALISAY, JOSE MANALANSAN III, OFELIA GINABE and NATY ASTRERO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS; CONCLUSIVE AND BINDING WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTION.—** Settled is the rule that when supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court. As such, only errors of law are reviewed by the Court in petitions for review of CA decisions. By way of exception, however, the Court will exercise its equity jurisdiction and re-evaluate, review and re-examine the factual findings of the CA when, as in this case, the same are contradicting with the findings of the labor tribunals.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; WILFULL BREACH OF TRUST AND CONFIDENCE, AS A GROUND; REQUISITES.—** As provided in Article 282 of the Labor Code and as firmly entrenched in jurisprudence, an employer has the right to dismiss an employee by reason of willful breach of the trust and confidence reposed in him. To temper the exercise of such prerogative and to reconcile the same with the employee's Constitutional guarantee of security of tenure, the law imposes the burden of proof upon the employer to show that the dismissal of the employee is for just cause failing which would mean that the dismissal is not justified. Proof beyond reasonable doubt is not necessary but the factual basis for the dismissal must be clearly and convincingly established. Further, the law mandates that before validity can be accorded to a dismissal premised on loss of

trust and confidence, two requisites must concur, *viz*: (1) the employee concerned must be holding a position of trust; and (2) the loss of trust must be based on willful breach of trust founded on clearly established facts.

3. ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.— The complained act of the petitioner did not evince intentional breach of the respondents' trust and confidence. Neither was the petitioner grossly negligent or unjustified in pursuing the course of action he took. The Court has repeatedly emphasized that the act that breached the trust must be willful such that it was done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. The conditions under which the clearance was issued exclude any finding of deliberate or conscious effort on the part of the petitioner to prejudice his employer. Also, the petitioner did not commit an irregular or prohibited act. He did not falsify or misrepresent any company record as it was officially confirmed by Lily that the items covered by the clearance were truly settled by Jacinto. Hence, the respondents had no factual basis in declaring that the petitioner violated Category B Grave Offense No. 1 of the Company Code of Conduct and Discipline. Loss of trust and confidence as a ground for dismissal has never been intended to afford an occasion for abuse because of its subjective nature. It should not be used as a subterfuge for causes which are illegal, improper and unjustified. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith.

4. ID.; ID.; ID.; ILLEGAL DISMISSAL; AWARD OF SEPARATION PAY IN LIEU OF REINSTATEMENT AND BACK WAGES SHALL EARN LEGAL INTEREST; SUSTAINED.— In accordance with current jurisprudence, the award of back wages shall earn legal interest at the rate of six percent (6%) *per annum* from the date of the petitioner's illegal dismissal until the finality of this decision. Thereafter, it shall earn 12% legal interest until fully paid in accordance with the guidelines in *Eastern Shipping Lines, Inc., v. Court of Appeals.* In addition to his back wages, the petitioner is also entitled to separation pay. It cannot be gainsaid that animosity and antagonism have been brewing between the parties since the petitioner was gradually eased out of key positions in RBSJI and to reinstate him will

only intensify their hostile working atmosphere. Thus, based on strained relations, separation pay equivalent to one (1) month salary for every year of service, with a fraction of a year of at least six (6) months to be considered as one (1) whole year, should be awarded in lieu of reinstatement, to be computed from date of his engagement by RBSJI up to the finality of this decision. The award of separation pay in case of strained relations is more beneficial to both parties in that it liberates the employee from what could be a highly oppressive work environment in as much as it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.

5. **ID.; ID.; ID.; ID.; MORAL AND EXEMPLARY DAMAGES; ADDITIONAL FACTS MUST BE PLEADED AND PROVEN TO WARRANT THE GRANT THEREOF.—** In *M+W Zander Philippines, Inc. v. Enriquez,* the Court decreed that illegal dismissal, by itself alone, does not entitle the dismissed employee to moral damages; additional facts must be pleaded and proven to warrant the grant of moral damages. x x x Bad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud. Here, the petitioner failed to prove that his dismissal was attended by explicit oppressive, humiliating or demeaning acts. Since no moral damages can be granted under the facts of the case, exemplary damages cannot also be awarded.

6. **ID.; ID.; ID.; ID.; CORPORATE DIRECTORS AND OFFICERS MAY BE HELD SOLIDARILY LIABLE WITH THE CORPORATION FOR THE TERMINATION OF EMPLOYMENT ONLY IF DONE WITH MALICE OR IN BAD FAITH; NOT PRESENT IN CASE AT BAR.—** Time and again, the Court has held that a corporation has its own legal personality separate and distinct from those of its stockholders, directors or officers. Hence, absent any evidence that they have exceeded their authority, corporate officers are not personally liable for their official acts. Corporate directors and officers may be held solidarily liable with the corporation for the termination of employment only if done with malice or in bad faith. As discussed above, the acts imputed to the respondents do not support a finding of bad faith. In addition,

the lack of a valid cause for the dismissal of an employee does not *ipso facto* mean that the corporate officers acted with malice or bad faith. There must be an independent proof of malice or bad faith, which is absent in the case at bar.

7. ID.; ID.; ID.; ID.; MANAGERIAL EMPLOYEE IS NOT ENTITLED TO 13TH MONTH PAY.— Being a managerial employee, the petitioner is not entitled to 13th month pay. Pursuant to Memorandum Order No. 28, as implemented by the Revised Guidelines on the Implementation of the 13th Month Pay Law dated November 16, 1987, managerial employees are exempt from receiving such benefit without prejudice to the granting of other bonuses, in lieu of the 13th month pay, to managerial employees upon the employer's discretion.

8. ID.; ID.; ID.; ID.; AWARD OF ATTORNEY'S FEES, PROPER.— It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable. Pursuant to Article 111 of the Labor Code, ten percent (10%) of the total award is the reasonable amount of attorney's fees that can be awarded.

APPEARANCES OF COUNSEL

Catherine C. Canonigo-Gan for petitioner.
Florante M. Yambot for respondents.

D E C I S I O N

REYES, *J.*:

This Petition for Review on *Certiorari*,[1] under Rule 45 of the Rules of Court, seeks to reverse and set aside the Decision[2] dated February 21, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 94690 dismissing the complaint for illegal dismissal filed by petitioner Rolando DS. Torres (petitioner) against respondent Rural Bank of San Juan, Inc. (RBSJI) and its officers

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[1] *Rollo,* pp. 9-26.

[2] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal, concurring; *id*. at 28-42.

who are the herein individual respondents, namely: Andres Cano Chua (Andres), Jobel Go Chua (Jobel), Jesus Cano Chua (Jesus), Meinrado Dalisay, Jose Manalansan III (Jose), Ofelia Ginabe (Ofelia) and Naty Astrero (collectively referred to as respondents).[3]

Likewise assailed is the CA Resolution[4] dated June 3, 2008 which denied reconsideration.

The antecedents

Culled from the rulings of the labor tribunals and the appellate court are the ensuing factual milieu:[5]

The petitioner was initially hired by RBSJI as Personnel and Marketing Manager in 1991. After a six-month probationary period and finding his performance to be satisfactory, RBSJI renewed his employment for the same post to a permanent/ regular status. In June 1996, the petitioner was offered the position of Vice-President for RBSJI's newly created department, Allied Business Ventures. He accepted the offer and concomitantly relinquished his post. The vacancy created was filled by respondent Jobel who temporarily held the position concurrently as a Corporate Planning and Human Resources Development Head.

On September 24, 1996, the petitioner was temporarily assigned as the manager of RBSJI's N. Domingo branch in view of the resignation of Jacinto Figueroa (Jacinto).

On September 27, 1996, Jacinto requested the petitioner to sign a standard employment clearance pertaining to his accountabilities with RBSJI. When the petitioner declined his request, Jacinto threw a fit and shouted foul invectives. To

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[3] Individual respondents are the President and General Manager, Corporate Planning and Human Resources Head, Consultant, Treasury Department Head, Vice-President for MISSG, Consultant to the Human Resources Department and Human Resources Supervisor, respectively, of RBSJI; *id.* at 29.

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

[5] Culled from the Labor Arbiter Decision dated November 27, 1998, *id.* at 62-79; National Labor Relations Commission Decisions dated April 14, 2000 and March 3, 2006, *id.* at 118-127, 88-94; and CA Decision dated February 21, 2008, *id.* at 28-42.

pacify him, the petitioner bargained to issue a clearance but only for Jacinto's paid cash advances and salary loan.

About seven months later or on April 17, 1997, respondent Jesus issued a memorandum to the petitioner requiring him to explain why no administrative action should be imposed on him for his unauthorized issuance of a clearance to Jacinto whose accountabilities were yet to be audited. Jacinto was later found to have unliquidated cash advances and was responsible for a questionable transaction involving ₱11 million for which RBSJI is being sued by a certain Actives Builders Manufacturing Corporation. The memorandum stressed that the clearance petitioner issued effectively barred RBSJI from running after Jacinto.[6]

The petitioner submitted his explanation on the same day clarifying that the clearance was limited only to Jacinto's paid cash advances and salary loan based on the receipts presented by Lily Aguilar (Lily), the cashier of N. Domingo branch. He emphasized that he had no foreknowledge nor was he forewarned of Jacinto's unliquidated cash advances and questionable transactions and that the clearance did not extend to those matters.[7]

After conducting an investigation, RBSJI's Human Resources Department recommended the petitioner's termination from employment for the following reasons, to wit:

> 1. The issuance of clearance to Mr. Jacinto Figueroa by the [petitioner] have been prejudicial to the Bank considering that damages [sic] found caused by Mr. Figueroa during his stay with the bank;
>
> 2. [The petitioner] is not in any authority to issue said clearance which is a violation of the Company Code of Conduct and Discipline under Category B Grave Offense No. 1 (falsifying or misrepresenting persons or other company records, documents or papers) equivalent to termination; [and]

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[6] *Id.* at 30-31.

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

3. The nature of his participation in the issuance of the said clearance could be a reasonable ground for the Management to believe that he is unworthy of the trust and confidence demanded by his position which is also a ground for termination under Article [282] of the Labor Code.[8]

On May 19, 1997, RBSJI's Board of Directors adopted the above recommendation and issued Resolution No. 97-102 terminating the petitioner from employment, the import of which was communicated to him in a Memorandum dated May 30, 1997.[9]

Feeling aggrieved, the petitioner filed the herein complaint for illegal dismissal, illegal deduction, non-payment of service incentive, leave pay and retirement benefits.[10] The petitioner averred that the supposed loss of trust and confidence on him was a sham as it is in fact the calculated result of the respondents' dubious plot to conveniently oust him from RBSJI.

He claimed that he was deceived to accept a Vice-President position, which turned out to be a mere clerical and menial work, so the respondents can install Jobel, the son of a major stockholder of RBSJI, as Personnel and Marketing Manager. The plot to oust the petitioner allegedly began in 1996 when Jobel annexed the Personnel and Marketing Departments to the Business Development and Corporate Planning Department thus usurping the functions of and displacing the petitioner, who was put on a floating status and stripped of managerial privileges and allowances.

The petitioner further alleged that he was cunningly assigned at N. Domingo branch so he can be implicated in the anomalous transaction perpetrated by Jacinto. He narrated that on September 27, 1996, the officers of RBSJI, namely: Jobel, Andres, Jose and Ofelia, were actually at the N. Domingo branch but they all suspiciously left him to face the predicament caused by Jacinto.

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[8] *Id.* at 68.

[9] *Id.* at 67-69, 125.

[10] Docketed as NLRC NCR Case No. 00-07-04850-97.

He recounted that the next day he was assigned back at the Tarlac extension office and thereafter repeatedly harassed and forced to resign. He tolerated such treatment and pleaded that he be allowed to at least reach his retirement age. On March 7, 1996, he wrote a letter to George Cano Chua (George) expressing his detestation of how the "new guys" are dominating the operations of the company by destroying the image of pioneer employees, like him, who have worked hard for the good image and market acceptability of RBSJI. The petitioner requested for his transfer to the operations or marketing department. His request was, however, not acted upon.

The petitioner claimed that on March 19, 1997, respondent Jesus verbally terminated him from employment but he later on retracted the same and instead asked the petitioner to tender a resignation letter. The petitioner refused. A month thereafter, the petitioner received the memorandum asking him to explain why he cleared Jacinto of financial accountabilities and thereafter another memorandum terminating him from employment.

For their part, the respondents maintained that the petitioner was validly dismissed for loss of trust and confidence precipitated by his unauthorized issuance of a financial accountability clearance sans audit to a resigned employee. They averred that a copy of the clearance mysteriously disappeared from RBSJI's records hence, the petitioner's claim that it pertained only to Jacinto's paid cash advances and salary loan cannot stand for being uncorroborated.

Attempts at an amicable settlement were made but the same proved futile hence, the Labor Arbiter[11] (LA) proceeded to rule on the complaint.

Ruling of LA

In its Decision[12] dated November 27, 1998, the LA sustained the claims of the petitioner as against the factually unsubstantiated allegation of loss of trust and confidence propounded by the

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[11] Labor Arbiter Aliman D. Mangandog.

[12] *Rollo,* pp. 62-79.

respondents. The LA observed that the petitioner's selfless dedication to his job and efforts to achieve RBSJI's stability, which the respondents failed to dispute, negate any finding of bad faith on his part when he issued a clearance of accountabilities in favor of Jacinto. As such, the said act cannot serve as a valid and justifiable ground for the respondents to lose trust and confidence in him.

The LA further held that the failure of both parties to present a copy of the subject clearance amidst the petitioner's explanation that it did not absolutely release Jacinto from liability, should work against the respondents since it is the proof that will provide basis for their supposed loss of trust and confidence.

The LA upheld the petitioner's contention that the loss of trust and confidence in him was indeed a mere afterthought to justify the respondents' premeditated plan to ease him out of RBSJI. The LA's conclusion was premised on the convergence of the following circumstances: (1) the petitioner's stint from 1991-1996 was not marred with any controversy or complaint regarding his performance; (2) when Jobel joined RBSJI in the latter part of 1996, he took over the department led by the petitioner thus placing the latter in a floating status; and (3) the petitioner's temporary transfer to the N. Domingo branch was designed to deliberately put him in a bind and blame him on whatever course of action he may take to resolve the same.

Accordingly, the petitioner was found to have been illegally dismissed and thus accorded the following reliefs in the decretal portion of the LA Decision, *viz.*:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Bank and individual respondents, to reinstate [the petitioner] to his previous or equivalent position, without loss of seniority rights and other benefits and privileges appurtaining [sic] to him, and to pay [the petitioner] the following:

1. [The petitioner's] partial backwages and other emoluments in the form of allowances, as gasoline, maintenance, representation, uniform and membership allowances, from the time of his dismissal up to his actual date of reinstatement, which as of this date amount to:

Backwages (Partial)	[₱]244,800.00
Gasoline Allowances	63,000.00
Maintenance Allowance	45,000.00
Representation Allowance	54,000.00
Membership Allowance	12,000.00
Uniform Allowance	8,000.00
Total	[₱]426,800.00

2. [The petitioner's] 13th month pay from the time of his dismissal up to actual date of reinstatement, which as of this date amounts to Twenty[-]Seven Thousand Two Hundred ([₱]27,200.00) Pesos;

3. Moral and exemplary damages in the amount of Fifty Thousand ([₱]50,000.00) Pesos each, respectively; and

4. Attorney's fees amounting to ten percent (10%) of the total award, specifically amounting to Fifty[-]Five Thousand Nine Hundred Twenty[-]Three Pesos and Eight ([₱]55,923.08) Centavos.

All other claims are hereby Dismissed for lack of merit.

SO ORDERED.[13]

Ruling of the National Labor Relations Commission (NLRC)

In its Resolution[14] dated April 14, 2000, the NLRC disagreed with the LA's conclusion and opined that it was anchored on irrelevant matters such as the petitioner's performance and the preferential treatment given to relatives of RBSJI's stockholders. The NLRC held that the legality of the petitioner's dismissal must be based on an appreciation of the facts and the proof directly related to the offense charged, which NLRC found to have weighed heavily in favor of the respondents.

The NLRC remarked that the petitioner was indisputably not authorized to issue the clearance. Also, the tantrums and

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

[14] *Id.* at 118-127. The appeal before the NLRC was docketed as NLRC NCR CA No. 019842-99.

furious attitude exhibited by Jacinto are not valid reasons to submit to his demands. The fact that the N. Domingo branch had been sued civilly on February 25, 1997 for a tax scam while under Jacinto's leadership, should have alerted the petitioner into issuing him a clearance. The action taken by the petitioner lacked the prudence expected from a man of his stature thus prejudicing the interests of RBSJI. Accordingly, the dispositive portion of the decision reads:

> WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE. Let a new one [sic] entered DISMISSING the instant case for lack of merit. However, respondent should pay [the petitioner] his proportionate 13th month pay for 1997 as he was dismissed on May 30, 1997.
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> SO ORDERED.[15]

The petitioner sought reconsideration[16] which was admitted by the NLRC in an Order dated September 30, 2005. From such Order, the respondents filed a motion for reconsideration on the ground that the petitioner failed to present a copy of his purported motion bearing the requisite proof of filing.[17]

Traversing both motions, the NLRC issued its Decision[18] dated March 3, 2006: (1) granting the petitioner's plea for the reconsideration of its Resolution dated April 14, 2000 thus effectively reversing and nullifying the same; and (2) denying the respondents' motion for reconsideration of the Order dated September 30, 2005.

Anent the first disposition, the NLRC accorded weight to the explanations proffered by the petitioner that the clearance issued to Jacinto was limited only to his paid cash advances and salary loan. The NLRC further held that the offense imputed to the petitioner is not covered by Category B, Grave Offense No. 1 of RBSJI's Code of Conduct and Discipline as it does

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[15] *Id.* at 126-127.

[16] *Id.* at 45-60.

[17] *Id.* at 88-89.

[18] *Id.* at 88-94.

not appear that he falsified or misrepresented personal or other company records, documents or papers.[19]

Taking an entirely opposite stance, the NLRC declared that the clearance issued by the petitioner did not prejudice RBSJI's interest as it was limited in scope and did not entirely clear Jacinto from all his financial accountabilities. Also, the petitioner was only "a day old" at the N. Domingo branch and thus he cannot be reasonably expected to be aware of the misdeeds purportedly committed by Jacinto.[20]

For the foregoing reasons, the NLRC reversed its earlier ruling and reinstated the LA's Decision dated November 27, 1998, thus:

> WHEREFORE, the Arbiter's decision of 27 November 1998 is hereby AFFIRMED and REINSTATED.
>
> Accordingly, the Resolution of 14 April 2000 is REVERSED and SET ASIDE.
>
> Finally, [the respondents'] Motion for Reconsideration dated 2 November 2005 is DENIED for lack of merit.
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> SO ORDERED.[21]

Ruling of the CA

The respondents sought recourse with the CA,[22] which in its Decision[23] dated February 21, 2008 reversed and set aside the NLRC Decision dated March 3, 2006 and ruled that the petitioner was dismissed for a just cause. The appellate court articulated that as the Acting Manager of RBSJI's N. Domingo branch, the petitioner held a highly sensitive and critical position which entailed the conscientious observance of company

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[19] *Id.* at 91-93.

[20] *Id.*

[21] *Id.* at 93-94.

[22] The petitioners' petition for *certiorari* was docketed as CA-G.R. SP. No. 94690.

[23] *Rollo*, pp. 28-42.

procedures. Not only was he unauthorized to issue the clearance, he also failed to exercise prudence in clearing Jacinto of his accountabilities given the fact that the same were yet to be audited. Such omission financially prejudiced RBSJI and it amounted to gross negligence and incompetence sufficient to sow in his employer the seed of mistrust and loss of confidence.[24] The decretal portion of the CA Decision thus reads:

IN VIEW OF ALL THE FOREGOING, the petition is **GRANTED**. The March 03, 2006 Decision of the National Labor Relations Commission is **REVERSED** and **SET ASIDE**. The April 14, 2000 Decision of the National Labor Relations Commission is hereby **REINSTATED**. No costs.

SO ORDERED.[25]

The petitioner moved for reconsideration[26] but the motion was denied in the CA Resolution[27] dated June 3, 2008. Hence, the present appeal.

Arguments of the parties

The petitioner avers that the respondents' claim of loss of trust and confidence is not worthy of credence since they failed to present a copy of the clearance purportedly showing that he cleared Jacinto of all his financial accountabilities and not merely as to his paid cash advances and salary loan. He points out that RBSJI must be in custody thereof considering that it is a vital official record.

The petitioner insists that the alleged loss of trust and confidence in him is a mere subterfuge to cover the respondents' ploy to oust him out of RBSJI. He asserts that the seven-month gap between the date when he issued the subject clearance and the date when he was sent a memorandum for the said act shows

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[24] *Id.* at 37-39.

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

[26] *Id.* at 80-87.

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

that the respondents' supposed loss of trust and confidence was a mere afterthought.[28]

On the other hand, the respondents invoke the ratiocinations of the CA that they were justified in losing the trust and confidence reposed on the petitioner since he failed to exercise the degree of care expected of his managerial position. They reiterate the petitioner's admission that no audit was yet conducted as to the accountabilities of Jacinto when he issued the clearance.

The respondents further assert that as a former Personnel Manager, the petitioner is well-aware of RBSJI's policy that before a resigned employee can be cleared of accountabilities, he must be first examined or audited. However, the petitioner opted to violate this policy and yield to Jacinto's tantrums.[29]

The above arguments yield the focal issue of whether or not the petitioner was validly dismissed from employment.

The Court's Ruling

The petition is impressed with merit.

Settled is the rule that when supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court.[30] As such, only errors of law are reviewed by the Court in petitions for review of CA decisions. By way of exception, however, the Court will exercise its equity jurisdiction and re-evaluate, review and re-examine the factual findings of the CA when, as in this case, the same are contradicting[31] with the findings of the labor tribunals.

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[28] *Id.* at 9-26.

[29] *Id.* at 97-117.

[30] *Lynvil Fishing Enterprises, Inc. v. Ariola,* G.R. No. 181974, February 1, 2012, 664 SCRA 679, 690.

[31] *Lima Land, Inc. v. Cuevas,* G.R. No. 169523, June 16, 2010, 621 SCRA 36, 41-42.

The respondents failed to prove that the petitioner was dismissed for a just cause.

As provided in Article 282[32] of the Labor Code and as firmly entrenched in jurisprudence,[33] an employer has the right to dismiss an employee by reason of willful breach of the trust and confidence reposed in him.

To temper the exercise of such prerogative and to reconcile the same with the employee's Constitutional guarantee of security of tenure, the law imposes the burden of proof upon the employer to show that the dismissal of the employee is for just cause failing which would mean that the dismissal is not justified. Proof beyond reasonable doubt is not necessary but the factual basis for the dismissal must be clearly and convincingly established.[34]

Further, the law mandates that before validity can be accorded to a dismissal premised on loss of trust and confidence, two requisites must concur, *viz.*: (1) the employee concerned must be holding a position of trust; and (2) the loss of trust must be

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[32] Article 282. TERMINATION BY EMPLOYER. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing. (Emphasis ours)

[33] *Prudential Guarantee and Assurance Employee Labor Union v. NLRC,* G.R. No. 185335, June 13, 2012, 672 SCRA 375, 386.

[34] *Jerusalem v. Keppel Monte Bank,* G.R. No. 169564, April 6, 2011, 647 SCRA 313, 323.

based on willful breach of trust founded on clearly established facts.[35]

There is no arguing that the petitioner was part of the upper echelons of RBSJI's management from whom greater fidelity to trust is expected. At the time when he committed the act which allegedly led to the loss of RBSJI's trust and confidence in him, he was the Acting Manager of N. Domingo branch. It was part of the petitioner's responsibilities to effect a smooth turn-over of pending transactions and to sign and approve instructions within the limits assigned to the position under existing regulations.[36] Prior thereto and ever since he was employed, he has occupied positions that entail the power or prerogative to dictate management policies — as Personnel and Marketing Manager and thereafter as Vice-President.

The presence of the first requisite is thus certain. Anent the second requisite, the Court finds that the respondents failed to meet their burden of proving that the petitioner's dismissal was for a just cause.

The act alleged to have caused the loss of trust and confidence of the respondents in the petitioner was his issuance, without prior authority and audit, of a clearance to Jacinto who turned out to be still liable for unpaid cash advances and for an ₱11-million fraudulent transaction that exposed RBSJI to suit. According to the respondents, the clearance barred RBSJI from running after Jacinto. The records are, however, barren of any evidence in support of these claims.

As correctly argued by the petitioner and as above set forth, the *onus* of submitting a copy of the clearance allegedly exonerating Jacinto from all his accountabilities fell on the respondents. It was the single and absolute evidence of the petitioner's act that purportedly kindled the respondents' loss of trust. Without it, the respondents' allegation of loss of trust and confidence has no leg to stand on and must thus be rejected.

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[35] *Supra* note 33, at 387, citing *Bristol Myers Squibb (Phils.), Inc. v. Baban,* G.R. No. 167449, December 17, 2008, 574 SCRA 198, 205-206.

[36] *Rollo,* p. 121.

Moreover, one can reasonably expect that a copy of the clearance, an essential personnel document, is with the respondents. Their failure to present it and the lack of explanation for such failure or the document's unavailability props up the presumption that its contents are unfavorable to the respondents' assertions.

At any rate, the absence of the clearance upon which the contradicting claims of the parties could ideally be resolved, should work against the respondents. With only sworn pleadings as proof of their opposite claims on the true contents of the clearance, the Court is bound to apply the principle that the scales of justice should be tilted in favor of labor in case of doubt in the evidence presented.[37]

RBSJI also failed to substantiate its claim that the petitioner's act estopped them from pursuing Jacinto for his standing obligations. There is no proof that RBSJI attempted or at least considered to demand from Jacinto the payment of his unpaid cash advances. Neither was RBSJI able to show that it filed a civil or criminal suit against Jacinto to make him responsible for the alleged fraud. There is thus no factual basis for RBSJI's allegation that it incurred damages or was financially prejudiced by the clearance issued by the petitioner.

More importantly, the complained act of the petitioner did not evince intentional breach of the respondents' trust and confidence. Neither was the petitioner grossly negligent or unjustified in pursuing the course of action he took.

It must be pointed out that the petitioner was caught in the quandary of signing on the spot a standard employment clearance for the furious Jacinto sans any information on his outstanding accountabilities, and refusing to so sign but risk alarming or scandalizing RBSJI, its employees and clients. Contrary to the respondents' allegation, the petitioner did not concede to Jacinto's demands. He was, in fact, able to equalize two equally undesirable options by bargaining to instead clear Jacinto only of his settled financial obligations after proper verification with branch cashier Lily. It was only after Lily confirmed Jacinto's recorded payments

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[37] *Supra* note 33, at 394.

that the petitioner signed the clearance. The absence of an audit was precisely what impelled the petitioner to decline signing a standard employment clearance to Jacinto and instead issue a different one pertaining only to his paid accountabilities.

Under these circumstances, it cannot be concluded that the petitioner was in any way prompted by malicious motive in issuing the clearance. He was also able to ensure that RBSJI's interests are protected and that Jacinto is pacified. He did what any person placed in a similar situation can prudently do. He was able to competently evaluate and control Jacinto's demands and thus prevent compromising RBSJI's image, employees and clients to an alarming scene.

The Court has repeatedly emphasized that the act that breached the trust must be willful such that it was done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[38] The conditions under which the clearance was issued exclude any finding of deliberate or conscious effort on the part of the petitioner to prejudice his employer.

Also, the petitioner did not commit an irregular or prohibited act. He did not falsify or misrepresent any company record as it was officially confirmed by Lily that the items covered by the clearance were truly settled by Jacinto. Hence, the respondents had no factual basis in declaring that the petitioner violated Category B Grave Offense No. 1 of the Company Code of Conduct and Discipline.

The respondents cannot capitalize on the petitioner's lack of authority to issue a clearance to resigned employees. *First,* it remains but an unsubstantiated allegation despite the several opportunities for them in the proceedings below to show, through bank documents, that the petitioner is not among those officers so authorized. *Second,* it is the Court's considered view that by virtue of the petitioner's stature in respondent bank, it was

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[38] *The Coca-Cola Export Corporation v. Gacayan,* G.R. No. 149433, June 22, 2011, 652 SCRA 463, 471, citing *Tiu and/or Conti Pawnshop v. NLRC,* G.R. No. 83433, November 12, 1992, 215 SCRA 540, 547.

well within his discretion to sign or certify the truthfulness of facts as they appear in RBSJI's records. Here, the records of RBSJI cashier Lily clearly showed that Jacinto paid the cash advances and salary loan covered by the clearance issued by the petitioner.

Lastly, the seven-month gap between the clearance incident and the April 17, 1997 memorandum asking the petitioner to explain his action is too lengthy to be ignored. It likewise remains uncontroverted that during such period, respondent Jesus verbally terminated the petitioner only to recall the same and instead ask the latter to tender a resignation letter. When the petitioner refused, he was sent the memorandum questioning his issuance of a clearance to Jacinto seven months earlier. The confluence of these undisputed circumstances supports the inference that the clearance incident was a mere afterthought used to gain ground for the petitioner's dismissal.

Loss of trust and confidence as a ground for dismissal has never been intended to afford an occasion for abuse because of its subjective nature. It should not be used as a subterfuge for causes which are illegal, improper and unjustified. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith.[39]

All told, the unsubstantiated claims of the respondents fall short of the standard proof required for valid termination of employment. They failed to clearly and convincingly establish that the petitioner's act of issuing a clearance to Jacinto rendered him unfit to continue working for RBSJI. The petitioner was illegally dismissed from employment and is entitled to back wages, to be computed from the date he was illegally dismissed until the finality of this decision.[40]

The disposition of the case made by the LA in its Decision dated November 27, 1998, as affirmed by the NLRC in its Decision dated March 6, 2006, is most in accord with the above

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[39] *Supra* note 31, at 47-48.

[40] *Supra* note 33, at 398.

disquisitions hence, must be reinstated. However, the monetary awards therein should be clarified.

The petitioner is entitled to separation pay in lieu of reinstatement and his back wages shall earn legal interest.

In accordance with current jurisprudence, the award of back wages shall earn legal interest at the rate of six percent (6%) per annum from the date of the petitioner's illegal dismissal until the finality of this decision.[41] Thereafter, it shall earn 12% legal interest until fully paid[42] in accordance with the guidelines in *Eastern Shipping Lines, Inc., v. Court of Appeals.*[43]

In addition to his back wages, the petitioner is also entitled to separation pay. It cannot be gainsaid that animosity and antagonism have been brewing between the parties since the petitioner was gradually eased out of key positions in RBSJI and to reinstate him will only intensify their hostile working atmosphere.[44] Thus, based on strained relations, separation pay equivalent to one (1) month salary for every year of service, with a fraction of a year of at least six (6) months to be considered as one (1) whole year, should be awarded in lieu of reinstatement, to be computed from date of his engagement by RBSJI up to the finality of this decision.[45]

The award of separation pay in case of strained relations is more beneficial to both parties in that it liberates the employee from what could be a highly oppressive work environment in as much as it releases the employer from the grossly unpalatable

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[41] See *Aliling v. Feliciano,* G.R. No. 185829, April 25, 2012, 671 SCRA 186, 221.

[42] See *Sessions Delights Ice Cream and Fast Foods v. CA (Sixth Division),* G.R. No. 172149, February 8, 2010, 612 SCRA 10, 26-27.

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

[44] *Bank of Lubao, Inc. v. Manabat,* G.R. No. 188722, February 1, 2012, 664 SCRA 772, 780-781.

[45] *Supra* note 41, at 215.

obligation of maintaining in its employ a worker it could no longer trust.[46]

The award of moral and exemplary damages is not warranted.

In *M+W Zander Philippines, Inc. v. Enriquez*,[47] the Court decreed that illegal dismissal, by itself alone, does not entitle the dismissed employee to moral damages; additional facts must be pleaded and proven to warrant the grant of moral damages, thus:

> [M]oral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. Such an award cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, *i.e.,* that the act of dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, and similar injury resulted therefrom.[48] (Citations omitted)

Bad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud.[49]

Here, the petitioner failed to prove that his dismissal was attended by explicit oppressive, humiliating or demeaning acts. The following events merely sketch the struggle for power within the upper management of RBSJI between the "old guys" and the "new guys"; they do not convincingly prove

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[46] *Id.* at 214.

[47] G.R. No. 169173, June 5, 2009, 588 SCRA 590.

[48] *Id.* at 608-609.

[49] *Wensha Spa Center, Inc. v. Yung,* G.R. No. 185122, August 16, 2010, 628 SCRA 311, 326.

that the respondents schemed to gradually ease the petitioner out, *viz*.: (1) his promotion as Vice-President; (2) his replacement by Jobel as Personnel and Marketing Manager; (2) his designation as Acting Manager of N. Domingo branch and the recall thereof on the very next day; (3) the presence of Andres, Jose and Ofelia at the N. Domingo branch in the morning of September 27, 1996; and (4) George's inaction on the petitioner's request to be transferred to the operations or marketing department. As disagreeable as they may seem, these acts cannot be equated with bad faith that can justify an award of damages.

Since no moral damages can be granted under the facts of the case, exemplary damages cannot also be awarded.[50]

The solidary liability of individual respondents as corporate officers must be recalled.

In the same vein, the individual respondents cannot be made solidarily liable with RBSJI for the illegal dismissal. Time and again, the Court has held that a corporation has its own legal personality separate and distinct from those of its stockholders, directors or officers. Hence, absent any evidence that they have exceeded their authority, corporate officers are not personally liable for their official acts. Corporate directors and officers may be held solidarily liable with the corporation for the termination of employment only if done with malice or in bad faith.[51] As discussed above, the acts imputed to the respondents do not support a finding of bad faith.

In addition, the lack of a valid cause for the dismissal of an employee does not *ipso facto* mean that the corporate officers acted with malice or bad faith. There must be an independent proof of malice or bad faith,[52] which is absent in the case at bar.

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[50] *Pacquing v. Coca-Cola Philippines, Inc.,* G.R. No. 157966, January 31, 2008, 543 SCRA 344, 363.

[51] *Londonio v. Bio Research, Inc.,* G.R. No. 191459, January 17, 2011, 639 SCRA 591, 599.

[52] *Lambert Pawnbrokers and Jewelry Corporation v. Binamira,* G.R. No. 170464, July 12, 2010, 624 SCRA 705, 719.

The award of 13th month pay is incorrect.

Being a managerial employee, the petitioner is not entitled to 13th month pay. Pursuant to Memorandum Order No. 28, as implemented by the Revised Guidelines on the Implementation of the 13th Month Pay Law dated November 16, 1987, managerial employees are exempt from receiving such benefit without prejudice to the granting of other bonuses, in lieu of the 13th month pay, to managerial employees upon the employer's discretion.[53]

The award of attorney's fees is proper.

It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[54] Pursuant to Article 111 of the Labor Code, ten percent (10%) of the total award is the reasonable amount of attorney's fees that can be awarded.

WHEREFORE, the petition is **GRANTED.** The Decision dated February 21, 2008 and Resolution dated June 3, 2008 of the Court of Appeals in CA-G.R. SP No. 94690 are **REVERSED** and **SET ASIDE.** The Decision of the Labor Arbiter dated November 27, 1998 is **REINSTATED** with the following **MODIFICATIONS/CLARIFICATIONS:** Petitioner Rolando DS. Torres is entitled to the payment of: (a) back wages reckoned from May 30, 1997 up to the finality of this Decision, with interest at six percent (6%) *per annum,* and 12% legal interest thereafter until fully paid; and (b) in lieu of reinstatement, separation pay equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months to be considered as one (1) whole year, to be computed from the date of his employment up to the finality of this decision.

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[53] *House of Sara Lee v. Rey,* 532 Phil. 121, 145 (2006), citing *Salafranca v. Philamlife Village Homeowners Asso., Inc.,* 360 Phil. 652, 668 (1998).

[54] *Supra* note 52, at 721.

The amounts awarded as moral damages, exemplary damages and 13th month pay are **DELETED.** Only respondent Rural Bank of San Juan, Inc. is liable for the illegal dismissal and the consequential monetary awards arising therefrom. The other portions of and monetary awards in the Labor Arbiter's Decision dated November 27, 1998 are **AFFIRMED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 191178. March 13, 2013]

ANCHOR SAVINGS BANK (FORMERLY ANCHOR FINANCE AND INVESTMENT CORPORATION), *petitioner, vs.* **HENRY H. FURIGAY, GELINDA C. FURIGAY, HERRIETTE C. FURIGAY and HEGEM C. FURIGAY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ORDINARY CIVIL ACTIONS; CAUSE OF ACTION; ELEMENTS.—** Section 1 of Rule 2 of the Revised Rules of Court requires that every ordinary civil action must be based on a cause of action. Section 2 of the same rule defines a cause of action as an act or omission by which a party violates the right of another. In order that one may claim to have a cause of action, the following elements must concur: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part

of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief. In other words, "a cause of action arises when that should have been done is not done, or that which should not have been done is done." In *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.*, it was held that "before an action can properly be commenced, all the essential elements of the cause of action must be in existence, that is, the cause of action must be complete. All valid conditions precedent to the institution of the particular action, whether prescribed by statute, fixed by agreement of the parties or implied by law must be performed or complied with before commencing the action, unless the conduct of the adverse party has been such as to prevent or waive performance or excuse non-performance of the condition."

2. **ID.; ID.; ID.; ID.; FAILURE TO MAKE A SUFFICIENT ALLEGATION OF A CAUSE OF ACTION IN THE COMPLAINT WARRANTS ITS DISMISSAL.—** The rules of procedure require that the complaint must contain a concise statement of the ultimate or essential facts constituting the plaintiff's cause of action. "The test of the sufficiency of the facts alleged in the complaint is whether or not, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer of plaintiff." The focus is on the sufficiency, not the veracity, of the material allegations. Failure to make a sufficient allegation of a cause of action in the complaint warrants its dismissal.

3. **ID.; ID.; *ACCION PAULIANA* (REMEDY OF RESCISSION); SUBSIDIARY NATURE THEREOF, SUSTAINED.—** In relation to an action for rescission, it should be noted that the remedy of rescission is subsidiary in nature; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same. x x x Consequently, following the subsidiary nature of the remedy of rescission, a creditor would have a cause of action to bring an action for rescission, if it is alleged that the following successive measures have already been taken: (1) exhaust the properties of the debtor through levying by attachment and execution upon all the property of the debtor, except such as

are exempt by law from execution; (2) exercise all the rights and actions of the debtor, save those personal to him (*accion subrogatoria*); and (3) seek rescission of the contracts executed by the debtor in fraud of their rights (*accion pauliana*).

4. **ID.; ID.; ID.; REQUIRED ALLEGATIONS IN THE COMPLAINT, ENUMERATED.—** With respect to an *accion pauliana,* it is required that the ultimate facts constituting the following requisites must all be alleged in the complaint, *viz*.: 1) That the plaintiff asking for rescission, has credit prior to the alienation, although demandable later; 2) That the debtor has made a subsequent contract conveying a patrimonial benefit to a third person; 3) That the creditor has no other legal remedy to satisfy his claim, but would benefit by rescission of the conveyance to the third person; 4) That act being impugned is fraudulent; and 5) That the third person who received the property conveyed, if by onerous title, has been an accomplice in the fraud.

APPEARANCES OF COUNSEL

Feria Tantoco Robeniol Law Offices for petitioner.
RRV Legal Consultancy Firm for respondents.

D E C I S I O N

MENDOZA, *J.*:

This concerns a petition for review on *certiorari* filed by petitioner Anchor Savings Bank (*ASB*) under Rule 45 of the 1997 Rules of Civil Procedure, assailing the May 28, 2009 Decision[1] and the January 22, 2010 Resolution[2] of the Court of Appeals (*CA*), in CA-G.R. CV No. 90123, dismissing the appeal.[3]

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[1] Penned by Associate Justice Bienvenido L. Reyes (now member of the Court), with Associate Justice Isaias P. Dicdican and Associate Justice Marlene Gonzales-Sison concurring; *rollo*, pp. 77-97.

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

[3] *Id.* at 97.

The assailed resolution denied the separate motions for reconsideration of both parties.

The Facts

On April 21, 1999, ASB filed a verified complaint for sum of money and damages with application for *replevin* against Ciudad Transport Services, Inc. (*CTS*), its president, respondent Henry H. Furigay; his wife, respondent Gelinda C. Furigay; and a "John Doe." The case was docketed as Civil Case No. 99-865 and raffled to Branch 143 of the Regional Trial Court of Makati City (*RTC*).[4]

On November 7, 2003, the RTC rendered its Decision[5] in favor of ASB, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff Anchor Savings Bank ordering defendants Ciudad Transport Services, Inc., Henry H. Furigay and Genilda C. Furigay to pay the following:
>
> 1) The amount of Eight Million Six Hundred Ninety Five Thousand Two Hundred Two pesos and Fifty Nine centavos (Php8,695,202.59) as PRINCIPAL OBLIGATION as of 12 April 1999;
>
> 2) An INTEREST of Twelve per cent (12%) per annum until fully paid;
>
> 3) PENALTY CHARGE of Twelve per cent (12%) per annum until fully paid;
>
> 4) LIQUIDATED DAMAGES of Ten (10%) per cent of the total amount due;
>
> 5) One Hundred Thousand pesos as reasonable ATTORNEY'S FEES;
>
> 6) Costs of suit.
>
> SO ORDERED.[6]

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[4] *Id.* at 150.

[5] *Id.* at 100-104.

[6] *Id.* at 104.

While Civil Case No. 99-865 was pending, respondent spouses donated their registered properties in Alaminos, Pangasinan, to their minor children, respondents Hegem G. Furigay and Herriette C. Furigay. As a result, Transfer Certificate of Title (*TCT*) Nos. 21743,[7] 21742,[8] 21741,[9] and 21740[10] were issued in the names of Hegem and Herriette Furigay.

Claiming that the donation of these properties was made in fraud of creditors, ASB filed a Complaint for Rescission of Deed of Donation, Title and Damages[11] against the respondent spouses and their children. The case was docketed as Civil Case No. A-3040 and raffled to Branch 55 of the RTC of Alaminos, Pangasinan. In its Complaint, ASB made the following allegations:

x x x x x x x x x

4. That Ciudad Transport Services, Inc., Henry H. Furigay and Gelinda C. Furigay obtained a loan from Anchor Savings Bank and subsequently the former defaulted from their loan obligation which prompted Anchor Savings Bank to file the case entitled "***Anchor Savings Bank vs. Ciudad Transport Services, Inc., Henry H. Furigay and Gelinda C. Furigay***" lodged before Makati City Regional Trial Court Branch 143 and docketed as Civil Case No. 99-865. On 7 November 2003 the Honorable Court in the aforesaid case issued a Decision the dispositive portion of which reads as follows:

x x x x x x x x x

5. That defendants Sps. Henry H. Furigay and Gelinda C. Furigay are the registered owners of various real properties located at the Province of Pangasinan covered by Transfer Certificate of Title Nos. 19721, 21678, 21679, and 21682. x x x

6. That on 8 March 2001 defendants Sps. Henry H. Furigay and Gelinda C. Furigay executed a Deed of Donation in favor of their children herein defendants Hegem C. Furigay and Herriette C. Furigay

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[7] *Id.* at 105-106.

[8] *Id.* at 107-108.

[9] *Id.* at 109-110.

[10] *Id.* at 111-112.

[11] *Id.* at 113-119.

donating to them all of the above-mentioned properties. Hence, the following titles were issued under their names to wit: Transfer Certificate of Title Nos. 21743, 21742, 21741, and 21740. x x x

7. That the donation made by defendants Sps. Henry H. Furigay and Gelinda C. Furigay were done with the intention to defraud its creditors particularly Anchor Savings Bank. Said transfer or conveyance is the one contemplated by Article 1387 of the New Civil Code, which reads:

x x x x x x x x x

8. x x x In the instant case, Sps. Furigay donated the properties at the time there was a pending case against them. x x x In the instant case, the Sps. Furigay donated the properties to their son and daughter. Moreover, the transfer or donation was executed in 2001 when both donees Hegem C. Furigay and Herriette C. Furigay are minors.

9. Clearly, the Donation made by defendants Sps. Furigay was intended to deprive plaintiff Anchor Savings Bank from going after the subject properties to answer for their due and demandable obligation with the Bank. The donation being undertaken in fraud of creditors then the same may be rescinded pursuant to Article 1381 of the New Civil Code. The said provision provides that:

x x x x x x x x x

Consequently, Transfer Certificate of Title Nos. 21743, 21742, 21741, and 21740 issued under the names of defendants Herriette C. Furigay and Hegem C. Furigay should likewise be cancelled and reverted to the names of co-defendants Henry and Gelinda Furigay.

10. That because of the fraud perpetrated by defendants, plaintiff suffered the following damages.

11. Plaintiff suffered actual and compensatory damages as a result of the filing of the case the bank has spent a lot of man-hours of its employees and officers re-evaluating the account of defendant Sps. Furigay. Such man-hour when converted into monetary consideration represents the salaries and per diems of its employees particularly the CI/Appraiser, Head Office Lawyer and Bank Auditor;

12. Said claim likewise represents administrative expenses such as transportation expenses, reproduction of documents, and courier expenses among others;

13. Defendants should be made to pay plaintiff Anchor Savings Bank the amount of **PESOS: ONE MILLION (₱1,000,000.00)** as moral damages for the damage it caused to the latter's business goodwill and reputation;

14. By way of example for the public and to deter others from the malicious filing of baseless (sic) suit, defendants should be ordered to pay [plaintiff] the amount of **PESOS: TWO HUNDRED THOUSAND (₱200,000.00)** as exemplary damages.

15. Attorneys fees equivalent to twenty-five percent (25%) of the total amount that can be collected from defendant;

1[6]. Defendants should also be held liable to pay for the cost of suit.[12]

Instead of filing an answer, respondents sought the dismissal of the complaint, principally arguing that the RTC failed to acquire jurisdiction over their persons as well as over the subject matter in view of the failure of the ASB to serve the summons properly and to pay the necessary legal fees.

RTC Resolutions

On September 29, 2006, the RTC issued an Order[13] denying the motion to dismiss. Respondents sought reconsideration of the Order adding that the ASB's action for rescission had already prescribed.

Upon filing of ASB's opposition to the motion for reconsideration, on February 27, 2007, the RTC reconsidered its earlier pronouncement and dismissed the complaint for failure of ASB to pay the correct docket fees and for prescription.[14]

RTC explained that the service of summons by publication made by ASB was valid because respondents' whereabouts could not have been ascertained with exactitude and because Section 14, Rule 14 of the Rules of Court did not distinguish what kind of action it would apply.

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[12] *Id.* at 114-117.

[13] *Id.* at 122-124.

[14] *Id.* at 125-141.

On the issue of lack of jurisdiction over the subject matter of the case, the RTC ruled that the complaint was actually a real action as it affected title to or possession of real property. Accordingly, the basis for determining the correct docket fees was the fair market value of the real property under litigation as stated in its current tax declaration or its current zonal valuation, whichever was higher. Considering that ASB did not state the current tax declaration or current zonal valuation of the real properties involved, as well as the amount of actual damages and attorney's fees it prayed for, the trial court was of the view that ASB purposely evaded the payment of the correct filing fees.

On the issue of prescription, the RTC ruled that the action for rescission had already prescribed. It stated that an action for rescission grounded on fraud should be filed within four (4) years from the discovery of fraud. ASB filed the action for rescission only on October 14, 2005 or after four (4) years from the time the Deed of Donation was registered in the Register of Deeds of Alaminos, Pangasinan, on April 4, 2001. The four-year prescriptive period should be reckoned from the date of registration of the deed of donation and not from the date of the actual discovery of the registration of the deeds of donation because registration is considered notice to the whole world. Thus, the RTC disposed:

> WHEREFORE, premises considered, the Order dated September 29, 2006 is hereby reconsidered and set aside, in lieu thereof, the instant complaint is hereby ordered dismissed on the account of lack of jurisdiction over the subject matter of the case for failure of the plaintiff to pay the correct docket fees upon its institution attended by bad faith and on the ground of prescription.
>
> SO ORDERED.[15]

ASB sought reconsideration, but to no avail.[16]

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[15] *Id.* at 141.

[16] *Id.* at 142.

Ruling of the CA

On appeal, the CA agreed with ASB that its complaint should not have been dismissed on the ground that it failed to pay the correct docket fees. It stated that the lack of specific amount of actual damages and attorney's fees in ASB's complaint did not, by itself, amount to evident bad faith. The CA noted that ASB had previously manifested before the trial court that it was willing to pay additional docket fees should the same be found insufficient.

On the issue of prescription, however, the CA saw things differently. Considering the subsidiary nature of an action for rescission, the CA found that the action of ASB had not yet prescribed, but was premature. The CA noted that ASB failed to allege in its complaint that it had resorted to all legal remedies to obtain satisfaction of its claim. The CA wrote:

> After a thorough examination of the foregoing precepts and the facts engirding this case, this court opines that plaintiff-appellant's action for rescission has not yet prescribed for it must be emphasized that it has not even accrued in the first place. To stress, an action for rescission or *accion pauliana* accrues only if all five requisites are present, to wit:
>
> 1) That the plaintiff asking for rescission, has a credit prior to the alienation, although demandable later;
>
> 2) That the debtor has made a subsequent contract conveying a patrimonial benefit to a third person;
>
> 3) That the creditor has no other legal remedy to satisfy his claim, but would benefit by rescission of the conveyance to the third person;
>
> 4) That the act being impugned is fraudulent; and
>
> 5) That the third person who received the property conveyed, if by onerous title, has been an accomplice in the fraud.
>
> In the instant case, the plaintiff-appellant failed to satisfy the ***third requirement*** considering that it did not allege in its complaint that it has resorted to all legal remedies to obtain satisfaction of his claim. It did not even point out in its complaint if the decision in Civil Case

No. 99-865 has already become final and executory and whether the execution thereof yielded negative result in satisfying its claims. Even the skip tracing allegedly done by the plaintiff-appellant to locate the properties of the defendant-appellees was not mentioned. And although the skip tracing reports were subsequently presented by the plaintiff-appellant, such reports are not sufficient to satisfy the third requirement. First, they are not prepared and executed by the sheriff, and second, they do not demonstrate that the sheriff failed to enforce and satisfy the judgment of the court and that the plaintiff-appellant has exhausted the property of the defendant-appellees. Perforce, the action for rescission filed by the plaintiff-appellant is dismissible.[17]

As stated at the outset, both parties sought reconsideration but were rebuffed.

Issue

Hence, this recourse of ASB to the Court, presenting the lone issue of:

WHETHER OR NOT THE COURT OF APPEALS, IN CA G.R. CV NO 90123, HAS DECIDED A QUESTION OF SUBSTANCE, NOT HERETOFORE DETERMINED BY THE SUPREME COURT, OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORDANCE WITH LAW OR THE APPLICABLE DECISIONS OF THE SUPREME COURT, WHEN IT RENDERED THE DECISION DATED 28 MAY 2009, AND RESOLUTION DATED 22 JANUARY 2010, IN FINDING THAT PETITIONER FAILED TO PROVE THAT IT HAS RESORTED TO ALL LEGAL REMEDIES TO OBTAIN SATISFACTION OF ITS CLAIM, WITHOUT GIVING PETITIONER THE OPPORTUNITY TO BE HEARD OR THE CHANCE TO PRESENT EVIDENCE TO SUPPORT ITS ACTION, THEREBY DEPRIVING THE LATTER OF THE RIGHT TO DUE PROCESS.[18]

ASB argues that, considering that its action was still in its preliminary stages, the CA erred in dismissing its action on the ground that it failed to allege in its complaint the fact that it had resorted to all other legal remedies to satisfy its claim, because

[17] *Id.* at 95-96. (Emphasis in the original)

[18] *Id.* at 62 and 590.

it is a matter that need not be alleged in its complaint, but, rather, to be proved during trial. It asserts that its action is not yet barred by prescription, insisting that the reckoning point of the four (4)-year prescriptive period should be counted from September 2005, when it discovered the fraudulent donation made by respondent spouses.

The basic issue in this case is whether the CA was correct in dismissing ASB's complaint on the ground that the action against respondents was premature.

Ruling of the Court

The Court finds the petition bereft of merit.

Section 1 of Rule 2 of the Revised Rules of Court requires that every ordinary civil action must be based on a cause of action. Section 2 of the same rule defines a cause of action as an act or omission by which a party violates the right of another. In order that one may claim to have a cause of action, the following elements must concur: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.[19] In other words, "a cause of action arises when that should have been done is not done, or that which should not have been done is done."[20]

In *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.*,[21] it was held that "before an action can properly be commenced, all the essential elements of the cause of action must be in existence, that is, the cause of action must be complete.

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[19] *Soloil, Inc. v. Philippine Coconut Authority,* G.R. No. 174806, August 11, 2010, 628 SCRA 185, 190.

[20] *Central Philippines University v. Court of Appeals,* 316 Phil. 616, 626 (1995).

[21] G.R. No. 87434, August 5, 1992, 212 SCRA 194, 207.

All valid conditions precedent to the institution of the particular action, whether prescribed by statute, fixed by agreement of the parties or implied by law must be performed or complied with before commencing the action, unless the conduct of the adverse party has been such as to prevent or waive performance or excuse non-performance of the condition."

Moreover, it is not enough that a party has, in effect, a cause of action. The rules of procedure require that the complaint must contain a concise statement of the ultimate or essential facts constituting the plaintiff's cause of action. "The test of the sufficiency of the facts alleged in the complaint is whether or not, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer of plaintiff."[22] The focus is on the sufficiency, not the veracity, of the material allegations. Failure to make a sufficient allegation of a cause of action in the complaint warrants its dismissal.[23]

In relation to an action for rescission, it should be noted that the remedy of rescission is subsidiary in nature; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same.[24] Article 1177 of the New Civil Code provides:

> The creditors, after having pursued the property in possession of the debtor to satisfy their claims, may exercise all the rights and bring all the actions of the latter for the same purpose, save those which are inherent in his person; they may also impugn the actions which the debtor may have done to defraud them. (Emphasis added)

Consequently, following the subsidiary nature of the remedy of rescission, a creditor would have a cause of action to bring an action for rescission, if it is alleged that the following successive measures have already been taken: (1) exhaust the properties of the debtor through levying by attachment and execution upon all the property of the debtor, except such as are exempt by

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[22] *First Bancorp, Inc. v. Court of Appeals,* 525 Phil. 309, 327 (2006).

[23] *Philippine Daily Inquirer v. Alameda,* G.R. No. 160604, March 28, 2008, 550 SCRA 199, 207.

[24] Civil Code, Art. 1383.

law from execution; (2) exercise all the rights and actions of the debtor, save those personal to him (*accion subrogatoria*); and (3) seek rescission of the contracts executed by the debtor in fraud of their rights (*accion pauliana*).[25]

With respect to an *accion pauliana*, it is required that the ultimate facts constituting the following requisites must all be alleged in the complaint, *viz.*:

1) That the plaintiff asking for rescission, has credit prior to the alienation, although demandable later;

2) That the debtor has made a subsequent contract conveying a patrimonial benefit to a third person;

3) That the creditor has no other legal remedy to satisfy his claim, but would benefit by rescission of the conveyance to the third person;

4) That act being impugned is fraudulent; and

5) That the third person who received the property conveyed, if by onerous title, has been an accomplice in the fraud.[26]

A cursory reading of the allegations of ASB's complaint would show that it failed to allege the ultimate facts constituting its cause of action and the prerequisites that must be complied before the same may be instituted. ASB, without availing of the first and second remedies, that is, exhausting the properties of CTS, Henry H. Furigay and Genilda C. Furigay or their transmissible rights and actions, simply undertook the third measure and filed an action for annulment of the donation. This cannot be done. The Court hereby quotes with approval the thorough discourse of the CA on this score:[27]

> To answer the issue of prescription, the case of ***Khe Hong Cheng vs. Court of Appeals (G.R. No. 144169, March 28, 2001)*** is pertinent. In said case, Philam filed an action for collection against Khe Hong Cheng. While the case was still pending, or on December 20, 1989,

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[25] *Adorable v. Court of Appeals,* 377 Phil. 210, 218 (1999).

[26] *Khe Hong Cheng v. Court of Appeals,* 407 Phil. 1058, 1068 (2001).

[27] *Rollo*, pp. 91-95.

Khe Hong Cheng, executed deeds of donations over parcels of land in favor of his children, and on December 27, 1989, said deeds were registered. Thereafter, new titles were issued in the names of Khe Hong Cheng's children. Then, the decision became final and executory. But upon enforcement of writ of execution, Philam found out that Khe Hong Cheng no longer had any property in his name. Thus, on February 25, 1997, Philam filed an action for rescission of the deeds of donation against Khe Hong Cheng alleging that such was made in fraud of creditors. However, Khe Hong Cheng moved for the dismissal of the action averring that it has already prescribed since the four-year prescriptive period for filing an action for rescission pursuant to Article 1389 of the Civil Code commenced to run from the time the deeds of donation were registered on December 27, 1989. Khe Hong Cheng averred that registration amounts to constructive notice and since the complaint was filed only on February 25, 1997, or more than four (4) years after said registration, the action was already barred by prescription. The trial court ruled that the complaint had not yet prescribed since the prescriptive period began to run only from December 29, 1993, the date of the decision of the trial court. Such decision was affirmed by this court but reckoned the accrual of Philam's cause of action in January 1997, the time when it first learned that the judgment award could not be satisfied because the judgment creditor, Khe Hong Cheng, had no more properties in his name. Hence, the case reached the Supreme Court which ruled that the action for rescission has not yet prescribed, ratiocinating as follows:

> "Essentially, the issue for resolution posed by petitioners is this: When did the four (4) year prescriptive period as provided for in Article 1389 of the Civil Code for respondent Philam to file its action for rescission of the subject deeds of donation commence to run?
>
> The petition is without merit.
>
> Article 1389 of the Civil Code simply provides that, 'The action to claim rescission must be commenced within four years.' Since this provision of law is silent as to when the prescriptive period would commence, the general rule, *i.e.,* from the moment the cause of action accrues, therefore, applies. Article 1150 of the Civil Code is particularly instructive:

> ARTICLE 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

Indeed, this Court enunciated the principle that it is the legal possibility of bringing the action which determines the starting point for the computation of the prescriptive period for the action. Article 1383 of the Civil Code provides as follows:

> ARTICLE 1383. An action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same.

It is thus apparent that an action to rescind or an *accion pauliana* must be of last resort, availed of only after all other legal remedies have been exhausted and have been proven futile. For an *accion pauliana* to accrue, the following requisites must concur:

> 1) That the plaintiff asking for rescission, has a credit prior to the alienation, although demandable later; 2) That the debtor has made a subsequent contract conveying a patrimonial benefit to a third person; 3) **That the creditor has no other legal remedy to satisfy his claim, but would benefit by rescission of the conveyance to the third person;** 4) That the act being impugned is fraudulent; 5) That the third person who received the property conveyed, if by onerous title, has been an accomplice in the fraud.

We quote with approval the following disquisition of the CA on the matter:

> An *accion pauliana* accrues only when the creditor discovers that he has no other legal remedy for the satisfaction of his claim against the debtor other than an *accion pauliana.* The *accion pauliana* is an action of a last resort. For as long as the creditor still has a remedy at law for the enforcement of his claim against the debtor, the creditor will not have any cause of action against the creditor for rescission of the contracts entered into by

> and between the debtor and another person or persons. Indeed, an *accion pauliana* presupposes a judgment and the issuance by the trial court of a writ of execution for the satisfaction of the judgment and the failure of the Sheriff to enforce and satisfy the judgment of the court. It presupposes that the creditor has exhausted the property of the debtor. The date of the decision of the trial court against the debtor is immaterial. What is important is that the credit of the plaintiff antedates that of the fraudulent alienation by the debtor of his property. After all, the decision of the trial court against the debtor will retroact to the time when the debtor became indebted to the creditor.

Petitioners, however, maintain that the cause of action of respondent Philam against them for the rescission of the deeds of donation accrued as early as December 27, 1989, when petitioner Khe Hong Cheng registered the subject conveyances with the Register of Deeds. Respondent Philam allegedly had constructive knowledge of the execution of said deeds under Section 52 of Presidential Decree No. 1529, quoted infra, as follows:

> SECTION 52. Constructive knowledge upon registration. — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the Office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing, or entering.

Petitioners argument that the Civil Code must yield to the Mortgage and Registration Laws is misplaced, for in no way does this imply that the specific provisions of the former may be all together ignored. To count the four year prescriptive period to rescind an allegedly fraudulent contract from the date of registration of the conveyance with the Register of Deeds, as alleged by the petitioners, would run counter to Article 1383 of the Civil Code as well as settled jurisprudence. It would likewise violate the third requisite to file an action for rescission

of an allegedly fraudulent conveyance of property, *i.e.*, the creditor has no other legal remedy to satisfy his claim.

An *accion pauliana* thus presupposes the following: 1) A judgment; 2) the issuance by the trial court of a writ of execution for the satisfaction of the judgment, and 3) the failure of the sheriff to enforce and satisfy the judgment of the court. It requires that the creditor has exhausted the property of the debtor. The date of the decision of the trial court is immaterial. What is important is that the credit of the plaintiff antedates that of the fraudulent alienation by the debtor of his property. After all, the decision of the trial court against the debtor will retroact to the time when the debtor became indebted to the creditor.

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Even if respondent Philam was aware, as of December 27, 1989, that petitioner Khe Hong Cheng had executed the deeds of donation in favor of his children, the complaint against Butuan Shipping Lines and/or petitioner Khe Hong Cheng was still pending before the trial court. Respondent Philam had no inkling, at the time, that the trial court's judgment would be in its favor and further, that such judgment would not be satisfied due to the deeds of donation executed by petitioner Khe Hong Cheng during the pendency of the case. Had respondent Philam filed his complaint on December 27, 1989, such complaint would have been dismissed for being premature. Not only were all other legal remedies for the enforcement of respondent Philam's claims not yet exhausted at the time the deeds of donation were executed and registered. Respondent Philam would also not have been able to prove then that petitioner Khe Hong Cheng had no more property other than those covered by the subject deeds to satisfy a favorable judgment by the trial court.

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As mentioned earlier, respondent Philam only learned about the unlawful conveyances made by petitioner Khe Hong Cheng in January 1997 when its counsel accompanied the sheriff to Butuan City to attach the properties of petitioner Khe Hong Cheng. There they found that he no longer had any properties in his name. It was only then that respondent Philam's action

for rescission of the deeds of donation accrued because then it could be said that respondent Philam had exhausted all legal means to satisfy the trial court's judgment in its favor. Since respondent Philam filed its complaint for *accion pauliana* against petitioners on February 25, 1997, barely a month from its discovery that petitioner Khe Hong Cheng had no other property to satisfy the judgment award against him, its action for rescission of the subject deeds clearly had not yet prescribed."

From the foregoing, it is clear that the four-year prescriptive period commences to run neither from the date of the registration of the deed sought to be rescinded nor from the date the trial court rendered its decision but ***from the day it has become clear that there are no other legal remedies by which the creditor can satisfy his claims.*** [Emphases in the original]

In all, it is incorrect for ASB to argue that a complaint need not allege all the elements constituting its cause of action since it would simply adduce proof of the same during trial. "Nothing is more settled than the rule that in a motion to dismiss for failure to state a cause of action, the inquiry is into the sufficiency, not the veracity, of the material allegations."[28] The inquiry is confined to the four corners of the complaint, and no other.[29] Unfortunately for ASB, the Court finds the allegations of its complaint insufficient in establishing its cause of action and in apprising the respondents of the same so that they could defend themselves intelligently and effectively pursuant to their right to due process. It is a rule of universal application that courts of justice are constituted to adjudicate substantive rights. While courts should consider public policy and necessity in putting an end to litigations speedily they must nevertheless harmonize such necessity with the fundamental right of litigants to due process.

WHEREFORE, the petition is **DENIED.**

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[28] *Balo v. Court of Appeals,* 508 Phil. 224, 231 (2005).

[29] *Acuña v. Batac Producers Cooperative Marketing Association, Inc.,* 126 Phil. 896, 901 (1967).

SO ORDERED.

Leonardo-de Castro,[*] *Peralta,*[**] *Abad*, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 191271. March 13, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERALD SORIANO *alias* PEDRO,** *accused-appellant.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION; THE CIRCUMSTANCES AND FACTS MUST BE ABSOLUTELY INCOMPATIBLE WITH ANY REASONABLE HYPOTHESIS PROPOUNDING THE INNOCENCE OF THE ACCUSED.— Under Section 4, Rule 133 of the Rules of Court, circumstantial evidence is sufficient for conviction when the concurrence of the following factors obtain: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all the circumstances is such as would prove the crime beyond reasonable doubt. These circumstances and facts must be **absolutely incompatible** with any reasonable hypothesis propounding the innocence of the accused. In the case at bar, the prosecution failed to establish the existence of an unbroken chain of circumstances that lead to no other logical conclusion but the guilt of the accused. x x x The circumstances borne out by the records are severely insufficient to establish the culpability of Soriano as one may reasonably extrapolate other

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[*] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1430 dated March 12, 2013.

[**] Per Special Order No. 1429 dated March 12, 2013.

possible scenarios other than those pointing to his guilt. The evidence in this case having fallen short of the standard of moral certainty, any doubt on the guilt of the accused should be considered in favor of his acquittal. The law enforcers' missteps in the performance of the investigation and the prosecuting attorney's careless presentation of the evidence cannot lead to any other conclusion other than that there are doubts as to the guilt of the accused.

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*.:

This is a review[1] of the Decision dated 22 October 2009[2] issued by the Court of Appeals, Cagayan de Oro City (CA) in CA-G.R. CR-HC No. 00474-MIN finding accused-appellant guilty beyond reasonable doubt of rape with homicide and sentencing him to suffer the penalty of *reclusion perpetua.* The dispositive part of the assailed Decision reads:

FOR REASONS STATED, the Decision of the Regional Trial Court of Marawi City, 10th Judicial Region, Branch 10, in Civil Cases No. 3200-99, is **AFFIRMED** with **MODIFICATION** in that the appellant Gerald Soriano *alias* Pedro is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole. He is further ordered to pay the heirs of the victim moral damages in the increased amount of ₱75,000 and temperate damages in the amount of ₱25,000.

SO ORDERED.[3]

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[1] Pursuant to Rule 124, Sec. 13.

[2] *Rollo,* pp. 4-13; Penned by CA Associate Justice Edgardo T. Lloren and concurred in by CA Associate Justices Edgardo A. Camello and Leoncia R. Dimagiba.

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

On 17 February 1999, accused-appellant Gerald Soriano *alias* Pedro (Soriano) was charged with rape with homicide in an Information, which reads in part:

> That on or about December 31, 1998 at around 4:00 o'clock [sic] in the afternoon at Barangay Katutungan, Municipality of Wao, Province of Lanao del Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously, and by means of force, violence and intimidation, grabbed [AAA], a girl of eight (8) years old, covered her mouth, bitten [sic] her right face and left breast and succeeded in having sexual intercourse with her against her wi[ll], and thereafter grabbed the victim's neck and chocked (sic) her to death and threw her body into the water of irrigation canal of Katutungan, Wao, Lanao del Sur.
>
> CONTRARY to and in [v]iolation of the last paragraph of Article 335 of the Revised Penal Code as amended.[4]

Facts According to the Prosecution

Around 8:00 a.m. of 31 December 1998, Soriano arrived with the nephew of Alice Hibaya (Hibaya) to drink liquor at her house until about 10:00 a.m.[5] Hibaya saw Soriano drink some more at the house of one Noel Quinatadcan (Quinatadcan), who lived about two meters away from her.[6] She then witnessed Soriano leave with his other companions at approximately 3:00 p.m.[7]

Around that time, Vicky Bearneza (Vicky) was grazing her carabao on a palm road when she saw Soriano, clad in a yellow t-shirt and blue denim, walk drunkenly towards the shortcut to Wao. She did not see anyone else pass by the area until she went home about 5:00 p.m.[8]

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[4] CA *rollo,* p. 8.

[5] *Rollo,* p. 5, CA Decision.

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

[7] *Id.* at 6.

[8] *Id.*

At roughly 3:30 p.m. of the same day, Vicky's sister BBB saw Soriano, whom she later similarly recalled was in yellow t-shirt and pants, pass by her house as he walked to the direction of Wao. It was also around the same time that she was expecting her eight-year-old daughter, AAA, to take the same shortcut on her way home from harvesting *palay*.[9]

Thereafter, at approximately 6:00 p.m., BBB asked for help in looking for AAA. The other residents assisted in the search, which lasted until midnight and turned out to be unsuccessful.[10]

On 1 January 1999, about 8:00 a.m., Tomas Bearneza (Tomas), the husband of Vicky, found the lifeless body of AAA in a canal along the shortcut. The victim was naked except for her shorts, which loosely hung below her knees. Her face and breast revealed bite marks.[11]

The health physician of the Wao District Hospital, Dr. Calico Haji Ali (Dr. Ali), examined the body of AAA. He observed the presence of human bite marks on the right side of her face and on her left breast.[12] According to his examination, she was raped and her death was caused by drowning.[13]

According to the mayor of Wao, Elvino C. Balicao (Mayor Balicao), Soriano confessed to being under the influence of alcohol when the latter killed AAA, but denied having raped her.[14]

On 2 January 1999, the Chief Investigator of Wao, Senior Police Officer 4 Edwin B. Bacerra, Sr. (SPO4 Bacerra), questioned Soriano. Because there were no lawyers available and Soriano claimed to be a minor, a representative from the Department of Social Welfare and Development (DSWD),

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[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.* at 7.

[14] *Id.*

Mercedes Oyangoren (Oyangoren), assisted him during the investigation. He admitted therein that he saw AAA near the canal. She tried to run away, but he caught up with her. She then started shouting for help, prompting him to panic and choke her. Thereafter, he removed her clothes, bit her left breast and threw her into the water. These statements were reduced into writing and signed by both Soriano and Oyangoren.[15]

Facts According to the Defense

Soriano averred that at 8:00 a.m. on 31 December 1998 at Hibaya's house, he and three other men drank Tanduay while they roasted a pig. By 2:00 p.m., they had transferred to the house of Quinatadcan, where they had a couple of beers.[16] At around 3:30 p.m., Soriano claimed that he was not quite drunk when he went home using the shortcut to Wao.[17] He was home by 5:00 p.m.[18]

Some policemen came to his house the following morning. Thinking that he was being hired to harvest corn, he voluntarily submitted himself to them. However, he was detained at the police headquarters.[19]

Soriano claimed that, without informing him of the contents of the document, SPO4 Bacerra made him sign it in front of Oyangoren. Mayor Balicao purportedly questioned Soriano inside the former's vehicle, threatened him that he would be fed to the crocodiles if he would not confess, and promised to help him if he would admit to having perpetrated the crime. Allegedly for these reasons, Soriano confessed to killing AAA.[20]

Upon the filing of an Information for rape with homicide against Soriano, the case was docketed as Criminal Case No. 3200-99 and raffled to the Regional Trial Court, 10th Judicial

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[15] *Id.*

[16] *Id.*

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

[18] *Id.* at 8.

[19] *Id.*

[20] *Id.*

Region, Marawi City, Branch 10 (RTC Br. 10). It later rendered a Decision finding him guilty beyond reasonable doubt of rape with homicide and sentencing him to suffer the death penalty.[21] He was likewise ordered to pay the heirs of AAA in the amount of ₱100,000 in civil indemnity and ₱50,000 in moral damages.[22]

After the case was elevated for automatic review, the CA affirmed the ruling of the trial court, but modified the sentence of Soriano to the penalty of *reclusion perpetua* without eligibility for parole and increased the civil liability to ₱75,000. He was also ordered to pay the heirs of AAA moral and temperate damages in the increased amounts of ₱75,000 and ₱25,000, respectively.[23] He filed a Notice of Appeal.[24]

Considering that the CA has already disregarded his supposed confession to Mayor Balicao, Soriano only raises the sole contention that the entirety of the circumstantial evidence presented by the prosecution was insufficient to sustain his conviction.[25] He posits the following arguments:

(a) The estimated time of death of AAA did not preclude the possibility that other culprits had perpetrated the crime.

(b) The prosecution failed to establish that he had caused the bite marks found on AAA.

(c) He had never been found to be in the company of the victim.

(d) It was not shown that he had gone to the place where her cadaver was found;

(e) While he was seen going towards the direction of the crime scene, this fact does not conclusively prove that he had raped and killed the victim.

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[21] CA *rollo*, pp. 19-A-33, RTC Br. 10 Decision dated 14 October 2002.

[22] *Id.* at 32-33.

[23] *Rollo,* pp. 12-13.

[24] *Id.* at 14-15.

[25] *Id.* at 22-38, Supplemental Brief for the accused-appellant dated 9 June 2010.

(f) His soiled clothes were not found at or near the area where the crime was committed, but were taken from his house without the benefit of a search warrant.[26]

At the outset, it should be underscored that following Section 12, Article III of the Constitution,[27] the CA was correct in ruling that the extrajudicial confession elicited by Mayor Balicao and SPO4 Bacerra from Soriano without the presence of counsel is inadmissible in evidence. Thus, the only issue is whether the circumstantial evidence presented by the prosecution was sufficient to hold Soriano guilty beyond reasonable doubt of the crime of rape with homicide. Ruling in the negative, this Court finds the appeal meritorious.

The prosecution faces a great deal of difficulty in cases involving the special complex crime of rape with homicide. In these cases, both the rape and the homicide must be proven beyond reasonable doubt, as the victim can no longer testify against the perpetrator of the offense.[28] Thus, a resort to circumstantial evidence becomes inevitable to prove the case.[29]

Under Section 4, Rule 133 of the Rules of Court, circumstantial evidence is sufficient for conviction when the concurrence of the following factors obtain: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all the circumstances

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[26] *Id.* at 32-35.

[27] Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

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(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

[28] *People v. Romero,* G.R. No. 181041, 23 February 2011, 644 SCRA 210.

[29] *Id.*

is such as would prove the crime beyond reasonable doubt. These circumstances and facts must be **absolutely incompatible** with any reasonable hypothesis propounding the innocence of the accused.[30] In the case at bar, the prosecution failed to establish the existence of an unbroken chain of circumstances that lead to no other logical conclusion but the guilt of the accused.

RTC Br. 10 anchored its Decision finding Soriano guilty of the crime charged on the following circumstances:

1. That the accused together with his companions had a drinking spree [at] the house and store of the two witnesses and admitted by accused until 3:00 in the afternoon and that day of December 30, 1998.

2. That the accused was seen by one of the witnesses while grassing [sic] their carabao at about 3:00 to 5:00 p.m. at the *barangay* road leading to crossing [sic] when he passed by under the influence of liquor, wearing a yellow T-shirt and maong pants that appeared clean but when witness was shown of the soiled and dirty yellow T-shirt and maong pants during the trial affirmed that it was the same clothes;

3. That accused was also seen by the mother of the victim and admitted by the accused, to be wearing [the] same clothes aforesaid leading to crossing Katutungan, where the crime was committed at around or between 3:00 to 3:30 [p].m. on [the] same day;

4. That the post mortem examination on the body of the victim contained series of contusion which are signs of violence inflicted in the different parts of the body of the victim, was raped before she was killed and that there was laceration of the hymen;

5. That the position of the body of the victim indicated she had been rape[d] and simultaneously killed.

6. That the body of the victim was found in the grassy area near the canal where her under pants was [sic] beside her and without clothes in her body, where the accused was last seen to have pass [sic] by. And that no other persons have passed by except the accused at that point in time[.][31]

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[30] *People v. Gonzaga,* G.R. No. 90036, 21 August 1992, 212 SCRA 730.

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

Meanwhile, in sustaining the Decision of the trial court, the CA ruled in this wise:

> In the instant case, appellant was seen walking towards the direction of the "short-cut" road to Wao where the body of the child-victim was found. He admitted that he used that road in going home. According to BBB, she saw appellant pass by her house at around 3:30 p.m. That was also the time when AAA was supposed to be on her way home using the same "short-cut" road. Appellant confirmed that BBB saw him and that he had spent the day drinking liquor.
>
> He was admittedly at the scene of the crime at the time the child was discovered to be missing. Moreover, he was the only person seen going to that road. He admitted that he saw no one else using that road. Appellant stated that he arrived at his home at around 5:00 that same afternoon. By his own testimony, he was there at the scene of the crime at around the time it happened. There can be no doubt that he raped and killed AAA as he was the only one out there in the "short-cut" road.[32]

The foregoing findings unquestionably establish that AAA was raped and killed. However, the circumstances presented by the prosecution do not form a solid and cohesive narrative that proves with moral certainty its contention that Soriano perpetrated these heinous acts. To synthesize, the only circumstances cited to implicate him in the crime are the following: (a) he passed through the shortcut to Wao around 3:00 p.m. on 31 December 1998; (b) Vicky did not see anyone else use that road from 3:00 p.m. to 5:00 p.m. on that day; and (c) the soiled garments confiscated from him were identified to have been the same ones he was wearing then.

To an unprejudiced mind, the fact that Soriano was the only one whom Vicky saw pass through the shortcut to Wao from 3:00 p.m. to 5:00 p.m. does not logically lead to any conclusion regarding his participation in the raping and killing of AAA. It is a mere conjecture that can be refuted by other equally conceivable and rational inferences. It is possible that Vicky might have failed to see the perpetrator, because he came from

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[32] *Rollo,* p. 11.

the same place as AAA; but, instead of traversing the shortcut after raping and killing the victim, actually went back to his point of origin. Neither can the mere fact that Soriano's clothes were soiled isolate him as the only probable suspect, considering that his garments were not found anywhere near the scene of the crime, but at his own home.

As a consequence, the circumstances borne out by the records are severely insufficient to establish the culpability of Soriano as one may reasonably extrapolate other possible scenarios other than those pointing to his guilt. The evidence in this case having fallen short of the standard of moral certainty, any doubt on the guilt of the accused should be considered in favor of his acquittal. The law enforcers' missteps in the performance of the investigation and the prosecuting attorney's careless presentation of the evidence cannot lead to any other conclusion other than that there are doubts as to the guilt of the accused.

WHEREFORE, the assailed Decision issued by the CA in CA-G.R. CR-HC No. 00474-MIN dated 22 October 2009 finding accused-appellant guilty beyond reasonable doubt, of rape with homicide and sentencing him to suffer the penalty of *reclusion perpetua* is **REVERSED** and **SET ASIDE.** Accused-appellant is hereby **ACQUITTED**. He is ordered to be immediately **RELEASED** from detention, unless he is being confined for another lawful cause. Let a copy of this Decision be furnished the Director, Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five (5) days from his receipt of this Decision, the action he has taken.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 191431. March 13, 2013]

RODOLFO G. CRUZ and ESPERANZA IBIAS, *petitioners, vs.* **ATTY. DELFIN GRUSPE,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; INTERPRETATION OF; IF THE TERMS OF THE DOCUMENT ARE CLEAR AND LEAVE NO DOUBT ON THE INTENTION OF THE PARTIES, THE LITERAL MEANING OF ITS STIPULATIONS SHALL CONTROL; APPLICATION IN CASE AT BAR.—** Contracts are obligatory no matter what their forms may be, whenever the essential requisites for their validity are present. In determining whether a document is an affidavit or a contract, the Court looks beyond the title of the document, since the denomination or title given by the parties in their document is not conclusive of the nature of its contents. In the construction or interpretation of an instrument, the intention of the parties is primordial and is to be pursued. If the terms of the document are clear and leave no doubt on the intention of the contracting parties, the literal meaning of its stipulations shall control. If the words appear to be contrary to the parties' evident intention, the latter shall prevail over the former. **A simple reading of the terms of the Joint Affidavit of Undertaking readily discloses that it contains stipulations characteristic of a contract.** As quoted in the CA decision, the Joint Affidavit of Undertaking contained a stipulation where Cruz and Leonardo promised to replace the damaged car of Gruspe, 20 days from October 25, 1999 or up to November 15, 1999, of the same model and of at least the same quality. In the event that they cannot replace the car within the same period, they would pay the cost of Gruspe's car in the total amount of ₱350,000.00, with interest at 12% per month for any delayed payment after November 15, 1999, until fully paid. **These, as read by the CA, are very simple terms that both Cruz and Leonardo could easily understand.**

2. **ID.; ID.; ELEMENTS; AN ALLEGATION OF VITIATED CONSENT MUST BE PROVEN BY PREPONDERANCE OF EVIDENCE; NOT ESTABLISHED IN CASE AT BAR.— An allegation of vitiated consent must be proven by preponderance of evidence; Cruz and Leonardo failed to support their allegation.** Although the undertaking in the affidavit appears to be onerous and lopsided, this does not necessarily prove the alleged vitiation of consent. They, in fact, admitted the genuineness and due execution of the Joint Affidavit and Undertaking when they said that they signed the same to secure possession of their vehicle. If they truly believed that the vehicle had been illegally impounded, they could have refused to sign the Joint Affidavit of Undertaking and filed a complaint, but they did not. That the release of their mini bus was conditioned on their signing the Joint Affidavit of Undertaking does not, by itself, indicate that their consent was forced – they may have given it grudgingly, but it is not indicative of a vitiated consent that is a ground for the annulment of a contract.

3. **ID.; OBLIGATIONS; DEBTOR TO BE IN DEFAULT; REQUISITES.—** "In order that the debtor may be in default[,] it is necessary that the following requisites be present: (1) that the obligation be demandable and already liquidated; (2) that the debtor delays performance; and (3) that the creditor requires the performance judicially and extrajudicially." Default generally begins from the moment the creditor demands the performance of the obligation. In this case, demand could be considered to have been made upon the filing of the complaint on November 19, 1999, and it is only from this date that the interest should be computed.

APPEARANCES OF COUNSEL

Ignacio Ignacio & Associates for petitioners.

Gruspe Marqueda Lambino Octava Gumarang & Associates Law Offices for respondent.

DECISION

BRION, *J.*:

Before the Court is the petition for review on *certiorari*[1] filed under Rule 45 of the Rules of Court, assailing the decision[2] dated July 30, 2009 and the resolution[3] dated February 19, 2010 of the Court of Appeals (*CA*) in CA-G.R. CV No. 86083. The CA rulings affirmed with modification the decision dated September 27, 2004 of the Regional Trial Court (*RTC*) of Bacoor, Cavite, Branch 19, in Civil Case No. BCV-99-146 which granted respondent Atty. Delfin Gruspe's claim for payment of sum of money against petitioners Rodolfo G. Cruz and Esperanza Ibias.[4]

THE FACTUAL BACKGROUND

The claim arose from an accident that occurred on October 24, 1999, when the mini bus owned and operated by Cruz and driven by one Arturo Davin collided with the Toyota Corolla car of Gruspe; Gruspe's car was a total wreck. The next day, on October 25, 1999, Cruz, along with Leonardo Q. Ibias went to Gruspe's office, apologized for the incident, and executed a **Joint Affidavit of Undertaking** promising jointly and severally to replace the Gruspe's damaged car in 20 days, or until November 15, 1999, of the same model and of at least the same quality; or, alternatively, they would pay the cost of Gruspe's car amounting to ₱350,000.00, with interest at **12% per month** for any delayed payment after November 15, 1999, until fully paid.[5] When Cruz and Leonardo failed to comply with their

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[1] *Rollo,* pp. 3-8.

[2] Penned by Associate Justice Amelita G. Tolentino, and concurred in by Associate Justices Pampio A. Abarintos and Mario V. Lopez; *id*. at 12-21.

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

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

[5] Records, p. 6. Paragraph 5 of the Joint Affidavit of Undertaking read:

5. If we cannot replace said car within the said period, we will be liable to pay the cost of the car (Toyota Corolla 1.6 GLI 1993 Model) in the total amount of Three Hundred Fifty Thousand Pesos (₱350,000.00), Philippine

undertaking, Gruspe filed a complaint for collection of sum of money against them on November 19, 1999 before the RTC.

In their answer, Cruz and Leonardo denied Gruspe's allegation, claiming that Gruspe, a lawyer, prepared the Joint Affidavit of Undertaking and forced them to affix their signatures thereon, without explaining and informing them of its contents; Cruz affixed his signature so that his mini bus could be released as it was his only means of income; Leonardo, a *barangay* official, accompanied Cruz to Gruspe's office for the release of the mini bus, but was also deceived into signing the Joint Affidavit of Undertaking.

Leonardo died during the pendency of the case and was substituted by his widow, Esperanza. Meanwhile, Gruspe sold the wrecked car for ₱130,000.00.

In a decision dated September 27, 2004, the **RTC ruled in favor of Gruspe** and ordered Cruz and Leonardo to pay ₱220,000.00,[6] plus 15% per annum from November 15, 1999 until fully paid, and the cost of suit.

On appeal, **the CA affirmed the RTC decision, but reduced the interest rate to <u>12% per annum</u> *pursuant to the Joint Affidavit of Undertaking*.**[7] It declared that despite its title, **the Joint Affidavit of Undertaking is a contract**, as it has all the essential elements of consent, object certain, and consideration required under Article 1318 of the Civil Code. The CA further

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currency, with interest rate of **12% per month** of any delayed payment after November 15, 1999 until fully paid.

[6] The total claim for ₱350,000.00 less the ₱130,000.00 that Gruspe received for selling his car; *rollo*, p. 14.

[7] *Id.* at 20. The dispositive portion of the CA decision dated July 30, 2009 read:

> WHEREFORE, premises considered, the appeal is DISMISSED. The assailed decision dated September 27, 2004 of the Regional Trial Court of Bacoor, Cavite, Branch 19, is AFFIRMED with the MODIFICATION that the interest charged be changed from 15% to *12%* ***<u>per annum pursuant to the Joint Affidavit of Undertaking</u>*** of the defendants-appellants.

said that **Cruz and Leonardo failed to present evidence to support their contention of vitiated consent**. By signing the Joint Affidavit of Undertaking, they voluntarily assumed the obligation for the damage they caused to Gruspe's car; Leonardo, who was not a party to the incident, could have refused to sign the affidavit, but he did not.

THE PETITION

In their appeal by *certiorari* with the Court, Cruz and Esperanza assail the CA ruling, contending that the Joint Affidavit of Undertaking is not a contract that can be the basis of an obligation to pay a sum of money in favor of Gruspe. They consider an affidavit as different from a contract: an affidavit's purpose is simply to attest to facts that are within his knowledge, while a contract requires that there be a meeting of the minds between the two contracting parties.

Even if the Joint Affidavit of Undertaking was considered as a contract, Cruz and Esperanza claim that it is invalid because Cruz and Leonardo's consent thereto was vitiated; the contract was prepared by Gruspe who is a lawyer, and its contents were never explained to them. Moreover, Cruz and Leonardo were simply forced to affix their signatures, otherwise, the mini van would not be released.

Also, they claim that prior to the filing of the complaint for sum of money, Gruspe did not make any demand upon them. Hence, pursuant to Article 1169 of the Civil Code, they could not be considered in default. Without this demand, Cruz and Esperanza contend that Gruspe could not yet take any action.

THE COURT'S RULING

The Court finds the petition **partly meritorious** and accordingly modifies the judgment of the CA.

Contracts are obligatory no matter what their forms may be, whenever the essential requisites for their validity are present. In determining whether a document is an affidavit or a contract, the Court looks beyond the title of the document, since the denomination or title given by the parties in their document is

not conclusive of the nature of its contents.[8] In the construction or interpretation of an instrument, the intention of the parties is primordial and is to be pursued. If the terms of the document are clear and leave no doubt on the intention of the contracting parties, the literal meaning of its stipulations shall control. If the words appear to be contrary to the parties' evident intention, the latter shall prevail over the former.[9]

A simple reading of the terms of the Joint Affidavit of Undertaking readily discloses that it contains stipulations characteristic of a contract. As quoted in the CA decision,[10] the Joint Affidavit of Undertaking contained a stipulation where Cruz and Leonardo promised to replace the damaged car of Gruspe, 20 days from October 25, 1999 or up to November 15, 1999, of the same model and of at least the same quality. In the event that they cannot replace the car within the same period, they would pay the cost of Gruspe's car in the total amount of ₱350,000.00, with interest at 12% per month for any delayed payment after November 15, 1999, until fully paid. **These, as read by the CA, are very simple terms that both Cruz and Leonardo could easily understand.**

There is also no merit to the argument of vitiated consent. An allegation of vitiated consent must be proven by preponderance of evidence; Cruz and Leonardo failed to support their allegation. Although the undertaking in the affidavit appears to be onerous and lopsided, this does not necessarily prove the alleged vitiation of consent. They, in fact, admitted the genuineness and due execution of the Joint Affidavit and Undertaking when they said that they signed the same to secure possession of their vehicle. If they truly believed that the vehicle had been illegally impounded, they could have refused to sign

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[8] In *Tayco v. Heirs of Concepcion Tayco-Flores*, G.R. No. 168692, December 13, 2010, 637 SCRA 742, 751, the Court declared that "[t]he denomination given by the parties in their contract is not conclusive of the nature of the contents."

[9] *Ayala Life Assurance, Inc. v. Ray Burton Dev't. Corp.,* 515 Phil. 431, 437 (2006).

[10] *Supra* note 2, at 19.

the Joint Affidavit of Undertaking and filed a complaint, but they did not. That the release of their mini bus was conditioned on their signing the Joint Affidavit of Undertaking does not, by itself, indicate that their consent was forced — they may have given it grudgingly, but it is not indicative of a vitiated consent that is a ground for the annulment of a contract.

Thus, on the issue of the validity and enforceability of the Joint Affidavit of Undertaking, the CA did not commit any legal error that merits the reversal of the assailed decision.

Nevertheless, the CA glossed over the issue of demand which is material in the computation of interest on the amount due. The RTC ordered Cruz and Leonardo to pay Gruspe "₱350,000.00 as cost of the car x x x plus fifteen percent (15%) per annum from November 15, 1999 until fully paid[.]"[11] The 15% interest (later modified by the CA to be 12%) was computed from November 15, 1999 — the date stipulated in the Joint Affidavit of Undertaking for the payment of the value of Gruspe's car. In the absence of a finding by the lower courts that Gruspe made a demand prior to the filing of the complaint, the interest cannot be computed from November 15, 1999 because until a demand has been made, Cruz and Leonardo could not be said to be in default.[12] "In order that the debtor may be in default[,]

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[11] *Id.* at 12.

[12] Civil Code, Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

1) When the obligation or the law expressly so declare; or

2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

it is necessary that the following requisites be present: (1) that the obligation be demandable and already liquidated; (2) that the debtor delays performance; and (3) that the creditor requires the performance judicially and extrajudicially."[13] Default generally begins from the moment the creditor demands the performance of the obligation. In this case, demand could be considered to have been made upon the filing of the complaint on November 19, 1999, and it is only from this date that the interest should be computed.

Although the CA upheld the Joint Affidavit of Undertaking, we note that it imposed interest rate on a *per annum* basis, instead of the *per month* basis that was stated in the Joint Affidavit of Undertaking without explaining its reason for doing so.[14] Neither party, however, questioned the change. Nonetheless, the Court affirms the change in the interest rate from 12% per month to 12% per annum, as we find the interest rate agreed upon in the Joint Affidavit of Undertaking excessive.[15]

WHEREFORE, we **AFFIRM** the decision dated July 30, 2009 and the resolution dated February 19, 2010 of the Court of Appeals in CA-G.R. CV No. 86083, subject to the **MODIFICATION** that the twelve percent (12%) per annum interest imposed on the amount due shall accrue only from November 19, 1999, when judicial demand was made.

SO ORDERED.

Carpio, del Castillo, Villarama, Jr.,[*] and *Perlas-Bernabe, JJ.,* concur.

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[13] *Social Security System v. Moonwalk Development and Housing Corporation,* G.R. No. 73345, April 7, 1993, 221 SCRA 119, 128.

[14] Compare paragraph 5 of the Joint Affidavit of Undertaking (*supra*, note 5) and the dispositive portion of the CA decision dated July 30, 2009 (*supra,* note 7).

[15] See *Asian Cathay Finance and Leasing Corporation v. Spouses Gravador,* G.R. No. 186550, July 5, 2010, 623 SCRA 517, 523.

[*] Designated as Acting Member in lieu of Associate Justice Jose P. Perez per Special Order No. 1426 dated March 8, 2013.

THIRD DIVISION

[G.R. No. 194104. March 13, 2013]

NOVATEKNIKA LAND CORPORATION, *petitioner, vs.* **PHILIPPINE NATIONAL BANK and THE REGISTER OF DEEDS OF MANILA CITY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FILING OF A MOTION FOR RECONSIDERATION IS A PREREQUISITE TO THE FILING OF A SPECIAL CIVIL ACTION FOR *CERTIORARI*; EXCEPTIONS.—** Before a petition for *certiorari* can prosper, the petitioner must be able to show, among others, that he does not have any other "plain, speedy and adequate remedy in the ordinary course of law." This remedy referred to in Section 1 of Rule 65 is a motion for reconsideration of the questioned order. Well established is the rule that the filing of a motion for reconsideration is a prerequisite to the filing of a special civil action for *certiorari*, subject to certain exceptions, to wit: x x x (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; DEFINED.— Nothing is more settled than the principle that a special civil action for *certiorari* under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," as contemplated by the Rules of Court, is "the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power" that is so patent and gross that it "amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law." Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order.

3. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ISSUANCE OF A WRIT, WHEN PROPER.— The sole object of a preliminary injunction is to preserve the *status quo* of the parties until the merits of the case can be heard. "A writ of preliminary injunction may be issued only upon clear showing by the applicant of the existence of the following: (1) a right *in esse* or a clear and unmistakable right to be protected; (2) a violation of that right; and (3) an urgent and paramount necessity for the writ to prevent serious damage. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion."

APPEARANCES OF COUNSEL

Corporate Counsels Philippines Law Offices for petitioner.
Estelito P. Mendoza for respondents.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, assailing the July 19, 2010 Resolution[1] and the October 6, 2010 Resolution[2]

[1] *Rollo,* pp. 68-70; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justice Remedios A. Salazar-Fernando and Associate Justice Michael P. Elbinias of the Second Division.

[2] *Id.* at 62-66.

of the Court of Appeals (*CA*), in CA-G.R. SP No. 114674, entitled *Novateknika Land Corporation v. Hon. Thelma Bunyi-Medina, in her capacity as Presiding Judge of the Regional Trial Court (Branch 32) of Manila, et al.*

The Facts

On December 13, 1993, petitioner Novateknika Land Corporation (*NLC*), together with Kenstar Industrial Corporation (*KIC*), Plastic City Corporation (*PCC*), Recovery Real Estate Corporation, Rexlon Realty Group, Inc., Pacific Plastic Corporation, Inland Container Corporation, Kennex Container Corporation, Rexlon Industrial Corporation and MPC Plastic Corporation, entered into a Credit Agreement[3] with respondent Philippine National Bank (*PNB*) for the availment of an omnibus line in the principal amount of ₱500,000,000.00. The borrowers bound themselves to be jointly and severally liable to PNB for the full payment of their obligations, such that the bank can demand payment and performance from any one of the borrowers.[4] As one of the securities for the credit accommodation to be extended by PNB pursuant to the Credit Agreement, the borrowers, on the same date, executed the Real Estate and Chattel Mortgage[5] covering 21 properties which included four (4) parcels of land under the name of NLC.

On January 2, 1996, the parties executed the Renewal and Conversion Agreement[6] extending the term of the omnibus line, which expired on December 22, 1994, and converting it into a peso/foreign currency convertible omnibus line. The Second Renewal Agreement,[7] dated March 17, 1997, prolonged the term of the omnibus line to December 18, 1997.

Several drawdowns, evidenced by promissory notes and trust receipts, were made by KIC and PCC during the effectivity of

[3] *Id.* at 111-131.

[4] *Id.* at 122.

[5] *Id.* at 132-141.

[6] *Id.* at 188-204.

[7] *Id.* at 205-211.

the abovementioned loan documents, bringing their total outstanding principal obligation to ₱593,449,464.79.[8] Despite repeated demands made by PNB, the loan remained unpaid. PNB was then constrained to file petitions for extrajudicial foreclosure over the properties covered by the Real Estate and Chattel Mortgage, which included the four (4) parcels of land of NLC.[9]

On March 8, 2010, the Regional Trial Court of Manila issued the Notice of Extrajudicial Sale,[10] announcing the sale of NLC properties on May 5, 2010. The properties were awarded to PNB, as the sole bidder, and the bid amount was applied in partial satisfaction of the outstanding obligation of the borrowers.[11]

NLC filed an action for injunction with a prayer for the issuance of a temporary restraining order (*TRO*) and/or a writ of preliminary injunction (*WPI*) in the Complaint,[12] dated May 5, 2010, arguing that: (1) PNB's right to bring a mortgage action had already prescribed because the demand letter was sent to NLC more than 10 years after the expiration of the omnibus line and more than 14 years after the execution of the Real Estate and Chattel Mortgage; (2) NLC did not benefit from the loans and acted merely as a third-party mortgagor; and (3) the stockholders of NLC did not properly authorize the execution of a mortgage over its properties.

In its May 20, 2010 Order,[13] the Regional Trial Court, Branch 32, Manila (*RTC*), granted NLC's application for the issuance of a TRO, preventing PNB from consummating the public sale and from doing any act that would tend to impede, hamper, limit or adversely affect its full enjoyment of its ownership of the subject properties.

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[8] *Id.* at 377 and 382.

[9] *Id.* at 382-404 and 490.

[10] *Id.* at 405-408.

[11] *Id.* at 490.

[12] *Id.* at 410-432.

[13] *Id.* at 437-440.

Later, on June 22, 2010, the RTC issued the Order[14] denying NLC's prayer for injunctive relief, pronouncing that the evidence so far presented by NLC did not warrant the issuance of a WPI because it failed to show that the right alleged in its complaint was clear and unmistakable. The RTC found that, contrary to the assertions of NLC, the mortgage action had not prescribed. The receipt of the demand letters from PNB by KIC and PCC served to halt the running of the prescriptive period. That NLC did not receive a demand letter from PNB within the 10-year period was of no moment because the obligation it contracted, together with the other borrowers, was solidary in nature and was necessarily indivisible insofar as prescription was concerned. NLC could not evade liability either, by reasoning that it only acted as a third-party mortgagor. The terms of the Credit Agreement, as well as the succeeding loan documents, explicitly stated that PNB could demand payment from any of the borrowers, including NLC, regardless of whether it availed of the credit line or not. Finally, the RTC discounted NLC's claim that the execution of the mortgage contract was not authorized by its stockholders and was, therefore, *ultra vires* and not binding upon it.

Aggrieved, NLC elevated the case to the CA via a petition for *certiorari* under Rule 65 of the Rules of Court. In its Resolution, dated July 19, 2010, the CA dismissed the petition outright for failure of NLC to file a motion for reconsideration before the RTC. The CA noted that NLC simply averred that the filing of the said motion was unnecessary because of the alleged extreme urgency for the CA to annul the questioned order of the trial court. The CA then reiterated the rule that the filing of a motion for reconsideration is an indispensable condition to the filing of a special civil action for *certiorari*.[15]

Hence, this petition.

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[14] *Id.* at 489-494.

[15] *Id.* at 68-70.

The Issues

Petitioner NLC raises the following:

1. **Whether the Court of Appeals erred in refusing to give due course to NLC's Petition for *Certiorari* under Rule 65 of the Rules of Court in CA-G.R. SP No. 114674.**

and

A. Whether there is extreme urgency for petitioner to resort directly to the Court of Appeals to annul and set aside the Trial Court's Order dated 22 June 2010.[16]

In other words, the only question to be resolved by the Court in the case at bench is whether the petitioner was justified in elevating the case to the CA without filing the requisite motion for reconsideration before the RTC.

The Court's Ruling

Petitioner NLC argues that although the filing of a motion for reconsideration is necessary before instituting a special civil action for *certiorari*, the rule admits of certain exceptions; such as, when there is an urgent necessity for the resolution of the question and any further delay would prejudice the interest of the petitioner or if the subject matter of the action is perishable.[17] NLC asserts that its situation falls under this exception because once the properties subject of the mortgage are sold and the corresponding certificates of sale are issued and registered, it loses the right to redeem its properties under Section 47 of the General Banking Law.[18] Consequently, it posits that a motion for reconsideration is not a plain, speedy and

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[16] *Id.* at 40.

[17] *Id.* at 686.

[18] *Id.* at 689; Republic Act No. 8791, *The General Banking Law of 2000,* Section 47:

"x x x, Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. x x x"

adequate remedy to address the extreme urgency of the case, considering that any judgment on the merits of the civil case would be ineffectual after the issuance and registration of the certificates of sale as the properties may be freely sold by PNB to another buyer.[19]

The Court disagrees.

Motion for reconsideration is a condition sine qua non to certiorari

Section 1, Rule 65 of the Rules of Court states that:

> Section 1. Petition for *certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and **there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis supplied)

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Unmistakably, before a petition for *certiorari* can prosper, the petitioner must be able to show, among others, that he does not have any other "plain, speedy and adequate remedy in the ordinary course of law." This remedy referred to in Section 1 of Rule 65 is a motion for reconsideration of the questioned order.[20]

Well established is the rule that the filing of a motion for reconsideration is a prerequisite to the filing of a special civil action for *certiorari*, subject to certain exceptions,[21] to wit:

> (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

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[19] *Rollo,* pp. 689-690.

[20] *Metro Transit Organization, Inc. v. The Court of Appeals,* 440 Phil. 743, 753 (2002).

[21] *Id.* at 751.

(b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner or the subject matter of the action is perishable;

(d) where, under the circumstances, a motion for reconsideration would be useless;

(e) where petitioner was deprived of due process and there is extreme urgency for relief;

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) where the proceedings in the lower court are a nullity for lack of due process;

(h) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and

(i) where the issue raised is one purely of law or where public interest is involved.[22]

None of the exceptions, however, is present in this case.

The supposed urgency of the case was not of such a nature as to necessitate the direct resort to the CA. The petitioner failed to show that a petition for *certiorari* would be a more speedy and adequate remedy than a motion for reconsideration from the order of the RTC.

Jurisprudence is replete with decisions which reiterate that before filing a petition for *certiorari* in a higher court, the attention of the lower court should be first called to its supposed error and its correction should be sought. Failing this, the petition for *certiorari* should be denied.[23] The reason for this is to afford

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[22] *Delos Reyes v. Flores,* G.R. No. 168726, March 5, 2010, 614 SCRA 270, 277-278.

[23] *Butuan Bay Wood Export Corporation v. Court of Appeals,* 186 Phil. 174, 184 (1980).

the lower court the opportunity to correct any actual or fancied error attributed to it through a re-examination of the legal and factual aspects of the case. The petitioner's disregard of this rule deprived the trial court the right and the opportunity to rectify an error unwittingly committed or to vindicate itself of an act unfairly imputed.[24]

As aptly declared by this Court in the case of *Cervantes v. Court of Appeals*:[25]

> It must be emphasized that a writ of *certiorari* is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of *certiorari* must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. **Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do.** Thus, the Court of Appeals correctly dismissed the petition.[26] (Emphasis supplied)

In the case at bench, the proper recourse of NLC was to have filed a motion for reconsideration of the June 22, 2010 Order of the RTC denying its application for injunctive relief. Only after the denial of such motion can it be deemed to have exhausted all available remedies and be justified in elevating the case to the CA through a petition for *certiorari* under Rule 65.

The petitioner is reminded that procedural rules are instituted to facilitate the adjudication of cases and, as such, the courts and the litigants are enjoined to abide strictly by the rules. While it is true that litigation is not a game of technicalities, it is equally important that every case must be prosecuted in accordance with the prescribed rules of procedure to ensure an orderly

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[24] *Estate of Salvador Serra Serra v. Heirs of Hernaez,* 503 Phil. 736, 743 (2005).

[25] 512 Phil. 210 (2005).

[26] *Id.* at 217.

and speedy administration of justice.[27] Only for the most persuasive of reasons can such rules be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[28]

No grave abuse of discretion

At any rate, even if the Court allows the premature recourse to *certiorari* without the petitioner having filed a motion for reconsideration in the trial court, the petition would still fail. Nothing is more settled than the principle that a special civil action for *certiorari* under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," as contemplated by the Rules of Court, is "the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power" that is so patent and gross that it "amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law."[29] Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order.[30] The burden of proof is on the petitioner to show that the RTC issued its June 22, 2010 Order with grave abuse of discretion. This petitioner failed to do.

Based on the records of the case, the Court finds that the RTC did not abuse its discretion in denying NLC's application for a writ of preliminary injunction.

The sole object of a preliminary injunction is to preserve the *status quo* of the parties until the merits of the case can be heard.[31] "A writ of preliminary injunction may be issued only

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[27] *Garbo v. Court of Appeals,* 327 Phil. 780, 784 (1996).

[28] *Galang v. Court of Appeals,* 276 Phil. 748, 755 (1991).

[29] *Beluso v. Commission on Elections,* G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456.

[30] *Republic of the Philippines v. Sandiganbayan,* 499 Phil. 138, 152 (2005).

[31] *Buyco v. Baraquia,* G.R. No. 177486, December 21, 2009, 608 SCRA 699, 704.

upon clear showing by the applicant of the existence of the following: (1) a right *in esse* or a clear and unmistakable right to be protected; (2) a violation of that right; and (3) an urgent and paramount necessity for the writ to prevent serious damage. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion."[32]

In this case, NLC was unable to convincingly substantiate its claim that it had an unmistakable right to be protected which was in danger of being violated by respondent PNB. Although it is clear, as the petitioner avers, that it was the registered owner of the four (4) properties subject of this petition, it is similarly clear that the said properties were mortgaged to PNB, as evidenced by the Real Estate and Chattel Mortgage[33] which was duly registered with the Register of Deeds who then annotated such encumbrance in the transfer certificates of title.[34] Moreover, the Credit Agreement, the Renewal and Conversion Agreement and the Second Renewal Agreement (collectively, the "Loan Documents"), documenting the terms of the omnibus line granted to the petitioner and its co-borrowers, all indicate that the full payment of the availments or advances on the omnibus credit line are secured by the Real Estate and Chattel Mortgage, as stipulated in Section 7 of the Credit Agreement:

> Section 7. Security. —
>
> 7.01 Security Document. The full payment of the Availments/ Advances on the Omnibus Line and any and all sums payable by the Borrowers in connection with the Omnibus Line and other documents contemplated hereby and the performance of all obligations of the Borrowers hereunder and under the Notes and such other documents shall be secured by the following, *viz.*:
>
> (a) real estate mortgage on twenty one (21) parcels of land, with an aggregate area of 91,659 square meters, more or less, located in Metro Manila and covered by various transfer certificates of

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[32] *Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank,* G.R. No. 161004, April 14, 2008, 551 SCRA 183, 189.

[33] *Rollo*, pp. 132-141.

[34] *Id.* at 602-613.

title and chattel mortgage on various machineries and equipment located at Bo. Canumay, Valenzuela, Metro Manila, which mortgage shall be evidenced by a Real Estate and Chattel Mortgage with Power of Attorney (the "Mortgage Document") to be executed by the Borrowers in favor of the Bank in form and substance satisfactory to the Bank.[35]

x x x x x x x x x

Section 8 of the Renewal and Conversion Agreement and Section 3 of the Second Renewal Agreement contain a similarly worded provision.[36]

Thus, the foreclosure of the mortgage is but a necessary consequence of the non-payment by petitioner of its obligation which was secured by the mortgage.[37] It would have been improper for the RTC to enjoin the foreclosure, the succeeding auction sale and the issuance and registration of the certificate of sale in favor of the winning bidder in face of the failure of petitioner to establish, at that time, its legal right to prevent and consummate such foreclosure by PNB.

In addition, it must be pointed out that, as a general rule, the RTC decision granting or, in this case, denying injunctive relief will not be set aside on appeal unless the court abused its discretion. The trial court can be said to have abused its discretion if it lacked jurisdiction over the case, failed to consider and make a record of the factors relevant to its determination, relied on clearly erroneous factual findings, considered irrelevant or improper factors, gave too much weight to one factor, relied on erroneous conclusions of law or equity, or misapplied its factual or legal conclusions.[38]

The June 22, 2010 Order of the RTC denying NLC's application for preliminary injunction plainly stated the reasons

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[35] *Id.* at 120.

[36] *Id.* at 200 and 207.

[37] *Spouses Delos Santos v. Metropolitan Bank and Trust Company,* G.R. No. 153852, October 24, 2012.

[38] *Almeida v. Court of Appeals,* 489 Phil. 648, 663-664 (2005).

for its decision, based on the evidence presented before it so far. The Court agrees with the evaluation of the facts made by the RTC and, consequently, sees no reason to reverse its findings.

As regards NLC's allegation that it cannot be held liable for the promissory notes executed by KIC and PCC because it did not benefit from the proceeds of the loan, the following provisions in the Loan Documents reveal that the petitioner bound itself to be solidarily liable for the loans made by its co-borrowers:

Credit Agreement dated December 13, 1993, Sec. 9.3:

The Borrowers shall be jointly and severally liable to the Bank for the full payment and complete performance of all obligations of the Borrower as provided herein. Accordingly, the Bank may demand payment and performance from any one of the Borrowers.

Renewal and Conversion Agreement dated January 2, 1996, Sec. 10.03:

Nature of the Borrowers' Liability. The Borrowers shall be jointly and severally liable to the Bank for the full payment and complete performance of all obligations of the Borrowers as provided herein. Accordingly, the Bank may demand payment and performance from any one of the Borrowers.

Because there is no ambiguity in the terms of the Loan Documents, NLC must honor the conditions of the omnibus credit line granted to it and its co-borrowers by respondent PNB. The Court has repeatedly emphasized that "a contract duly executed is the law between the parties and they are obliged to comply fully and not selectively with its terms."[39] Petitioner NLC, as a solidary debtor, can be made to answer for the promissory notes executed by KIC and PCC, in accordance with the Loan Documents, unless it can prove otherwise. Hence, the Court agrees with the RTC when it justifiably ruled that NLC could not escape liability for the reason that it simply acted as a third-party mortgagor and did not profit from the loan.

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[39] *Pilipino Telephone Corporation v. Tecson,* G.R. No. 156966, May 7, 2004, 428 SCRA 378, 382.

Therefore, even if this Court permits the petitioner to dispense with the requirement of filing a motion for reconsideration before resorting to *certiorari*, the petitioner still cannot be granted the injunctive relief it prayed for because the Court finds no abuse of discretion on the part of the RTC in denying the application for a writ of preliminary injunction by the petitioner.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Leonardo-de Castro,[*] *Peralta,*[**] *Abad*, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 195540. March 13, 2013]

GOLDENWAY MERCHANDISING CORPORATION, *petitioner, vs.* **EQUITABLE PCI BANK,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; STATUTES; CONSTITUTIONAL QUESTION; FOR A LAW TO BE NULLIFIED, IT MUST BE SHOWN THAT THERE IS A CLEAR AND UNEQUIVOCAL BREACH OF THE CONSTITUTION.—** When confronted with a constitutional question, it is elementary that every court must approach it with grave care and considerable caution bearing in mind that every statute is presumed valid and every reasonable doubt should be resolved in favor of its constitutionality. For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt. Indeed, those

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[*] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1430 dated March 12, 2013.

[**] Per Special Order No. 1429 dated March 12, 2013.

who petition this Court to declare a law, or parts thereof, unconstitutional must clearly establish the basis therefor. Otherwise, the petition must fail.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; NON-IMPAIRMENT CLAUSE, EXPLAINED.—** The purpose of the non-impairment clause of the Constitution is to safeguard the integrity of contracts against unwarranted interference by the State. As a rule, contracts should not be tampered with by subsequent laws that would change or modify the rights and obligations of the parties. Impairment is anything that diminishes the efficacy of the contract. There is an impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.

3. **CIVIL LAW; MORTGAGE; EXTRAJUDICIAL FORECLOSURE; THE CONSTITUTIONAL PROSCRIPTION AGAINST IMPAIRMENT OF THE OBLIGATION OF CONTRACT IS NOT VIOLATED BY THE MODIFICATION OF THE TIME TO EXERCISE THE RIGHT OF A JURIDICAL PERSON TO REDEEM FORECLOSED PROPERTIES; APPLICATION IN CASE AT BAR.—** The law governing cases of extrajudicial foreclosure of mortgage is Act No. 3135, as amended by Act No. 4118. x x x The one-year period of redemption is counted from the date of the registration of the certificate of sale. In this case, the parties provided in their real estate mortgage contract that upon petitioner's default and the latter's entire loan obligation becoming due, respondent may immediately foreclose the mortgage judicially in accordance with the Rules of Court, or extrajudicially in accordance with Act No. 3135, as amended. x x x However, Section 47 of R.A. No. 8791 otherwise known as "The General Banking Law of 2000" which took effect on June 13, 2000, amended Act No. 3135. x x x Under the new law, an exception is thus made in the case of juridical persons which are allowed to exercise the right of redemption only "until, but not after, the registration of the certificate of foreclosure sale" and in no case more than three (3) months after foreclosure, whichever comes first. x x x Section 47 did not divest juridical persons of the right to redeem their foreclosed properties but only modified the time for the exercise

of such right by reducing the one-year period originally provided in Act No. 3135. The new redemption period commences from the date of foreclosure sale, and expires upon registration of the certificate of sale or three months after foreclosure, whichever is earlier. There is likewise no retroactive application of the new redemption period because Section 47 exempts from its operation those properties foreclosed prior to its effectivity and whose owners shall retain their redemption rights under Act No. 3135. x x x The freedom to contract is not absolute; all contracts and all rights are subject to the police power of the State and not only may regulations which affect them be established by the State, but all such regulations must be subject to change from time to time, as the general well-being of the community may require, or as the circumstances may change, or as experience may demonstrate the necessity. Settled is the rule that the non- impairment clause of the Constitution must yield to the loftier purposes targeted by the Government. The right granted by this provision must submit to the demands and necessities of the State's power of regulation. Such authority to regulate businesses extends to the banking industry which, as this Court has time and again emphasized, is undeniably imbued with public interest.

4. **ID.; ID.; ID.; RIGHT OF REDEMPTION; CONSTRUED.—** The right of redemption being statutory, it must be exercised in the manner prescribed by the statute, and within the prescribed time limit, to make it effective. Furthermore, as with other individual rights to contract and to property, it has to give way to police power exercised for public welfare. The concept of police power is well-established in this jurisdiction. It has been defined as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." Its scope, ever-expanding to meet the exigencies of the times, even to anticipate the future where it could be done, provides enough room for an efficient and flexible response to conditions and circumstances thus assuming the greatest benefits. x x x Having ruled that the assailed Section 47 of R.A. No. 8791 is constitutional, we find no reversible error committed by the CA in holding that petitioner can no longer exercise the right of redemption over its foreclosed properties after the certificate of sale in favor of respondent had been registered.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; THE CLASSIFICATION DOES NOT VIOLATE THE EQUAL PROTECTION GUARANTEE IF THE CLASSIFICATION IS GERMANE TO THE PURPOSE OF THE LAW, CONCERNS ALL MEMBERS OF THE CLASS, AND APPLIES EQUALLY TO PRESENT AND FUTURE CONDITIONS; PRESENT IN CASE AT BAR.— The equal protection clause is directed principally against undue favor and individual or class privilege. It is not intended to prohibit legislation which is limited to the object to which it is directed or by the territory in which it is to operate. It does not require absolute equality, but merely that all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed. Equal protection permits of reasonable classification. We have ruled that one class may be treated differently from another where the groupings are based on reasonable and real distinctions. If classification is germane to the purpose of the law, concerns all members of the class, and applies equally to present and future conditions, the classification does not violate the equal protection guarantee. x x x The difference in the treatment of juridical persons and natural persons was based on the nature of the properties foreclosed – whether these are used as residence, for which the more liberal one-year redemption period is retained, or used for industrial or commercial purposes, in which case a shorter term is deemed necessary to reduce the period of uncertainty in the ownership of property and enable mortgagee-banks to dispose sooner of these acquired assets. It must be underscored that the General Banking Law of 2000, crafted in the aftermath of the 1997 Southeast Asian financial crisis, sought to reform the General Banking Act of 1949 by fashioning a legal framework for maintaining a safe and sound banking system. In this context, the amendment introduced by Section 47 embodied one of such safe and sound practices aimed at ensuring the solvency and liquidity of our banks. It cannot therefore be disputed that the said provision amending the redemption period in Act 3135 was based on a reasonable classification and germane to the purpose of the law.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for petitioner.

Isip San Juan Guirnalda & Associates for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before the Court is a petition for review on *certiorari* which seeks to reverse and set aside the Decision[1] dated November 19, 2010 and Resolution[2] dated January 31, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 91120. The CA affirmed the Decision[3] dated January 8, 2007 of the Regional Trial Court (RTC) of Valenzuela City, Branch 171 dismissing the complaint in Civil Case No. 295-V-01.

The facts are undisputed.

On November 29, 1985, Goldenway Merchandising Corporation (petitioner) executed a Real Estate Mortgage in favor of Equitable PCI Bank (respondent) over its real properties situated in Valenzuela, Bulacan (now Valenzuela City) and covered by Transfer Certificate of Title (TCT) Nos. T-152630, T-151655 and T-214528 of the Registry of Deeds for the Province of Bulacan. The mortgage secured the Two Million Pesos (₱2,000,000.00) loan granted by respondent to petitioner and was duly registered.[4]

As petitioner failed to settle its loan obligation, respondent extrajudicially foreclosed the mortgage on December 13, 2000. During the public auction, the mortgaged properties were sold for ₱3,500,000.00 to respondent. Accordingly, a Certificate of

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[1] *Rollo,* pp. 36-47. Penned by Associate Justice Isaias P. Dicdican with Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier concurring.

[2] *Id.* at 86-87.

[3] *Id.* at 240-245. Penned by Judge Maria Nena J. Santos.

[4] *Id.* at 192-197, 236.

Sale was issued to respondent on January 26, 2001. On February 16, 2001, the Certificate of Sale was registered and inscribed on TCT Nos. T-152630, T-151655 and T-214528.[5]

In a letter dated March 8, 2001, petitioner's counsel offered to redeem the foreclosed properties by tendering a check in the amount of ₱3,500,000.00. On March 12, 2001, petitioner's counsel met with respondent's counsel reiterating petitioner's intention to exercise the right of redemption.[6] However, petitioner was told that such redemption is no longer possible because the certificate of sale had already been registered. Petitioner also verified with the Registry of Deeds that title to the foreclosed properties had already been consolidated in favor of respondent and that new certificates of title were issued in the name of respondent on March 9, 2001.

On December 7, 2001, petitioner filed a complaint[7] for specific performance and damages against the respondent, asserting that it is the one-year period of redemption under Act No. 3135 which should apply and not the shorter redemption period provided in Republic Act (R.A.) No. 8791. Petitioner argued that applying Section 47 of R.A. 8791 to the real estate mortgage executed in 1985 would result in the impairment of obligation of contracts and violation of the equal protection clause under the Constitution. Additionally, petitioner faulted the respondent for allegedly failing to furnish it and the Office of the Clerk of Court, RTC of Valenzuela City with a Statement of Account as directed in the Certificate of Sale, due to which petitioner was not apprised of the assessment and fees incurred by respondent, thus depriving petitioner of the opportunity to exercise its right of redemption prior to the registration of the certificate of sale.

In its Answer with Counterclaim,[8] respondent pointed out that petitioner cannot claim that it was unaware of the redemption price which is clearly provided in Section 47 of R.A. No. 8791,

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[5] *Id.* at 198-200, 236.

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

[7] *Id.* at 183-191.

[8] *Id.* at 211-215.

and that petitioner had all the opportune time to redeem the foreclosed properties from the time it received the letter of demand and the notice of sale before the registration of the certificate of sale. As to the check payment tendered by petitioner, respondent said that even assuming *arguendo* such redemption was timely made, it was not for the amount as required by law.

On January 8, 2007, the trial court rendered its decision dismissing the complaint as well as the counterclaim. It noted that the issue of constitutionality of Sec. 47 of R.A. No. 8791 was never raised by the petitioner during the pre-trial and the trial. Aside from the fact that petitioner's attempt to redeem was already late, there was no valid redemption made because Atty. Judy Ann Abat-Vera who talked to Atty. Joseph E. Mabilog of the Legal Division of respondent bank, was not properly authorized by petitioner's Board of Directors to transact for and in its behalf; it was only a certain Chan Guan Pue, the alleged President of petitioner corporation, who gave instruction to Atty. Abat-Vera to redeem the foreclosed properties.[9]

Aggrieved, petitioner appealed to the CA which affirmed the trial court's decision. According to the CA, petitioner failed to justify why Section 47 of R.A. No. 8791 should be declared unconstitutional. Furthermore, the appellate court concluded that a reading of Section 47 plainly reveals the intention to shorten the period of redemption for juridical persons and that the foreclosure of the mortgaged properties in this case when R.A. No. 8791 was already in effect clearly falls within the purview of the said provision.[10]

Petitioner's motion for reconsideration was likewise denied by the CA.

In the present petition, it is contended that Section 47 of R.A. No. 8791 is inapplicable considering that the contracting parties expressly and categorically agreed that the foreclosure of the real estate mortgage shall be in accordance with Act No.

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[9] *Id.* at 243-245.

[10] *Id.* at 44-47.

3135. Citing *Co v. Philippine National Bank*[11] petitioner contended that the right of redemption is part and parcel of the Deed of Real Estate Mortgage itself and attaches thereto upon its execution, a vested right flowing out of and made dependent upon the law governing the contract of mortgage and not on the mortgagee's act of extrajudicially foreclosing the mortgaged properties. This Court thus held in said case that "Under the terms of the mortgage contract, the terms and conditions under which redemption may be exercised are deemed part and parcel thereof whether the same be merely conventional or imposed by law."

Petitioner then argues that applying Section 47 of R.A. No. 8791 to the present case would be a substantial impairment of its vested right of redemption under the real estate mortgage contract. Such impairment would be violative of the constitutional proscription against impairment of obligations of contract, a patent derogation of petitioner's vested right and clearly changes the intention of the contracting parties. Moreover, citing this Court's ruling in *Rural Bank of Davao City, Inc. v. Court of Appeals*[12] where it was held that "Section 119 prevails over statutes which provide for a shorter period of redemption in extrajudicial foreclosure sales", and in *Sulit v. Court of Appeals*,[13] petitioner stresses that it has always been the policy of this Court to aid rather than defeat the mortgagor's right to redeem his property.

Petitioner further argues that since R.A. No. 8791 does not provide for its retroactive application, courts therefore cannot retroactively apply its provisions to contracts executed and consummated before its effectivity. Also, since R.A. 8791 is a general law pertaining to the banking industry while Act No. 3135 is a special law specifically governing real estate mortgage and foreclosure, under the rules of statutory construction that in case of conflict a special law prevails over a general law regardless of the dates of enactment of both laws, Act No.

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[11] 200 Phil. 333, 347 (1982).

[12] G.R. No. 83992, January 27, 1993, 217 SCRA 554, 565.

[13] 335 Phil. 914, 928 (1997).

3135 clearly should prevail on the redemption period to be applied in this case.

The constitutional issue having been squarely raised in the pleadings filed in the trial and appellate courts, we shall proceed to resolve the same.

The law governing cases of extrajudicial foreclosure of mortgage is Act No. 3135,[14] as amended by Act No. 4118. Section 6 thereof provides:

> SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors-in-interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure,[15] in so far as these are not inconsistent with the provisions of this Act.

The one-year period of redemption is counted from the date of the registration of the certificate of sale. In this case, the parties provided in their real estate mortgage contract that upon petitioner's default and the latter's entire loan obligation becoming

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[14] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES, approved on March 6, 1924.

[15] Now Section 28 of Rule 39, 1997 Rules on Civil Procedure.

SEC. 28. *Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed.* — The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale, by paying the purchaser the amount of his purchase, with one *per centum* per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount of the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest.

due, respondent may immediately foreclose the mortgage judicially in accordance with the Rules of Court, or extrajudicially in accordance with Act No. 3135, as amended.

However, Section 47 of R.A. No. 8791 otherwise known as "The General Banking Law of 2000" which took effect on June 13, 2000, amended Act No. 3135. Said provision reads:

> SECTION 47. *Foreclosure of Real Estate Mortgage.* — In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extrajudicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.
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> **Notwithstanding Act 3135, juridical persons** whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision **until, but not after, the registration of the certificate of foreclosure sale** with the applicable Register of Deeds **which in no case shall be more than three (3) months after foreclosure, whichever is earlier**. Owners of property that has been sold in a foreclosure sale **prior** to the effectivity of this Act shall retain their redemption rights until their expiration. (Emphasis supplied.)

Under the new law, an exception is thus made in the case of juridical persons which are allowed to exercise the right of redemption only "until, but not after, the registration of the

certificate of foreclosure sale" and in no case more than three (3) months after foreclosure, whichever comes first.[16]

May the foregoing amendment be validly applied in this case when the real estate mortgage contract was executed in 1985 and the mortgage foreclosed when R.A. No. 8791 was already in effect?

We answer in the affirmative.

When confronted with a constitutional question, it is elementary that every court must approach it with grave care and considerable caution bearing in mind that every statute is presumed valid and every reasonable doubt should be resolved in favor of its constitutionality.[17] For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt.[18] Indeed, those who petition this Court to declare a law, or parts thereof, unconstitutional must clearly establish the basis therefor. Otherwise, the petition must fail.[19]

Petitioner's contention that Section 47 of R.A. 8791 violates the constitutional proscription against impairment of the obligation of contract has no basis.

The purpose of the non-impairment clause of the Constitution[20] is to safeguard the integrity of contracts against unwarranted interference by the State. As a rule, contracts should not be tampered with by subsequent laws that would change or modify

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[16] See A.M. No. 99-10-05-0 Re: *Procedure in Extra-Judicial Foreclosure of Mortgages,* August 7, 2001 (Unsigned Resolution).

[17] *People v. Siton,* G.R. No. 169364, September 18, 2009, 600 SCRA 476, 479, citing *Lacson v. Executive Secretary,* G.R. No. 128096, January 20, 1999, 301 SCRA 298.

[18] *Beltran v. Secretary of Health,* 512 Phil. 560, 588 (2005), citing *Basco v. Philippine Amusements and Gaming Corporation,* G.R. No. 91649, May 14, 1991, 197 SCRA 52, 68 and *Yu Cong Eng v. Trinidad,* 47 Phil. 385 (1925).

[19] *Id.*

[20] Art. III, Sec. 10 of the 1987 Constitution reads:

"Sec. 10. No law impairing the obligation of contracts shall be passed."

the rights and obligations of the parties.[21] Impairment is anything that diminishes the efficacy of the contract. There is an impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.[22]

Section 47 did not divest juridical persons of the right to redeem their foreclosed properties but only modified the time for the exercise of such right by reducing the one-year period originally provided in Act No. 3135. The new redemption period commences from the date of foreclosure sale, and expires upon registration of the certificate of sale or three months after foreclosure, whichever is earlier. There is likewise no retroactive application of the new redemption period because Section 47 exempts from its operation those properties foreclosed prior to its effectivity and whose owners shall retain their redemption rights under Act No. 3135.

Petitioner's claim that Section 47 infringes the equal protection clause as it discriminates mortgagors/property owners who are juridical persons is equally bereft of merit.

The equal protection clause is directed principally against undue favor and individual or class privilege. It is not intended to prohibit legislation which is limited to the object to which it is directed or by the territory in which it is to operate. It does not require absolute equality, but merely that all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed.[23] Equal protection permits of reasonable classification.[24] We have ruled that one class may be treated

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[21] *Siska Development Corporation v. Office of the President of the Phils.,* G.R. No. 93176, April 22, 1994, 231 SCRA 674, 680.

[22] *Id.,* citing *Clemons v. Nolting,* 42 Phil. 702, 717 (1922).

[23] *JMM Promotion and Management, Inc. v. Court of Appeals,* G.R. No. 120095, August 5, 1996, 260 SCRA 319, 331, citing *Itchong v. Hernandez,* 101 Phil. 1155, 1164 (1957).

[24] *Abbas v. Commission on Elections,* 258 Phil. 870, 882 (1989), citing *People v. Vera,* 65 Phil. 56 (1937); *Laurel v. Misa,* 76 Phil. 372 (1946); *J.M. Tuason and Co., Inc. v. Land Tenure Administration,* G.R. No. L-21064, February 18, 1970, 31 SCRA 413.

differently from another where the groupings are based on reasonable and real distinctions.[25] If classification is germane to the purpose of the law, concerns all members of the class, and applies equally to present and future conditions, the classification does not violate the equal protection guarantee.[26]

We agree with the CA that the legislature clearly intended to shorten the period of redemption for juridical persons whose properties were foreclosed and sold in accordance with the provisions of Act No. 3135.[27]

The difference in the treatment of juridical persons and natural persons was based on the nature of the properties foreclosed — whether these are used as residence, for which the more liberal one-year redemption period is retained, or used for industrial or commercial purposes, in which case a shorter term is deemed necessary to reduce the period of uncertainty in the ownership of property and enable mortgagee-banks to dispose sooner of

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[25] *Id.,* citing *Dumlao v. Commission on Elections,* G.R. No. 52245, January 22, 1980, 95 SCRA 392, 404.

[26] *JMM Promotion and Management, Inc. v. Court of Appeals, supra* note 23, at 332.

[27] Records of the Eleventh Congress showed that the consolidated House Bill No. 6814 and Senate Bill No. 1519 under Conference Committee Report submitted on April 28, 2000 contained the reconciled Sec 47 that was approved and signed into law by the President of the Philippines, and became R.A. 8791. Said final version of Sec. 47 was based on the recommendation made by Senator Franklin Drilon during the Second Reading of SB 1519 that a distinction be made in the foreclosure of properties used for residence and those used for business purposes. We quote from the Record of the Senate during the session of September 14, 1999:

"**Senator Drilon**. x x x

Maybe, the sponsor can consider, at the appropriate time, a provision which would allow this one-year redemption period by whatever liberal provisions and which may be incorporated in cases of properties used for residence. But for properties for commercial or industrial purposes, we may wish to review even the one-year redemption period because such inability to generate economic activity out of the foreclosed property for a period of one year can tie up a lot of assets. Maybe, the committee can consider making distinctions between foreclosure of properties used for residence and properties used for business." (Record of the Senate, Vol. I, No. 22, p. 569)

these acquired assets. It must be underscored that the General Banking Law of 2000, crafted in the aftermath of the 1997 Southeast Asian financial crisis, sought to reform the General Banking Act of 1949 by fashioning a legal framework for maintaining a safe and sound banking system.[28] In this context, the amendment introduced by Section 47 embodied one of such safe and sound practices aimed at ensuring the solvency and liquidity of our banks. It cannot therefore be disputed that the said provision amending the redemption period in Act 3135 was based on a reasonable classification and germane to the purpose of the law.

This legitimate public interest pursued by the legislature further enfeebles petitioner's impairment of contract theory.

The right of redemption being statutory, it must be exercised in the manner prescribed by the statute,[29] and within the prescribed time limit, to make it effective. Furthermore, as with other individual rights to contract and to property, it has to give way to police power exercised for public welfare.[30] The concept of police power is well-established in this jurisdiction. It has been defined as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." Its scope, ever-expanding to meet the exigencies of the times, even to anticipate the future where it could be done, provides enough room for an efficient and flexible response to conditions and circumstances thus assuming the greatest benefits.[31]

The freedom to contract is not absolute; all contracts and all rights are subject to the police power of the State and not only

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[28] Sponsorship speech of the late Senator Raul S. Roco, Record of the Senate, March 17, 1999, Vol. III, No. 76, pp. 552-559.

[29] See *Mateo v. Court of Appeals,* 99 Phil. 1042 (1956).

[30] *Beltran v. Secretary of Health, supra* note 18, at 587, citing *Vda. De Genuino v. Court of Agrarian Relations,* G.R. No. L-25035, February 26, 1968, 22 SCRA 792, 796-797.

[31] *Basco v. Philippine Amusement and Gaming Corporation, supra* note 18, at 61, citing *Edu v. Ericta,* G.R. No. L-32096, October 24, 1970, 35 SCRA 481, 487 & 488.

may regulations which affect them be established by the State, but all such regulations must be subject to change from time to time, as the general well-being of the community may require, or as the circumstances may change, or as experience may demonstrate the necessity.[32] Settled is the rule that the non-impairment clause of the Constitution must yield to the loftier purposes targeted by the Government. The right granted by this provision must submit to the demands and necessities of the State's power of regulation.[33] Such authority to regulate businesses extends to the banking industry which, as this Court has time and again emphasized, is undeniably imbued with public interest.[34]

Having ruled that the assailed Section 47 of R.A. No. 8791 is constitutional, we find no reversible error committed by the CA in holding that petitioner can no longer exercise the right of redemption over its foreclosed properties after the certificate of sale in favor of respondent had been registered.

WHEREFORE, the petition for review on *certiorari* is **DENIED** for lack of merit. The Decision dated November 19, 2010 and Resolution dated January 31, 2011 of the Court of Appeals in CA-G.R. CV No. 91120 are hereby **AFFIRMED.**

With costs against the petitioner.

SO ORDERED.

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

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[32] *Beltran v. Secretary of Health, supra* note 30, citing *Ongsiako v. Gamboa,* 86 Phil. 50 (1950).

[33] *Id.,* citing *Philippine Association of Service Exporters, Inc. v. Drilon,* G.R. No. 81958, June 30, 1988, 163 SCRA 386, 397.

[34] *Asiatrust Development Bank v. First Aikka Development, Inc.,* G.R. No. 179558, June 11, 2011, 650 SCRA 172, 190, citing *Banco de Oro-EPCI, Inc. v. JAPRL Development Corporation,* G.R. No. 179901, April 14, 2008, 551 SCRA 342, 356.

THIRD DIVISION

[G.R. No. 196907. March 13, 2013]

NIPPON EXPRESS (PHILIPPINES) CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); REFUND OR TAX CREDIT OF INPUT TAX; THE PERIOD REQUIRED WHEN TO APPEAL THE DENIAL OR THE INACTION OF THE COMMISSIONER OF INTERNAL REVENUE IS CATEGORICALLY STATED.—** The provision in question is Section 112(D) (now subparagraph C) of the NIRC: Sec. 112. Refunds or Tax Credits of Input Tax x x x A simple reading of the abovequoted provision reveals that the taxpayer may appeal the denial or the inaction of the CIR only within thirty (30) days from receipt of the decision denying the claim or the expiration of the 120-day period given to the CIR to decide the claim. Because the law is categorical in its language, there is no need for further interpretation by the courts and non-compliance with the provision cannot be justified.

2. **ID.; ID.; ID.; ID.; OBSERVANCE OF THE REQUIRED PERIOD TO APPEAL IS JURISDICTIONAL; EXCEPTION, ELUCIDATED.—** The 120+30-day period is indeed mandatory and jurisdictional, as recently ruled in *Commissioner of Internal Revenue v. San Roque Power Corporation.* Thus, failure to observe the said period before filing a judicial claim with the CTA would not only make such petition premature, but would also result in the non-acquisition by the CTA of jurisdiction to hear the said case. Because the 120+30 day period is jurisdictional, the issue of whether petitioner complied with the said time frame may be broached at any stage, even on appeal. Well-settled is the rule that the question of jurisdiction over the subject matter can be raised at any time during the proceedings. Jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or

objection or the acts or omissions of the parties or any one of them. Consequently, the fact that the CIR failed to immediately express its objection to the premature filing of the petition for review before the CTA is of no moment. x x x Pursuant to the ruling of the Court in *San Roque,* the 120+30-day period is mandatory and jurisdictional from the time of the effectivity of Republic Act (*R.A.*) No. 8424 or the Tax Reform Act of 1997. The Court, however, took into consideration the issuance by the BIR of Ruling No. DA-489-03, which expressly stated that the taxpayer need not wait for the lapse of the 120-day period before seeking judicial relief. Because taxpayers cannot be faulted for relying on this declaration by the BIR, the Court deemed it reasonable to allow taxpayers to file its judicial claim even before the expiration of the 120-day period. This exception is to be observed from the issuance of the said ruling on December 10, 2003 up until its reversal by *Aichi* on October 6, 2010. In the landmark case of *Aichi*, this Court made a definitive statement that the failure of a taxpayer to wait for the decision of the CIR or the lapse of the 120-day period will render the filing of the judicial claim with the CTA premature. As a consequence, its promulgation once again made it clear to the taxpayers that the 120+30-day period must be observed. As laid down in *San Roque* judicial claims filed from January 1, 1998 until the present should strictly adhere to the 120+30-day period referred to in Section 112 of the NIRC. The only exception is the period from December 10, 2003 until October 6, 2010, during which, judicial claims may be filed even before the expiration of the 120-day period granted to the CIR to decide on the claim for refund.

APPEARANCES OF COUNSEL

Cabrera Lavadia & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before this court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, seeking to set aside the May 13, 2011 Resolution[1] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. No. 505 (C.T.A. Case No. 6688) entitled *Commissioner of Internal Revenue v. Nippon Express (Philippines) Corporation*.

The Facts

Petitioner Nippon Express (Philippines) Corporation (*petitioner*) is a corporation duly organized and registered with the Securities and Exchange Commission. It is also a value-added tax (*VAT*)-registered entity with the Large Taxpayer District of the Bureau of Internal Revenue (*BIR*).[2] For the year 2001, it regularly filed its amended quarterly VAT returns.

On April 24, 2003, it filed an administrative claim for refund of ₱20,345,824.29 representing excess input tax attributable to its effectively zero-rated sales in 2001, computed as follows:[3]

Output VAT from Taxable Sales (10%)	₱ 5,827,022.20
Less: Input VAT from Taxable Sales	(1,789,111.32)
Input VAT from Zero-rated Sales	(24,383,735.17)
Refundable Excess Input VAT	(₱20,345,824.29)

Pending review by the BIR, on April 25, 2003, petitioner filed a petition for review with the CTA, requesting for the

[1] *Rollo,* pp. 111-130; penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Olga Palanca-Enriquez, with a Dissenting Opinion by Associate Justice Lovell R. Bautista.

[2] *Id.* at 84.

[3] *Id.* at 85.

issuance of a tax credit certificate in the amount of ₱20,345,824.29.[4]

On January 26, 2009, the First Division of the CTA denied the petition for insufficiency of evidence.[5] Upon motion for reconsideration, however, the CTA First Division promulgated its Amended Decision,[6] dated March 24, 2009, ordering the respondent, Commissioner of Internal Revenue (*CIR*) to issue a tax credit certificate in favor of petitioner in the amount of ₱10,928,607.31 representing excess or unutilized input tax for the second, third and fourth quarters of 2001. The CTA First Division took judicial notice of the records of C.T.A. Case No. 6967, also involving petitioner, to show that the claim of input tax had not been applied against any output tax in the succeeding quarters. As to the timeliness of the filing of petitioner's administrative and judicial claims, the CTA First Division ruled that while the administrative application for refund was made within the two-year prescriptive period, petitioner's immediate recourse to the court was a premature invocation of the court's jurisdiction due to the non-observance of the procedure in Section 112 (D)[7] of the National Internal Revenue Code (*NIRC*) providing

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[4] *Id.*

[5] *Id.*

[6] *Id.* at 69-73; penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova.

[7] Sec. 112. Refunds or Tax Credits of Input Tax. —

x x x x x x x x x

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period,** appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

that an appeal may be made with the CTA within 30 days from the receipt of the decision of the CIR denying the claim or after the expiration of the 120-day period without action on the part of the CIR. Considering, however, that the CIR did not register his objection when he filed his Answer, he is deemed to have waived his objection thereto.[8] The CIR sought reconsideration but his motion was denied in the June 16, 2009 Resolution[9] of the CTA First Division.

The CIR elevated the case to the CTA *En Banc* which, on June 11, 2010, reversed and set aside the March 24, 2009 Amended Decision and the June 16, 2009 Resolution of the CTA First Division.[10] Accordingly, petitioner's claim for refund or issuance of a tax credit certificate was denied for lack of merit. The CTA *En Banc* ruled that the sales invoices issued by petitioner were insufficient to establish its zero-rated sale of services. Without the proper VAT official receipts issued to its clients, the payments received by petitioner could not qualify for zero-rating for VAT purposes. As a result, the claimed input VAT payments allegedly attributable to such sales could not be granted.

The CTA *En Banc* later changed its position on September 22, 2010 when it issued its Amended Decision[11] granting petitioner's motion for reconsideration, setting aside its own June 11, 2010 Decision and affirming the March 24, 2009 Amended Decision of the CTA First Division. In view of the

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[8] *Rollo,* pp. 71-72.

[9] *Id.* at 75-81.

[10] *Id.* at 82-103; penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista and Associate Justice Olga Palanca-Enriquez, with a Dissenting Opinion by Presiding Justice Ernesto D. Acosta, concurred in by Associate Justice Caesar A. Casanova.

[11] *Id.* at 104-110; penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista and Associate Justice Olga Palanca-Enriquez, with a Dissenting Opinion by Presiding Justice Ernesto D. Acosta, concurred in by Associate Justice Caesar A. Casanova.

pronouncement of the Court in the case of *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue,*[12] that Section 113 of the NIRC did not distinguish between a sales invoice and an official receipt, the CTA *En Banc* found petitioner's sales invoices to be acceptable proof to support its claim for refund or issuance of a tax credit certificate representing its excess or unutilized input VAT arising from zero-rated or effectively zero-rated sales.

The CIR filed a motion for reconsideration, arguing that the sales invoice, which supported the sale of goods, was not the same as the official receipt, which must support the sale of services. In addition, it pointed out that the CTA had no jurisdiction over the petition for review because it was filed before the lapse of the 120-day period accorded to the CIR to decide on its administrative claim for input VAT refund.[13]

In another reversal of opinion, the CTA *En Banc* set aside the March 24, 2009 Amended Decision and the June 16, 2009 Resolution of the CTA First Division and dismissed the petition for review for lack of jurisdiction. In its May 13, 2011 Resolution,[14] the CTA *En Banc* held that the 120-day period under Section 112 (D) of the NIRC, which granted the CIR the opportunity to act on the claim for refund, was jurisdictional in nature such that petitioner's failure to observe the said period before resorting to judicial action warranted the dismissal of its petition for review for having been prematurely filed, in accordance with the ruling in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[15] With respect to the use of official receipts interchangeably with sales invoices, the tax court cited the ruling of the Court in *Kepco Philippines Corporation v. Commissioner of Internal Revenue*[16] which concluded that a VAT invoice and a VAT receipt should not be confused as referring to the same

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[12] G.R. No. 182364, August 3, 2010, 626 SCRA 567.

[13] *Rollo,* p. 115.

[14] *Id.* at 111-130.

[15] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

[16] G.R. No. 181858, November 24, 2010, 636 SCRA 166.

thing. A VAT invoice was the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt was the buyer's best evidence of the payment of goods and services received from the seller.

Hence, this petition.

<u>The Issues</u>

Petitioner raises the following questions:

WHETHER OR NOT THE COURT OF TAX APPEALS HAS NO JURISDICTION TO ENTERTAIN THE INSTANT CASE.

WHETHER OR NOT THE PETITIONER'S VAT INVOICES ARE INSUFFICIENT PROOF TO SUPPORT ITS ZERO-RATED SALES.[17]

<u>The Court's Ruling</u>

The Court finds the petition to be without merit.

As regards the first issue, petitioner argues that the non-exhaustion of administrative remedies is not a jurisdictional defect as to prevent the tax court from taking cognizance of the case.[18] It merely renders the filing of the case premature and makes it susceptible to dismissal for lack of cause of action, if invoked. Considering, however, that the CIR failed to seasonably object to the filing of the case by petitioner with the CTA, it is deemed to have waived any defect in the petition for review. In fact, petitioner points out that the this issue was only raised for the first time in the respondent's Supplemental Motion for Reconsideration, dated December 3, 2010, which was filed after the promulgation of the September 22, 2010 Amended Decision of the CTA *En Banc*. Finally, petitioner insists that it cannot be faulted for relying on prevailing CTA jurisprudence requiring that both administrative and judicial claims for refund be filed within two (2) years from the date of the filing of the return and the payment of the tax due. Because this case was filed

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[17] *Rollo,* p. 41.

[18] *Id.* at 42.

more than seven years prior to *Aichi*, the doctrine espoused therein cannot be applied retroactively as it would impair petitioner's substantial rights and will deprive it of its right to refund.[19]

Petitioner is mistaken.

The provision in question is Section 112 (D) (now subparagraph C) of the NIRC:

Sec. 112. Refunds or Tax Credits of Input Tax

x x x x x x x x x

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis Supplied)

A simple reading of the abovequoted provision reveals that the taxpayer may appeal the denial or the inaction of the CIR only within thirty (30) days from receipt of the decision denying the claim or the expiration of the 120-day period given to the CIR to decide the claim. Because the law is categorical in its language, there is no need for further interpretation by the courts and non-compliance with the provision cannot be justified.[20] As eloquently stated in *Rizal Commercial Banking Corporation v. Intermediate Appellate Court and BF Homes, Inc.*:[21]

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[19] *Id.* at 42-52.

[20] *Pansacola v. Commissioner of Internal Revenue,* 537 Phil. 296, 309 (2006).

[21] 378 Phil. 10 (1999).

It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application (*Cebu Portland Cement Co. vs. Municipality of Naga,* 24 SCRA-708 [1968]).

> Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed (*Chartered Bank Employees Association vs. Ople,* 138 SCRA 273 [1985]; *Luzon Surety Co., Inc. vs. De Garcia,* 30 SCRA 111 [1969]; *Quijano vs. Development Bank of the Philippines,* 35 SCRA 270 [1970]).

Only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent. Ambiguity is a condition of admitting two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time. A statute is ambiguous if it is admissible of two or more possible meanings, in which case, the Court is called upon to exercise one of its judicial functions, which is to interpret the law according to its true intent.[22]

Moreover, contrary to petitioner's position, the 120+30-day period is indeed mandatory and jurisdictional, as recently ruled in *Commissioner of Internal Revenue v. San Roque Power Corporation.*[23] Thus, failure to observe the said period before filing a judicial claim with the CTA would not only make such petition premature, but would also result in the non-acquisition by the CTA of jurisdiction to hear the said case.

Because the 120+30 day period is jurisdictional, the issue of whether petitioner complied with the said time frame may be broached at any stage, even on appeal. Well-settled is the rule that the question of jurisdiction over the subject matter can be raised at any time during the proceedings. Jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the

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[22] *Id.* at 22.

[23] G.R. No. 187485, February 12, 2013.

parties or any one of them.[24] Consequently, the fact that the CIR failed to immediately express its objection to the premature filing of the petition for review before the CTA is of no moment.

As to petitioner's contention that it relied on the previous decisions of the CTA on the matter, the Court finds it apt to quote its ruling in *San Roque*:

> There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.[25]

Pursuant to the ruling of the Court in *San Roque,* the 120+30-day period is mandatory and jurisdictional from the time of the effectivity of Republic Act (*R.A.*) No. 8424 or the Tax Reform Act of 1997. The Court, however, took into consideration the issuance by the BIR of Ruling No. DA-489-03, which expressly stated that the taxpayer need not wait for the lapse of the 120-day period before seeking judicial relief. Because taxpayers cannot be faulted for relying on this declaration by the BIR, the Court deemed it reasonable to allow taxpayers to file its judicial claim even before the expiration of the 120-day period. This exception is to be observed from the issuance of the said ruling on December 10, 2003 up until its reversal by Aichi on October 6, 2010. In the landmark case of *Aichi*, this Court made a definitive statement that the failure of a taxpayer to wait for the decision of the CIR or the lapse of the 120-day period will render the filing of the judicial claim with the CTA premature.[26] As a consequence, its

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[24] *Republic of the Philippines v. Sangalang,* 243 Phil. 46, 50 (1988).

[25] *Commissioner of Internal Revenue v. San Roque Power Corporation, supra* note 23.

[26] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., supra* note 15, at 443.

promulgation once again made it clear to the taxpayers that the 120+30-day period must be observed.

As laid down in *San Roque,* judicial claims filed from January 1, 1998 until the present should strictly adhere to the 120+30-day period referred to in Section 112 of the NIRC. The only exception is the period from December 10, 2003 until October 6, 2010, during which, judicial claims may be filed even before the expiration of the 120-day period granted to the CIR to decide on the claim for refund.

Based on the foregoing discussion and the ruling in *San Roque,* the petition must fail because the judicial claim of petitioner was filed on April 25, 2003, only one day after it submitted its administrative claim to the CIR. Petitioner failed to wait for the lapse of the requisite 120-day period or the denial of its claim by the CIR before elevating the case to the CTA by a petition for review. As its judicial claim was filed during which strict compliance with the 120+30-day period was required, the Court cannot but declare that the filing of the petition for review with the CTA was premature and that the CTA had no jurisdiction to hear the case.

Having thus concluded, the Court sees no need to discuss other issues which may have been raised in the petition.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

Leonardo-de Castro,[*] *Peralta,*[**] and *Abad, JJ.,* concur.

Leonen, J., concurs in the result in line with his separate opinion in *San Roque vs. CIR*.

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[*] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1430 dated March 12, 2013.

[**] Per Special Order No. 1429 dated March 12, 2013.

SECOND DIVISION

[G.R. No. 197207. March 13, 2013]

BENEDICTO MARQUEZ *y* RAYOS DEL SOL, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** For the successful prosecution of illegal possession of dangerous drugs, like marijuana, the following essential elements must be established: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the drug.
2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; WHEN FAILURE TO STRICTLY FOLLOW THE DIRECTIVES OF SECTION 21 OF R.A. NO. 9165 IS NOT FATAL; CASE AT BAR.—** After a careful reading of the records, we also find that the chain of custody over the confiscated marijuana was shown not to have been broken. x x x As regards the failure of the police to strictly comply with the provisions of Section 21 of R.A. No. 9165, it is settled that the failure to strictly follow the directives of this section is not fatal and will not necessarily render the items confiscated from an accused inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In the present case, the succession of events, established by evidence, shows that the items seized were the same items tested and subsequently identified and testified to in court. We thus hold that the integrity and evidentiary value of the drugs seized from the petitioner were duly proven not to have been compromised. Moreover, the police officers explained during trial the reason for their failure to strictly comply with Section 21 of R.A. No. 9165. x x x Corollary, the fact that the police marked the plastic sachets at the police

station, and not at the place of seizure, did not also compromise the integrity of the seized evidence. Jurisprudence holds that the phrase "marking upon immediate confiscation" contemplates even marking at the nearest police station or office of the apprehending team. Significantly, P/lnsp. Pascua identified the plastic sachets in court to be the same items he marked at the police station.

APPEARANCES OF COUNSEL

Public Attorney's Office 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] filed by petitioner Benedicto Marquez *y* Rayos del Sol, assailing the February 4, 2011 decision[2] and the June 9, 2011 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CR No. 31878. The challenged CA decision affirmed the August 8, 2008 decision[4] of the Regional Trial Court (*RTC*), Branch 78, Quezon City, finding the petitioner guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The assailed resolution, on the other hand, denied the petitioner's motion for reconsideration.

In its decision dated August 8, 2008, the RTC found the petitioner guilty of illegal possession of 1.49 grams of marijuana, penalized under Section 11,[5] Article II of R.A. No. 9165. The

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[1] *Rollo,* pp. 11-27.

[2] *Id.* at 72-92; penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justice Josefina Guevara Salonga and Associate Justice Mariflor P. Punzalan Castillo.

[3] *Id.* at 109-110.

[4] *Id.* at 46-57; penned by Judge Fernando T. Sagun, Jr.

[5] Possession of Dangerous Drugs.

RTC held, among others, that the prosecution was able to prove that the petitioner knowingly possessed the dried marijuana fruiting tops without any legal authority to do so. It found the testimonies of the prosecution witnesses credible, more so since the petitioner did not impute any improper motive on their part to falsely testify against him. Accordingly, the RTC sentenced the petitioner to suffer the indeterminate penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and nine (9) months, as maximum. It also ordered him to pay a ₱300,000.00 fine.

On appeal, the CA affirmed the RTC decision. The CA held that the prosecution established all the elements of illegal possession of dangerous drugs. It added that non-compliance with the directives of Section 21, Article II of R.A. No. 9165 is not necessarily fatal to the prosecution's case if there exist justifiable grounds for the non-compliance, and as long as the integrity and evidentiary value of the seized evidence had been properly preserved. The CA further ruled that the chain of custody over the confiscated marijuana was shown not to have been broken.

The petitioner moved to reconsider this decision, but the CA denied his motion in its resolution of June 9, 2011.

In the present petition, the petitioner claims that the police failed to strictly comply with the required procedures in the handling and custody of the seized drugs. He also alleges that the chain of custody over the seized evidence had been broken.

Our Ruling

The petitioner's conviction stands.

For the successful prosecution of illegal possession of dangerous drugs, like marijuana, the following essential elements must be established: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the drug.[6]

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[6] See *People v. Tuan,* G.R. No. 176066, August 11, 2010, 628 SCRA 226, 241.

The prosecution successfully established the presence of all the required elements for violation of Section 11, Article II of R.A. No. 9165. The records show that on September 28, 2005, Mrs. Elenita Bautista Bagongon, the guidance counselor of Emilio Aguinaldo High School, received reports from some of the concerned parents that an employee of the school had been selling drugs to the students. Bagongon showed to the parents pictures of the janitors being paid by the Department of Education (*DepEd*), but they were unable to identify the culprit. When Bagongon showed the files of the school's other non-teaching personnel to the parents, one student identified the petitioner (through his photograph) as the person who had been selling drugs to the students.

At around 2:45 p.m. of the same day, Bagongon saw a group of students talking to the petitioner. When Bagongon was about to approach them, the students scampered away and left the petitioner behind. Bagongon approached the petitioner, and noticed that the latter was holding a piece of paper. Bagongon asked the petitioner what it was, but the latter replied that it was just thrash. Bagongon tried to get the piece of paper from the petitioner, but it fell to the ground when the petitioner attempted to put it in his pocket. Bagongon picked up the piece of paper, and saw two tea bag-like sachets containing dried leaves inside. Bagongon went to the principal's office, and showed the sachets to the principal and to the school's administrative officer, Maria Nancy del Rosario. Maria instructed the security guard, Virgilio Timonera, not to let the petitioner go out of the school's premises. Afterwards, the school officials called the police. When Senior Police Officer (*SPO*)2 Joel Sioson and Police Officer (*PO*)3 Edward Acosta arrived, they inspected the items seized from the petitioner. Thereafter, they went to the petitioner's quarters, introduced themselves as policemen, and brought the petitioner to the principal's office. After further questioning, the police brought the petitioner and the seized marijuana to the police station. Per Chemistry Report No. D-797-2005 of Engineer Leonard M. Jabonillo, Forensic Analyst of the Central Police District Crime Laboratory, the plastic sachets confiscated from the petitioner were examined and found to contain a total of

1.49 grams of marijuana. From these established facts, it is clear that the petitioner knowingly possessed marijuana — a prohibited drug — without legal authority to do so, in violation of Section 11, Article II of R.A. No. 9165.

We rely on the lower courts' assessment of the prosecution witnesses' credibility, absent any showing that certain facts of weight and substance, bearing on the elements of the crime, have been overlooked. We particularly note that the petitioner even testified that he did not hold any grudge against, or have any quarrel or altercation with Bagongon prior to his arrest. In addition, the police officers are presumed to have regularly performed their official duties in the absence of evidence to the contrary.

After a careful reading of the records, we also find that the chain of custody over the confiscated marijuana was shown not to have been broken. To recall, when Bagongon got hold of the piece of paper containing two sachets of marijuana, she immediately went to the principal's office, and showed these sachets to the principal and to the school's administrative officer. When the police arrived, Bagongon handed the seized sachets to PO3 Acosta for inspection. Thereafter, SPO2 Sioson and PO3 Acosta brought the petitioner and the seized sachets to the Quezon City Police District Office-Station for investigation. When they arrived there, PO3 Acosta handed the sachets to the desk officer. The desk officer, in turn, forwarded the two sachets to the investigator, Police Inspector (P/Insp.) Rex Pascua, who marked the seized evidence with "*EB-B-BMR*." SPO2 Sioson explained that the investigator is the officer "responsible to put the markings."[7] On the same day, Police Superintendent Julius Caesar Abanes, the District Station Commander, prepared a request from laboratory examination;[8] he personally delivered this request, together with the plastic sachets, to the Central Police District Crime Laboratory where they were received by Engr. Jabonillo. Engr. Jabonillo examined the contents of the

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[7] TSN, April 16, 2007, p. 10.

[8] Records, p. 7.

plastic sachets marked with "*EB-B-BMR*" and found them positive for the presence of marijuana. This finding was noted by Police Chief Inspector Filipinas Francisco Papa, the Police District Chief.[9] From the sequence of events, we hold that the prosecution established the crucial links in the chain of custody of the seized items.

As regards the failure of the police to strictly comply with the provisions of Section 21 of R.A. No. 9165, it is settled that the failure to strictly follow the directives of this section is not fatal and will not necessarily render the items confiscated from an accused inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In the present case, the succession of events, established by evidence, shows that the items seized were the same items tested and subsequently identified and testified to in court. We thus hold that the integrity and evidentiary value of the drugs seized from the petitioner were duly proven not to have been compromised. Moreover, the police officers explained during trial the reason for their failure to strictly comply with Section 21 of R.A. No. 9165.

A final word. The antecedents of this case involve a unique feature in the sense that the person who had initial custody of the dangerous drugs was not a police officer or agent, but a guidance counselor — a person who was not expected to be familiar with the niceties of the procedures required of law enforcers in the initial handling of the confiscated evidence. Contrary to the petitioner's claim, Bagongon's failure to mark the seized sachets should not in any way weaken the prosecution's case, more so since she was able to prove that she was also the person who handed the seized sachets to the police when the latter arrived. On this point, we stress that drug peddling in schools is prevalent; the scenario attending this case is likely to be repeated many times. To impose on teachers and other school personnel the observance of the same procedure required of law enforcers (like marking) — processes that are unfamiliar to

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[9] *Id.* at 8.

them — is to set a dangerous precedent that may eventually lead to the acquittal of many drug peddlers. To our mind, the evidentiary value of the seized specimen remains intact as long as the school personnel who had initial contact with the drug/s was able to establish that the evidence had not been tampered with when he handed it to the police, as in this case.

Corollary, the fact that the police marked the plastic sachets at the police station, and not at the place of seizure, did not also compromise the integrity of the seized evidence. Jurisprudence holds that the phrase "marking upon immediate confiscation" contemplates even marking at the nearest police station or office of the apprehending team. Significantly, P/Insp. Pascua identified the plastic sachets in court to be the same items he marked at the police station.

We sustain the penalty imposed by the RTC and affirmed by the CA, as it is in accordance with the penalty prescribed under Section 11, Article II of R.A. No. 9165.

WHEREFORE, the February 4, 2011 decision and the June 9, 2011 resolution of the Court of Appeals in CA-G.R. CR No. 31878 are **AFFIRMED.**

SO ORDERED.

Carpio, del Castillo, Villarama, Jr.,[*] and *Perlas-Bernabe, JJ.,* concur.

[*] Designated as Acting Member in lieu of Associate Justice Jose P. Perez, per Special Order No. 1426 dated March 8, 2013.

FIRST DIVISION

[G.R. No. 202020. March 13, 2013]

MIKE ALVIN PIELAGO *y* ROS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED.—** It is well-settled that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. x x x Jurisprudence has it that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.

2. **ID.; ID.; DENIAL; CANNOT PREVAIL OVER CATEGORICAL TESTIMONY.—** [B]are denial cannot exculpate [respondent] from the criminal charge. It is well-settled that denial, just like *alibi*, cannot prevail over the positive and categorical testimony and identification of an accused by the complainant. Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crime attributed to him.

3. **ID.; CRIMINAL PROCEDURE; RIGHT OF ACCUSED; TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM; NOT THE TITLE OF OFFENSE BUT THE FACTS RECITED IN THE INFORMATION THAT DETERMINE THE CRIME CHARGED.—** It is well-settled that in all criminal prosecutions, the accused is entitled to be informed of the nature and cause of the accusation against him. In this respect, the designation in the Information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly. In the instant case, the designation of the offense in the Information against Pielago was changed from the crime of acts of lasciviousness in relation to Section 5(b) of R.A . No.

7610 to the crime of rape by sexual assault penalized under Article 266-A (2) of the Revised Penal Code, as amended by R.A. No. 8353. It cannot be said, however, that his right to be properly informed of the nature and cause of the accusation against him was violated. This Court is not unaware that the Information was worded, as follows: *"x x x commit an act of lasciviousness upon the person of [AAA], a minor being four (4) years old, by kissing the vagina and inserting one of his fingers to the vagina of AAA, x x x."* And, as correctly explained by the CA, the factual allegations contained in the Information determine the crime charged against the accused and not the designation of the offense as given by the prosecutor which is merely an opinion not binding to the courts.

4. **CRIMINAL LAW; RAPE BY SEXUAL ASSAULT; PROPER PENALTY AND DAMAGES.—** [T]he RTC and CA correctly imposed the indeterminate penalty of imprisonment ranging from seven (7) years of *prision mayor,* as minimum, to twelve (12) years and one (1) day of *reclusion temporal,* as maximum, with the accessory penalties provided for by law considering that Pielago voluntarily surrendered to the police authorities before a warrant of arrest could be issued against him. However, in line with the existing jurisprudence on the matter, the award of exemplary damages should be increased from ₱25,000.00 to ₱30,000.00. In addition, and in conformity with the current policy, we also impose on all the monetary awards for damages interest at the legal rate of six percent (6%) *per annum* from the date of finality of this decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, *J*.:

The petitioner, Mike Alvin Pielago *y* Ros (Pielago) assails the Decision[1] dated February 1, 2012 of the Court of Appeals (CA) in CA-G.R. CR No. 33475 which affirmed the Judgment[2] dated May 31, 2010 of the Regional Trial Court (RTC) of Ligao City, Branch 14, finding Pielago guilty beyond reasonable doubt of the crime of rape by sexual assault.

Pielago was charged in an Information,[3] the accusatory portion of which reads:

> "That on or about July 1, 2006 at around 3:30 in the afternoon at Barangay Allang[,] City of Ligao, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and actuated by lust, did then and there willfully and unlawfully and feloniously commit an act of lasciviousness upon the person of [AAA],[4] a minor being four (4) years old, by kissing the vagina and inserting one of his fingers to the vagina of [AAA], which acts debase, degrade and demean the intrinsic worth and dignity of said minor as human being to her damage and prejudice."
>
> CONTRARY TO LAW.[5]

Prior to the issuance of a warrant of arrest, Pielago voluntarily surrendered to the police authorities and posted a property bail.

During arraignment, Pielago pleaded not guilty to the charge against him.

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[1] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Rosalinda Asuncion-Vicente and Ramon A. Cruz, concurring; *rollo*, pp. 29-43.

[2] Rendered by Presiding Judge Edwin C. Ma-alat; *id*. at 80-94.

[3] *Id.* at 47.

[4] Under Republic Act No. 9262, also known as the "Anti-Violence Against Women and their Children Act of 2004," and its implementing rules, the real name of the victim and those of her immediate family members are withheld; fictitious initials are instead used to protect the victim's identity.

[5] *Rollo,* p. 47.

At the trial, the prosecution presented the testimonies of AAA; her mother, BBB; Ligao City Health Officer Dr. Lea F. Remonte; Melie P. Gonzales, a resident of *Barangay* Allang; and PO2 Ma. Rowena S. Aldea. The defense, on the other hand, presented the testimonies of the accused; Nestor and Celeste Pielago, his parents; Myrna Ros De la Torre, his aunt; and some of the residents of *Barangay* Allang where the accused and the victim reside.

Evidence for the Prosecution

On July 1, 2006, between 2:00 p.m. to 2:30 p.m., AAA and her two (2)-year old brother, CCC, were playing with Pielago whom they call as *Kuya Alvin* at the porch of Boyet Ros' (Boyet) house. After playing, the three (3) went inside Boyet's house to watch television. After a while, Pielago turned off the television and brought AAA and CCC to a bedroom. While CCC played with a toy carabao at a corner, Pielago made AAA lie down on bed. Pielago then took off AAA's short pants and inserted his right hand's forefinger inside her vagina and exclaimed "*masiram*" (which means "delicious") as he brutely licked it and spewed saliva in it. AAA felt pain and blood came out of her vagina which frightened her. Unsatisfied, Pielago made AAA lie on her chest on the same bed then fingered her anus. After a few minutes, AAA and CCC were called for lunch by their mother, BBB. Pielago immediately replaced AAA's shorts then sent her and CCC out of the bedroom. BBB noticed the bloodstains at the back portion of AAA's shorts. When BBB asked AAA what happened, AAA did not answer immediately until she said ***"Kuya Alvin tugsok buyay saka lubot ko buda dila pa."*** (which means "Kuya Alvin inserted something in my vagina and my anus and he licked me). Incensed by what AAA told her, BBB went to a certain *Manay* Eden who accompanied her to the house of Boyet where she found Pielago still lying on bed. BBB continually hit Pielago as she asked him what he did to AAA. Pielago, however, denied the accusations and maintained that he was asleep when the incident happened. At 6:00 p.m. of the same day, AAA and BBB lodged a complaint at the Police Station where AAA was physically examined by a medico-legal officer

which issued a report showing a superficial laceration found at the 7 o'clock position of AAA's anus and the presence of erythema in the perihymenal area and fossa navicularis caused by the insertion into the victim's genitals of a foreign object, possibly a small finger or any blunt object.[6]

Evidence for the Defense

Pielago denied the charge against him and testified that on July 1, 2006, he ate lunch with Mary Grace Capinpin, Benedict Bordeos (Benedict) and Jerome Monasterial in the house of his uncle, Lito Ros. Thereafter, he and Benedict rested in a nipa hut which was 3 to 4 meters away from said house. While resting, Pielago heard BBB calling her two (2) children, AAA and CCC, who both ignored her while they were at the basketball court. Being close to the two (2) children, Pielago convinced them to go home and even assisted them in taking their lunch. He felt sleepy so he proceeded to the house of his uncle and slept on the sofa located in the living room. However, AAA and CCC came in and noisily played in the living room where he was so he transferred to the bedroom. He was sound asleep until he felt somebody boxing his back. While BBB was continually boxing Pielago, she kept on asking what he did to her child, AAA. Awakened and shocked, Pielagio retorted: "***What is it***?" He denied her accusation because he said he was fast asleep. At that time, he saw AAA and CCC chatting at the corridor of his uncle's house. After BBB left, Pielago just went back to sleep. Pielago added that there is an existing land dispute between his grandparents and BBB's family which could have impelled the latter to file the instant charge against him even if he has nothing to do with it. The defense also insisted that the bloodstain found on AAA's shorts may have resulted from BBB's spanking; or that it could be the menstrual blood of a teenager living in the house of Pielago's uncle who owns the short pants which AAA took and wore during the incident.[7] This was

[6] *Id.* at 32-34.

[7] *Id.* at 35.

not far fetched because Pielago stated that after he woke up, he noticed that the clothes on top of the bed were already scattered.[8]

The Decision of the RTC

In its Decision[9] dated May 31, 2010, the RTC stated that it is necessary to determine the actual or proper crime against the accused in view of the discrepancy between the crime charged in the Information and the factual allegations contained therein. On its face, the Information charged the crime of acts of lasciviousness against Pielago. However, the factual allegations contained in the Information and the provisions of existing laws pertain to the crime of rape by sexual assault defined and penalized under Section 266-A of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353.[10] The trial court explained that the testimony of AAA merits full credit despite her tender age. Her clear, candid and straightforward testimony categorically narrated how Pielago successfully ravished her innocence when he inserted his finger into her vagina and *anus* that caused her to feel pain in her genital parts. Indeed, AAA's positive identification of Pielago as her molester convinced the trial court to believe her version of what indeed transpired between them.

The RTC brushed aside Pielago's defense of denial for being intrinsically weak. Finding Pielago guilty for the crime of rape by sexual assault, the RTC sentenced him to an indeterminate penalty of *prision mayor*, as minimum, to *reclusion temporal*, as maximum, after considering Pielago's voluntary surrender as a mitigating circumstance, and to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, ₱25,000.00 as exemplary damages and ₱10,000.00 as temperate damages.[11]

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[8] *Id.* at 88.

[9] *Id.* at 80-94.

[10] The Anti-Rape Law of 1997.

[11] *Rollo,* p. 94.

The *fallo* of the RTC Decision reads:

WHEREFORE, the above premises considered, judgment is hereby rendered:

a. Finding the accused, Mike Alvin Pielago *y* Ros GUILTY beyond reasonable doubt of the crime of Rape by Sexual Assault, committed against [AAA], defined in paragraph No. 2, Article 266-A, Revised Penal Code, as amended by RA 8353; thereby, after taking into account the qualifying circumstance relating to the victim's age, "*less than seven (7) years of age*" (last paragraph, Art. 266-B, *ibid*.), but crediting accused with the mitigating circumstance of voluntary surrender, hereby sentences said accused to suffer the indeterminate penalty of imprisonment ranging from seven (7) years of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, with the accessory penalties provided by law;

b. As civil liability *ex delicto,* the same accused is ORDERED TO PAY minor complainant, [AAA], through her parents, the following sums:

   1) Php.10,000.00 as temperate damages;

   2) Php.30,000.00 as civil indemnity for the commission of Rape by sexual assault;

   3) Php.30,000.00 as moral damages; and

   4) Php.25,000.00 by way of exemplary damages.

SO ORDERED.[12]

The Decision of the CA

On February 1, 2012, the CA rendered a Decision[13] affirming *in toto* the RTC's decision. The appellate court explained that despite the fact that the Information charged the crime of acts of lasciviousness, the established factual circumstances therein constitutes the elements of rape

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[12] *Id.*

[13] *Id.* at 29-43.

penalized under Article 266-A of the Revised Penal Code such as: (1) that the offender inserted his penis into another person's mouth or anal orifice or inserted any instrument or object into the genital or anal orifice of another person; and (2) that the same was done to a child below 12 years of age.[14] Citing the case of *Intestate Estate of Manolita Gonzales Vda. De Carungcong v. People,*[15] the CA emphasized that it is not the nomenclature of the offense that determines the crime in the Information but the recital of facts of the commission of the offense. The determination by the prosecutor who signs the Information is merely an opinion which is not binding on the court.[16] The CA, moreover, agreed with the RTC in brushing aside the bare self-serving denial of Pielago. He also failed to adduce any evidence to support his claim that AAA was coached by her mother on what she should testify in court. Finding support in current jurisprudence,[17] the CA aptly stated that an accused may be convicted solely on the testimony of the victim so long as it is credible, convincing and consistent with human nature and the normal course of things.[18] Lastly, the CA concurred with the RTC's cognizance of the mitigating circumstance of voluntary surrender there being no warrant of arrest issued against Pielago. Thus, it decreed, in this wise:

WHEREFORE, in view of the foregoing, the Decision dated May 31, 2010, of the Regional Trial Court of Ligao City, Branch 14 in Criminal Case No. 5496 is **AFFIRMED** in ***toto***.

SO ORDERED.[19]

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

[15] G.R. No. 181409, February 11, 2010, 612 SCRA 272.

[16] *Id.* at 291.

[17] *People v. Subesa,* G.R. No. 193660, November 16, 2011, 660 SCRA 390, 401.

[18] *Rollo,* pp. 39-40.

[19] *Id.* at 42.

Hence, this appeal anchored on the two issues, namely:

I

WHETHER THE HONORABLE [CA] ERRED IN AFFIRMING THE PETITIONER'S CONVICTION DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT[; and]

II

WHETHER THE HONORABLE [CA] ERRED IN CONVICTING THE PETITIONER OF THE CRIME OF RAPE BY SEXUAL ASSAULT DESPITE HIS BEING CHARGED IN THE INFORMATION FOR ACTS OF LASCIVIOUSNESS ONLY.[20]

Our Ruling

This Court affirms Pielago's conviction with modification as to the awarded damages.

Pielago's guilt was proved beyond reasonable doubt.

This Court finds no cogent reason to disturb the factual findings of the RTC, as affirmed by the CA. It is well-settled that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.[21] After a careful review, this Court is convinced that the testimony of AAA positively identifying Pielago as the one who molested her is worthy of belief.

The clear, consistent and spontaneous testimony of AAA unrelentingly established that Pielago inserted his right hand's forefinger into her vagina and anus while she and her younger brother, CCC, were in his custody. Being a child of tender years, her failure to resist or struggle while Pielago molested her would all the more prove how she felt intimidated by her "***Kuya***." Furthermore, Pielago's bare denial cannot exculpate him from the criminal charge. It is well-settled that denial, just

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[20] *Id.* at 17.

[21] *People v. Ramos,* G.R. No. 198017, June 13, 2012.

like *alibi*, cannot prevail over the positive and categorical testimony and identification of an accused by the complainant.[22] Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crime attributed to him.[23] Apparently, in the instant case, Pielago failed to prove the alleged ill motive on the part of the prosecution witnesses that led to the false charges against him.

The RTC correctly convicted Pielago for the crime of rape by sexual assault.

It is well-settled that in all criminal prosecutions, the accused is entitled to be informed of the nature and cause of the accusation against him.[24] In this respect, the designation in the Information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly.[25] In the instant case, the designation of the offense in the Information against Pielago was changed from the crime of acts of lasciviousness in relation to Section 5 (b) of R.A. No. 7610 to the crime of rape by sexual assault penalized under Article 266-A (2)[26] of the Revised Penal Code, as amended

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[22] *People v. Malate,* G.R. No. 185724, June 5, 2009, 588 SCRA 817, 829.

[23] *People v. De los Santos, Jr.,* G.R. No. 186499, March 21, 2012, 668 SCRA 784, 801, citing *People v. Nieto,* G.R. No. 177756, March 3, 2008, 547 SCRA 511, 527.

[24] RULES OF COURT, Rule 115, Section 1 (b).

[25] *Malto v. People,* G.R. No. 164733, September 21, 2007, 533 SCRA 643, 657.

[26] Article 266-A. *Rape, When and How Committed.* — Rape is committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority; [and]

by R.A. No. 8353. It cannot be said, however, that his right to be properly informed of the nature and cause of the accusation against him was violated. This Court is not unaware that the Information was worded, as follows: *"x x x commit an act of lasciviousness upon the person of [AAA], a minor being four (4) years old, by kissing the vagina and inserting one of his fingers to the vagina of AAA, x x x"* And, as correctly explained by the CA, the factual allegations contained in the Information determine the crime charged against the accused and not the designation of the offense as given by the prosecutor which is merely an opinion not binding to the courts. As held in *Malto v. People*:[27]

> What controls is not the title of the information or the designation of the offense but the actual facts recited in the information. In other words, it is the recital of facts of the commission of the offense, not the nomenclature of the offense, that determines the crime being charged in the information.[28] (Citations omitted)

Also, in the more recent case of *People v. Rayon, Sr.,*[29] this Court reiterated that the character of the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information.

The CA further ratiocinated that the variance in the two crimes is not fatal to Pielago's conviction. Indeed, in order to obtain a conviction for rape by sexual assault, it is essential for the

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d. When the offended party is under twelve (12) years of age or is demented even though none of the circumstances mentioned above be present.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

[27] G.R. No. 164733, September 21, 2007, 533 SCRA 643.

[28] *Id.* at 657-658.

[29] G.R. No. 194236, January 30, 2013.

prosecution to establish the elements that constitute such crime. Article 266-A (2) of the Revised Penal Code explicitly provides that the gravamen of the crime of rape by sexual assault which is the ***insertion of the penis into another person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice.*** In the instant case, this element is clearly present when AAA straightforwardly testified in court that Pielago inserted his forefinger in her vagina and anus. Jurisprudence has it that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[30] Thus, AAA's unrelenting narration of what transpired, accompanied by her categorical identification of Pielago as the malefactor, established the case for the prosecution.

The RTC and CA properly imposed the correct indeterminate penalty but the amount of exemplary damages should be modified.

As can be gleaned from the records, the RTC and CA correctly imposed the indeterminate penalty of imprisonment ranging from seven (7) years of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, with the accessory penalties provided for by law considering that Pielago voluntarily surrendered to the police authorities before a warrant of arrest could be issued against him. However, in line with the existing jurisprudence on the matter, the award of exemplary damages should be increased from ₱25,000.00 to ₱30,000.00.[31] In addition, and in conformity with the current policy, we also impose on all the monetary awards for damages interest at the legal rate of six percent (6%) *per annum* from the date of finality of this decision until fully paid.[32]

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[30] *People v. Ogarte,* G.R. No. 182690, May 30, 2011, 649 SCRA 395, 412-413, citing *People v. Tabayan,* 357 Phil. 494, 508 (1998).

[31] *People v. Asprec,* G.R. No. 182457, January 20, 2013.

[32] *People v. Veloso,* G.R. No. 188849, February 13, 2013.

WHEREFORE, the Decision dated February 1, 2012 of the Court of Appeals in CA-G.R. CR No. 33475 is **AFFIRMED** with **MODIFICATION**, that: (1) the amount of exemplary damages is increased from ₱25,000.00 to ₱30,000.00; and (2) petitioner Mike Alvin Pielago *y* Ros is ordered to pay the private offended party interest on all damages awarded at the legal rate of 6% *per annum* from the date of finality of this decision.

No costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[A.M. No. RTJ-12-2335. March 18, 2013]
(Formerly OCA I.P.I. No. 12-3829-RTJ)

ANNA LIZA VALMORES-SALINAS, *complainant, vs.* **JUDGE CRISOLOGO S. BITAS, Regional Trial Court, Branch 7, Tacloban City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; ERRORS IN THE ADJUDICATIVE FUNCTIONS SHOULD BE CORRECTED THROUGH JUDICIAL REMEDIES, NOT THROUGH ADMINISTRATIVE PROCEEDINGS.—** [J]urisprudence is replete with cases holding that errors, if any, committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through available judicial remedies. Disciplinary proceedings do not complement, supplement or

substitute judicial remedies and, thus, cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by their erroneous orders or judgments. x x x In fact, it is a matter of policy that it is only when there is fraud, dishonesty or corruption that the acts of a judge in his judicial capacity are subject to disciplinary action, even though such acts are erroneous. Respondent Judge may be held administratively liable for summarily holding petitioner in contempt of court.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; PROCEDURAL REQUISITES; VIOLATED IN CASE AT BAR.—** [U]nder Sections 3 and 4, Rule 71 of the Rules of Court [on indirect contempt] x x x it is clear that the following procedural requisites must be complied with before petitioner may be punished for indirect contempt: *First*, there must be an order requiring the petitioner to show cause why she should not be cited for contempt. *Second*, the petitioner must be given the opportunity to comment on the charge against her. *Third*, there must be a hearing and the court must investigate the charge and consider petitioner's answer. *Finally*, only if found guilty will petitioner be punished accordingly. What is most essential in indirect contempt cases, however, is that the alleged contemner be granted an opportunity to meet the charges against him and to be heard in his defenses. Here, it appears that Roy Salinas did not file a verified complaint, but instead initiated the indirect contempt through his Comment/Opposition to the Motion for Reconsideration with Motion to Cite Defendant for Indirect Contempt. Regardless of this fact, however, respondent Judge still issued an order peremptorily holding petitioner in contempt of court. Moreover, assuming that the contempt charge was initiated *motu proprio* by the Court, respondent Judge still failed to abide by the rules when he did not require petitioner to show cause why she should not be punished for contempt.

DECISION

PERALTA, *J.*:

This resolves the verified complaint[1] filed by petitioner on January 16, 2012 charging respondent Judge with Gross Ignorance of the Law, Conduct Unbecoming a Judge, Bias, Manifest Partiality and Impropriety relative to (1) TPO Case No. 2011-04-04, entitled *Anna Liza V. Salinas v. Roy Y. Salinas,* for Violence Against Women and their Children; and (2) Civil Case No. 2011-08-60, entitled *Roy Y. Salinas v. Anna Liza D. Valmores-Salinas,* for Declaration of Nullity of Marriage with Prayer for Issuance of a Temporary Restraining Order (TRO) and Preliminary Injunction.

The facts follow.

Petitioner filed a case for Violence Against Women and their Children (VAWC) with a Petition for the Issuance of a Temporary Protection Order (TPO), docketed as TPO Case No. 2011-04-04, against her husband Roy Salinas before the Regional Trial Court of Tacloban City which was presided by respondent Judge. Subsequently, respondent Judge rendered a Decision denying the petition for the issuance of a TPO filed by petitioner.

Meanwhile, respondent Judge heard Civil Case No. 2011-08-60, particularly Roy Salinas' prayer for a TRO and preliminary injunction.

After a chamber conference with both parties' counsels, respondent Judge immediately issued an Order appointing Mervyn Añover as the administrator of the spouses' community properties. Petitioner avers that she did not agree to the appointment of an administrator. In fact, during the chamber conference, her counsel had reservations regarding the qualifications of the administrator and reserved the right to question the jurisdiction of the court to adjudicate on the properties, considering that there was no list of properties attached to the petition.

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

Despite the foregoing, a Letter of Administration was still issued and released with an order *motu proprio* appointing Mervyn Añover as the administrator. Petitioner asserts that she and her counsel were not furnished copies of the order and the letter of administration. Aggrieved, petitioner filed a Motion for Reconsideration of the Order appointing Mervyn Añover as the administrator.

In response, Roy Salinas' counsel filed his comment on the motion, with motion to cite petitioner for indirect contempt for her defiance to the order of the court by disallowing Mervyn Añover to take over the management of Royal Grand Suites.

In an Order[2] dated December 14, 2011, respondent Judge summarily held petitioner in contempt of court for violating the court's order by disallowing the administrator to perform his duty and violating the injunction of the court to desist from getting the income of the businesses. Thus, petitioner was ordered to suffer a 5-day imprisonment.

Thereafter, petitioner filed the instant complaint alleging that the December 14, 2011 Order was in direct violation of Section 4, Rule 71 of the Revised Rules of Court, since there was neither an order nor any formal charge requiring her to show cause why she should not be punished for contempt. She asserts that no verified petition was initiated and there were no proceedings to determine whether her act was indeed contumacious.

In his Comment, respondent Judge explains that the court appointed the administrator to preserve the properties of the spouses, considering that some of the properties were already dissipated by petitioner and the amortizations to the Development Bank of the Philippines on the rest of the properties have not been paid. Respondent Judge alleges that petitioner filed the instant administrative case to harass him and to prevent the implementation of the court's Orders appointing Mervyn Añover as administrator and enjoining the Salinas spouses from managing their businesses and finding petitioner guilty of contempt of court.

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[2] *Id.* at 67.

In its Report[3] dated September 11, 2012, the Office of the Court Administrator (*OCA*) recommended as follows:

It is respectfully recommended for the consideration of the Honorable Court that:

(1) the administrative case against Judge Crisologo S. Bitas, Branch 7, Regional Trial Court, Tacloban City, be **RE-DOCKETED** as a regular administrative matter; and

(2) respondent Judge Bitas be found **GUILTY** of **GROSS IGNORANCE OF THE LAW OR PROCEDURE**, and, accordingly, be **FINED** in the amount of Twenty-One Thousand Pesos (₱21,000.00) with a **STERN WARNING** that a repetition of the same or similar act shall be dealt with more severely.[4]

We sustain the findings of the Court Administrator.

To begin with, jurisprudence is replete with cases holding that errors, if any, committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through available judicial remedies. Disciplinary proceedings do not complement, supplement or substitute judicial remedies and, thus, cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by their erroneous orders or judgments.[5]

Given this doctrine, the Court fully agrees with the OCA's report that the propriety of the decision denying petitioner's Petition for the Issuance of a TPO and the Order appointing Mr. Mervyn Añover as an administrator are judicial matters which are beyond the scope of administrative proceedings. If there were indeed errors in their issuance, petitioner should have resorted to judicial remedies and not to the filing of the instant administrative complaint. In fact, it is a matter of policy

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[3] *Id.* at 71-77.

[4] *Id.* at 77.

[5] *Re: Verified Complaint of AMA Land, Inc. Against Hon. Danton Q. Bueser, Hon. Sesinando E. Villon, and Hon. Ricardo R. Rosario, Associate Justices of the Court of Appeals,* A.M. OCA I.P.I. No. 12-202-CA-J, January 15, 2013.

that it is only when there is fraud, dishonesty or corruption that the acts of a judge in his judicial capacity are subject to disciplinary action, even though such acts are erroneous.[6]

Nevertheless, respondent Judge may be held administratively liable for summarily holding petitioner in contempt of court.

Sections 3 and 4, Rule 71 of the Rules of Court explicitly states:

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

Section 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. (Emphasis supplied)

From the foregoing, it is clear that the following procedural requisites must be complied with before petitioner may be punished for indirect contempt: *First*, there must be an order requiring

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[6] *Ernesto Hebron v. Judge Matias M. Garcia II, Regional Trial Court, Branch 19, Bacoor City, Cavite,* A.M. No. RTJ-12-2334, November 14, 2012, citing *Dadula v. Judge Ginete,* 493 Phil. 700 (2005).

the petitioner to show cause why she should not be cited for contempt. *Second*, the petitioner must be given the opportunity to comment on the charge against her. *Third*, there must be a hearing and the court must investigate the charge and consider petitioner's answer. *Finally*, only if found guilty will petitioner be punished accordingly. What is most essential in indirect contempt cases, however, is that the alleged contemner be granted an opportunity to meet the charges against him and to be heard in his defenses.[7]

Here, it appears that Roy Salinas did not file a verified complaint, but instead initiated the indirect contempt through his Comment/ Opposition to the Motion for Reconsideration with Motion to Cite Defendant for Indirect Contempt. Regardless of this fact, however, respondent Judge still issued an order peremptorily holding petitioner in contempt of court. Moreover, assuming that the contempt charge was initiated *motu proprio* by the Court, respondent Judge still failed to abide by the rules when he did not require petitioner to show cause why she should not be punished for contempt.

Plainly, respondent Judge's obstinate disregard of established rules of procedure amounts to gross ignorance of the law or procedure, since he disregarded the basic procedural requirements in instituting an indirect contempt charge.

However, this Court deems it proper to reduce the recommended fine imposed, considering that this is respondent Judge's first offense and that it is not uncommon for judges, even lawyers, to make unambiguous distinctions between direct and indirect contempt, and how the same are treated. Thus, it is but fair to reduce the recommended penalty from ₱21,000.00 to ₱10,000.00.

WHEREFORE, premises considered, respondent Judge **CRISOLOGO S. BITAS** is found **GUILTY OF GROSS IGNORANCE OF THE LAW OR PROCEDURE**, and accordingly, **FINED** in the amount of Ten Thousand Pesos

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[7] *Isabelo Esperida, et al. v. Franco K. Jurado, Jr.,* G.R. No. 172538, April 25, 2012.

(₱10,000.00), with a **STERN WARNING** that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Velasco, Jr., Abad, Mendoza, and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 178125. March 18, 2013]

THE ORCHARD GOLF AND COUNTRY CLUB, *petitioner, vs.* **AMELIA R. FRANCISCO,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; OCCURS WHEN THE UNWARRANTED ACTS OF THE EMPLOYER ARE COMMITTED TO THE END THAT THE EMPLOYEE'S CONTINUED EMPLOYMENT SHALL BECOME SO INTOLERABLE.—** Constructive dismissal occurs not when the employee ceases to report for work, but when the unwarranted acts of the employer are committed to the end that the employee's continued employment shall become so intolerable. In these difficult times, an employee may be left with no choice but to continue with his employment despite abuses committed against him by the employer, and even during the pendency of a labor dispute between them. This should not be taken against the employee. Instead, we must share the burden of his plight, ever aware of the precept that necessitous men are not free men.

2. **ID.; ID.; MANAGEMENT PREROGATIVES; POWER TO DISMISS MUST BE WITHIN THE PARAMETERS OF THE LAW AND PURSUANT TO THE BASIC TENETS OF EQUITY, JUSTICE AND FAIR PLAY.—** "[A]n employer is free to manage and regulate, according to his own discretion and judgment, all phases of employment, which includes hiring, work assignments, working

methods, time, place and manner of work, supervision of workers, working regulations, transfer of employees, lay-off of workers, and the discipline, dismissal and recall of work. While the law recognizes and safeguards this right of an employer to exercise what are clearly management prerogatives, such right should not be abused and used as a tool of oppression against labor. The company's prerogatives must be exercised in good faith and with due regard to the rights of labor. *A priori,* they are not absolute prerogatives but are subject to legal limits, collective bargaining agreements and the general principles of fair play and justice. The power to dismiss an employee is a recognized prerogative that is inherent in the employer's right to freely manage and regulate his business. x x x. Such right, however, is subject to regulation by the State, basically in the exercise of its paramount police power. Thus, the dismissal of employees must be made within the parameters of the law and pursuant to the basic tenets of equity, justice and fair play. It must not be done arbitrarily and without just cause."

3. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; DEEMED EQUITABLE AS CLAIMANT HERE WAS COMPELLED TO LITIGATE TO PROTECT HER INTEREST.—** With respect to the award of attorney's fees, we find the same to be due and owing to respondent given the circumstances prevailing in this case as well as the fact that this case has spanned the whole judicial process from the Labor Arbiter to the NLRC, the CA and all the way up to this Court. Under Article 2208 of the Civil Code, attorney's fees and expenses of litigation other than judicial costs may be recovered if the claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought, and where the courts deem it just and equitable that attorney's fees and expenses of litigation should be recovered.

4. **REMEDIAL LAW; TECHNICAL RULES OF PROCEDURE ARE NOT BINDING IN LABOR CASES.—** "[T]echnical rules of procedure are not binding in labor cases. The application of technical rules of procedure may be relaxed to serve the demands of substantial justice." "[I]t is more in keeping with the objective of rendering substantial justice if we brush aside technical rules rather than strictly apply its literal reading. There [being] no objective reason to further delay this case by insisting on

a technicality when the controversy could now be resolved." Moreover, "there is no need to remand this case to the Labor Arbiter for further proceedings, as the facts are clear and complete on the basis of which a decision can be made."

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

Danilo L. Francisco and Associates Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Constructive dismissal occurs not when the employee ceases to report for work, but when the unwarranted acts of the employer are committed to the end that the employee's continued employment shall become so intolerable. In these difficult times, an employee may be left with no choice but to continue with his employment despite abuses committed against him by the employer, and even during the pendency of a labor dispute between them. This should not be taken against the employee. Instead, we must share the burden of his plight, ever aware of the precept that necessitous men are not free men.

Assailed in this Petition for Review[1] is the January 25, 2007 Decision[2] of the Court of Appeals (CA) which dismissed the Petition in CA-G.R. SP No. 80968 and affirmed the November 19, 2002 Resolution[3] of the National Labor Relations Commission

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[1] *Rollo,* pp. 3-23.

[2] CA *rollo*, pp. 580-594; penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Regalado E. Maambong.

[3] *Id.* at 29-46; penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

(NLRC). Likewise assailed is the May 23, 2007 CA Resolution[4] denying petitioner's Motion for Reconsideration.

Factual Antecedents

Petitioner, The Orchard Golf and Country Club (the Club), operates and maintains two golf courses in Dasmariñas, Cavite for Club members and their guests. The Club likewise has a swimming pool, bowling alley, cinema, fitness center, courts for tennis, badminton and basketball, restaurants, and function rooms.

On March 17, 1997, respondent Amelia R. Francisco (Francisco) was employed as Club Accountant, to head the Club's General Accounting Division and the four divisions under it, namely: 1) Revenue and Audit Division, 2) Billing/Accounts Receivable Division, 3) Accounts Payable Division, and 4) Fixed Assets Division. Each of these four divisions has its own Supervisor and Assistant Supervisor. As General Accounting Division head, respondent reports directly to the Club's Financial Comptroller, Jose Ernilo P. Famy (Famy).

On May 18, 2000, Famy directed Francisco to draft a letter to SGV & Co. (SGV), the Club's external auditor, inquiring about the accounting treatment that should be accorded property that will be sold or donated to the Club. Francisco failed to prepare the letter, even after Famy's repeated verbal and written reminders, the last of which was made on June 22, 2000.

On June 27, 2000, Famy issued a memorandum[5] requiring Francisco's written explanation, under pain of an insubordination charge, relative to her failure to prepare the letter. Instead of complying with the memorandum, Francisco went to the Club's General Manager, Tomas B. Clemente III (Clemente), and personally explained to the latter that due to the alleged heavy volume of work that needed her attention, she was unable to

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[4] *Id.* at 637; penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Edgardo P. Cruz and Regalado E. Maambong.

[5] *Rollo,* p. 25.

draft the letter. Clemente assured her that he would discuss the matter with Famy personally. On this assurance, Francisco did not submit the required written explanation. For this reason, Famy issued a June 29, 2000 memorandum[6] suspending Francisco without pay for a period of 15 days. The memorandum reads, as follows:

Considering the fact that you did [sic] explain in writing within 24 hours from the date and time of my memorandum to you dated June 27, 2000 the reason why you should not be charged with "Insubordination" as specified in Rule 5 Section 2a of our handbook, it has been found that:

Findings: You willfully refused to carry out a legitimate and reasonable instruction of your Department Head.

Act/Offense: Insubordination

Under the circumstances and pursuant to the rules and regulations of the Club, you are hereby suspended for 15 working days without pay. Effective dates of which shall be determined by the undersigned depending on the exigency of your work.

(Signed)

Nilo P. Famy[7]

On July 1, 2000, Famy issued another memorandum[8] informing Francisco that her suspension shall be effective from July 3 to 19, 2000. On July 3, 2000 Francisco wrote to the Club's General and Administrative Manager, Ma. Irma Corazon A. Nuevo (Nuevo), questioning Famy's act of charging, investigating, and suspending her without coursing the same through the Club's Personnel Department. Pertinent portions of her memorandum to Nuevo read:

This has reference to the [memoranda] of the Financial Controller, Mr. Ernilo Famy of June 27, June 29 & July 1, 2000 x x x. I would like to know under what authority x x x a department head [could] issue

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[6] *Id.* at 26.

[7] *Id.*

[8] *Id.* at 27.

a memorandum and make decisions without the intervention of the [P]ersonnel [D]epartment.

I believe that if ever a department head or superior has complaints against his subordinate then he has to course them through the [P]ersonnel [D]epartment [which] will be the one to initiate and conduct an inquiry and investigation. A mere furnishing of the memorandum to the [P]ersonnel [D]epartment does not substitute [sic] the actual authority and functions of the [P]ersonnel [D]epartment because there will be no due process x x x. Nilo Famy decided on his own complaint without merit (sic) x x x. Also I believe x x x Nilo Famy abuse [sic] his authority as superior with full disregard of the Personnel Department because he acted as the complainant, the investigator and the judge, **all by himself. For this I would like to file this complaint against him for abuse of authority** x x x.

x x x During our departmental meetings listed in his letter, I always made him aware of the lined-up priorities that need to be given attention first and pending works which during the year-end audit by the auditors [were] put on hold and [were] not x x x finish[ed] by the assigned staff. In fact, he commented that I should do something about the pending work. Also, if he really feels [sic] the importance of that letter and [sic] cognizant of my present work load, then why [did] he went [sic] on leave from June 23 until June 26. (his leave was cut because of the board meeting. His leave [sic] supposed to be until June 30) x x x.

Also, I would like to formally inform you that whenever we have some disagreement or he has dissatisfaction [sic] he is creating [sic] a feeling of job insecurity; it is very easy for Mr. Nilo Famy to directly tell me and the staff to resign. The last time we had a talk prior to this issue, he made it clear that he can transfer me to lower positions like the position of the cashier, cost controller and the like. He is confident he can do it because he had done it to the former Club Accountant. What do you think is the kind of authority you expect from him if you always hear these wordings [sic].[9]

That very same day, Nuevo replied,[10] exonerating Famy and justifying the latter's actions as falling within his power and authority as department head. Nuevo said that Francisco was

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[9] *Id.* at 28-29. Emphasis in the original.

[10] *Id.* at 30.

accorded due process when she was given the opportunity to explain her side; that she deliberately ignored her superior's directive when she did not submit a written explanation, which act constitutes insubordination; that Famy acted prudently though he did not course his actions through the Personnel Department, for ultimately, he would decide the case; and that she was consulted by Famy and that she gave her assent to Famy's proposed actions, which he later carried out. Nuevo likewise brushed aside Francisco's accusation of abuse of authority against Famy, and instead blamed Francisco for her predicament.

On July 5, 2000, Francisco wrote a letter[11] to Clemente requesting an investigation into Famy's possible involvement in the commission in 1997 of alleged fraudulent and negligent acts relative to the questionable approval and release of Club checks in payment of Bureau of Internal Revenue (BIR) taxes, in which her counter-signature though required was not obtained. Famy belied Francisco's claims in a reply memorandum, saying the charges were baseless and intended to malign him.

On July 20, 2000, or a day after Francisco's period of suspension expired, Famy issued separate memoranda[12] to Francisco and Clemente informing them of Francisco's transfer, without diminution in salary and benefits, to the Club's Cost Accounting Section while the investigation on Famy's alleged illegal activities is pending. Relevant portions of these memoranda state:

MEMORANDUM TO CLEMENTE

In view of the recent developments, *i.e.,* the suspension of Ms. Amelia Francisco and her letter of July 5, 2000 x x x, I would like to formally inform you that effective today, July 20, 2000, Ms. Francisco shall be temporarily given a new assignment in my department pending the result of the investigation she lodged against the undersigned.

x x x. She shall remain directly reporting to the Financial Comptroller (Famy).[13]

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

[12] *Id.* at 39-40.

[13] *Id.* at 39.

MEMORANDUM TO FRANCISCO

This is to inform you that effective today, July 20, 2000, Management has approved your temporary transfer of assignment pending the completion of the investigation you lodged against the undersigned.

You shall be handling the Cost Accounting Section together with six (6) Accounting Staffs and shall remain reporting directly to the undersigned.[14]

Yet again, in another memorandum[15] dated August 1, 2000 addressed to Nuevo, Famy sought an investigation into Francisco's alleged insubordination, this time for her alleged unauthorized change of day-off from July 30 to August 4, 2000, and for being absent on said date (August 4, 2000) despite disapproval of her leave/offset application therefor. In an August 2, 2000 memorandum,[16] Francisco was required to explain these charges. In another memorandum[17] dated August 5, 2000, Francisco was asked to submit her explanation on the foregoing charges of insubordination, negligence, inefficiency and violation of work standards relative to the unauthorized change of day-off and disapproved offset/leave. To these, Francisco replied on August 8, 2000 claiming that her presence on July 30, 2000 which was a Sunday and supposedly her day-off, was nonetheless necessary because it was the Club's scheduled month-end inventory, and she was assigned as one of the officers-in-charge thereof. She added that her actions were in accord with past experience, where she would take a leave during the first week of each month to make payments to Pag-Ibig, and Famy very well knew about this. She accused Famy of waging a personal vendetta against her for her seeking an inquiry into claimed anomalies embodied in her July 5, 2000 letter. She also took exception to her transfer to Cost Accounting Section, claiming that the same was humiliating and demeaning and that it constituted constructive

[14] *Id.* at 40.

[15] *Id.* at 41.

[16] *Id.* at 42.

[17] *Id.* at 53.

dismissal, and threatened to take legal action or seek assistance from Club members to insure that Famy's impropriety is investigated.[18]

On August 11, 2000, Francisco filed a Complaint for illegal dismissal against the Club, impleading Famy, Clemente and Nuevo as additional respondents. The case was docketed as NLRC Case No. RAB-IV-812780-00-C. She prayed, among others, for damages and attorney's fees.

On August 16, 2000, Francisco received another memorandum requiring her to explain why she should not be charged with betrayal of company trust, allegedly for the act of one Ernie Yu, a Club member, who was seen distributing copies of Francisco's letter to the Club's Chairman of the Board of Directors.[19] On August 18, 2000, Francisco submitted her written explanation to the charges.[20] On August 19, 2000, with the Club finding no merit in her explanation, Clemente handed her a Notice of Disciplinary Action[21] dated August 16, 2000 relative to her July 30, 2000 unauthorized change of day-off and her August 4, 2000 unauthorized leave/absence. She was suspended for another fifteen days, or from August 21 to September 6, 2000.[22]

Francisco amended her illegal dismissal Complaint to one for illegal suspension. Meanwhile, she continued to report for work.

On September 7, 2000, or a day after serving her suspension, Francisco again received a September 6, 2000 memorandum from Nuevo, duly noted and approved by Clemente, this time placing her on forced leave with pay for 30 days, or from September 7, 2000 up to October 11, 2000, for the alleged reason that the case filed against her has strained her relationship

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[18] *Id.* at 43-45, 54-56.

[19] *Id.* at 134.

[20] *Id.*

[21] *Id.* at 57.

[22] *Id.*

with her superiors.[23] On even date, Francisco wrote a letter to Nuevo seeking clarification as to what case was filed against her, to which Nuevo immediately sent a reply memorandum stating that the case referred to her alleged "betrayal of company trust."[24]

After the expiration of her forced leave, or on October 12, 2000, Francisco reported back to work. This time she was handed an October 11, 2000 memorandum[25] from Clemente informing her that, due to strained relations between her and Famy and the pending evaluation of her betrayal of company trust charge, she has been permanently transferred, without diminution of benefits, to the Club's Cost Accounting Section effective October 12, 2000. Notably, even as Clemente claimed in the memorandum that Francisco's transfer was necessary on account of the strained relations between her and Famy, Francisco's position at the Cost Accounting Section was to remain under Famy's direct supervision. The pertinent portion of the memorandum in this regard reads:

> Because of the strained relationship between you and your department head, Mr. Ernilo Famy, we deem it necessary to transfer you permanently to Cost Accounting effective October 12, 2000. You shall however continue to receive the same benefits and **shall remain under the supervision of Mr. Famy** x x x.[26]

In an October 13, 2000 memorandum[27] to Clemente, Francisco protested her permanent transfer, claiming that it was made in bad faith. She also bewailed Clemente's inaction on her July 5, 2000 letter charging Famy with irregularities relative to BIR tax payments. Likewise, on account of her transfer, Francisco once more amended her Complaint to include illegal/constructive dismissal. And in her prayer, she sought to be reinstated to her former position as Club Accountant.

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[23] *Id.* at 134.

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

[25] *Id.* at 58, 135.

[26] *Id.* at 58. Emphasis supplied.

[27] *Id.* at 59.

On October 17, 2000, Clemente issued a memorandum[28] addressed to Francisco denying that her transfer was done in bad faith, and affirming instead that it was made in the proper exercise of management prerogative. In addition, Clemente clarified the matter of Famy's alleged wrongdoing, thus:

> Secondly, I would also like to correct your assumptions that the case of Mr. Famy has not yet been acted upon. For your information, the Committee composed of Club members and myself tasked by the Board of Directors to investigate the case and make the necessary recommendations [has] already concluded [its] investigation and has made [its] recommendations to the Board. The Board, likewise, has acted on the Committee's recommendation x x x the results of which have been given to Mr. Famy. Whatever that decision was, it is a matter between the Board and Mr. Famy.[29]

Ruling of the Labor Arbiter

After considering the parties' respective Position Papers and evidence, Labor Arbiter Enrico Angelo C. Portillo issued a Decision[30] dated August 23, 2001 dismissing Francisco's Complaint for lack of merit. The Labor Arbiter noted the "belligerence and animosity" between Francisco and Famy, making short shrift of Francisco's accusations against her superior and dismissing them as nothing more than attempts to get back at Famy for his reproach at her failure to draft the SGV letter. The Labor Arbiter further admonished Francisco, reminding her that —

> x x x [A] workplace is not a "bed of roses." While employers are expected to show respect and courtesy to its employees, words and actions expectedly tend to get somewhat disrespectful, if not outright insulting, when work remains undone. Common experience tells us that the scolding and trash talk bites harder as one climbs higher in the organization ladder commensurate to the additional responsibility attached to the position. It is at these times, when the fact [sic] and

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[28] *Id.* at 60.

[29] *Id.*

[30] *Id.* at 128-142.

professionalism of an employee, particularly a managerial employee, is put to test x x x.[31]

The Labor Arbiter further upheld Francisco's two suspensions as valid exercises of the Club's management prerogative, justifying the measures taken as reasonable and necessary penalties for Francisco's failure to draft the SGV letter and her taking a leave with full awareness yet in disregard of her superior Famy's disapproval of her leave application. He added that in the conduct of proceedings leading to the decision to suspend Francisco, the proper procedure was taken, and Francisco was afforded ample opportunity to defend herself.

The Labor Arbiter likewise found Francisco's claim of constructive dismissal to be baseless. On the contrary, he found Francisco's transfer as necessary and in furtherance of the Club's interests. He also noted that the transfer was lateral, or to a position of the same rank and pay scale based on the Club's Organizational Chart.[32] Both Club Accountant and Cost Controller positions belonged to the same pay scale "9" and are rated as "Supervisor V."

Finally, the Labor Arbiter held that the fact that Francisco continued to report for work belies her claim of constructive dismissal.

Ruling of the National Labor Relations Commission

On September 17, 2001, Francisco appealed the Labor Arbiter's Decision to the NLRC, which took a contrary view. Thus, in its November 19, 2002 Resolution,[33] the NLRC held that while Francisco's suspensions were valid, her subsequent permanent transfer on the ground of strained relations to the Club's Cost Accounting Section as Cost Controller on October 12, 2000 was without just cause. It resulted in

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[31] *Id.* at 140.

[32] *Id.* at 24.

[33] CA *rollo*, pp. 29-46.

Francisco's demotion, since the position of Cost Controller was merely of a supervisory character, while the position of Club Accountant was of managerial rank. Besides, by admission of herein petitioner, Francisco held the rank of "Manager 3" with her position as Club Accountant, while the Cost Controller is only a Supervisor position and is precisely under the direct supervision and control of the Club Accountant.[34] This unwarranted demotion, according to the NLRC, is equivalent to constructive dismissal.

The NLRC added that strained relationship is not a valid ground for termination of employment under the Labor Code. It ordered Francisco's reinstatement to her former position as Club Accountant and awarded her attorney's fees in the amount of ₱50,000.00. However, the NLRC absolved Famy, Nuevo and Clemente of wrongdoing. It also held that Francisco was not entitled to moral and exemplary damages because she failed to show proof that her constructive dismissal was attended by bad faith. Thus, the NLRC held:

> WHEREFORE, premises considered, Complainant's appeal is partly GRANTED. The Labor Arbiter's decision in the above-entitled case is hereby MODIFIED. It is hereby declared that Complainant's transfer resulted [in] a demotion in level/rank, which is considered as illegal constructive dismissal. Respondent the Orchard Golf & Country Club, Inc. is hereby ordered to immediately reinstate Complainant to her former position as Club Accountant without loss of seniority rights and other privileges and to pay her attorney's fees in the amount of ₱50,000.00.
>
> SO ORDERED.[35]

Petitioner moved for reconsideration, to no avail. Francisco moved for partial reconsideration of the NLRC's Resolution with respect to its ruling declaring her suspensions as valid and the denial of her claim for damages. Her motion was denied as well.

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[34] *Id.* at 43.

[35] *Id.* at 45-46.

Ruling of the Court of Appeals

Petitioner went up to the CA *via* Petition for *Certiorari*,[36] while respondent Francisco no longer took issue with the denial of her motion.

In its January 25, 2007 Decision, the CA sustained the NLRC ruling. It held that while petitioner had the right or prerogative to transfer the respondent from one office to another within the Club, there should be no demotion in rank, salary, benefits and other privileges. The CA added that the right may not be used arbitrarily to rid the employer of an undesirable worker. Proper notification and an opportunity to be heard or contest the transfer must be given to the employee whose transfer is sought, conditions which were not observed in Francisco's case. She was notified only of the Club's decision to permanently transfer her, without giving her the opportunity to contest the same. The CA characterized Francisco's permanent transfer as a demotion in the guise of a lateral transfer.

The CA sustained as well the award of attorney's fees, saying that Francisco was forced to litigate and hire the services of counsel to protect her rights.

Thus, the Petition for *Certiorari* was dismissed. Petitioner filed a Motion for Reconsideration,[37] which was subsequently denied.

Issues

Hence, this Petition raising the following issues:

I

WHETHER x x x THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT HELD THAT THE TRANSFER OF RESPONDENT FROM THE

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

[37] *Id.* at 604-612.

POSITION OF CLUB ACCOUNTANT TO COST ACCOUNTANT WAS TANTAMOUNT TO A DEMOTION.

II

WHETHER x x x THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT AWARDED ATTORNEY'S FEES TO RESPONDENT IN THE AMOUNT OF FIFTY THOUSAND PESOS (₱50,000.00).[38]

Petitioner's Arguments

In seeking the annulment and setting aside of the CA Decision, petitioner insists that respondent Francisco's transfer did not amount to a demotion, and that she suffered no diminution in rank, salary, benefits, and position because the position of Club Accountant and Cost Controller/Accountant are of equal rank. Both positions belong to pay grade "9" and rated as "Supervisor V"; a transfer from one of the positions to the other is merely a lateral transfer and within the prerogative of Club management. Petitioner directs the Court's attention to its Organizational Chart[39] which should bolster its claim in this regard.

Petitioner adds that Francisco's transfer to the Cost Accounting Section was done in good faith, noting that the deteriorating relationship between Famy and Francisco placed the Club's business at risk. It had no choice but to address this problem in order not to further jeopardize the Club's day-to-day operations. Petitioner claims further that Francisco's transfer did not prejudice her. She continues to report to Famy and receive the same benefits and privileges as the Club Accountant. It is of no consequence that as Cost Controller, she has a lesser number of employees/staff (six) under her or that she is relegated to a very small office space, as opposed to the position of Club Accountant, which has 32 employees under it and holds office at the bigger offices reserved for use by the Club's executives.

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[38] *Rollo,* p. 651.

[39] *Id.* at 24.

On the issue of constructive dismissal, petitioner claims that it did not commit any act which forced Francisco to quit; she continues to be employed by the Club, and in fact continues to report for work.

Finally, petitioner argues that Francisco is not entitled to attorney's fees, in the absence of an award of exemplary damages and in the wake of the NLRC's finding that she is not entitled to such damages. It believes that if no exemplary damages are adjudged, then no attorney's fees may be awarded as well. It adds that Francisco could only blame herself for the fate she suffered, knowing very well that she is not entitled to her claims; she should bear her own litigation expenses.

Respondent's Arguments

Francisco insists that the issues raised in the Petition have been sufficiently addressed by the NLRC and the CA, and their findings should bind the Court. Francisco stresses that petitioner's own actions betrayed the fact that the position of Cost Controller/Accountant is a mere Supervisor position and the same is directly under the supervision of the Club Accountant. A reassignment from Club Accountant to Cost Controller is clearly an unwarranted demotion in rank. She adds that per the Club's latest actions, she has suffered not only a demotion in rank, but also a diminution in salary and benefits. Petitioner illegally withheld her accrued salary differential, merit increases and productivity bonuses since 2001.

Our Ruling

The Petition lacks merit.

At the outset, it must be emphasized that Francisco's two suspensions, *i.e.*, for her failure to draft the SGV letter and for being absent without prior leave, is no longer at issue before this Court. Records show that after the NLRC declared the same as valid in its November 19, 2002 Resolution, Francisco moved for reconsideration but to no avail. After the denial of her motion, Francisco no longer brought the issue or appealed the same to the CA. Hence, the only issues for our resolution

are the propriety of Francisco's transfer to the position of Cost Controller and the award of attorney's fees.

There was constructive dismissal when Francisco was transferred to the Cost Accounting Section.

We agree with the NLRC and the CA that Francisco's transfer to the position of Cost Controller was without valid basis and that it amounted to a demotion in rank. Hence, there was constructive dismissal.

Records show that when Francisco returned to work on July 20, 2000 fresh from her first suspension, she was unceremoniously transferred by Famy, via his July 20, 2000 memorandum, to the Club's Cost Accounting Section. Famy stated the reason for her transfer:

> This is to inform you that effective today, July 20, 2000, Management has approved your **temporary transfer of assignment pending the completion of the investigation you lodged against the undersigned**.
>
> x x x x x x x x x[40]

His memorandum of even date to his superior Clemente reveals the same cause:

> **In view** of the recent developments, *i.e.,* the suspension of Ms. Amelia Francisco and **her letter of July 5, 2000** x x x, I would like to formally inform you that effective today, July 20, 2000, **Ms. Francisco shall be temporarily given a new assignment in my department pending the result of the investigation she lodged against the undersigned.**
>
> x x x x x x x x x[41]

In other words, the cause of Francisco's temporary transfer on July 20, 2000 was her pending complaint against Famy.

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[40] *Id.* at 40. Emphasis supplied.

[41] *Id.* at 39. Emphasis supplied.

And then again, on September 6, 2000, Nuevo issued another memorandum duly noted and approved by Clemente, and personally delivered at Francisco's residence on September 7, 2000 informing her this time that she has been placed on forced leave with pay for 30 days, or from September 7, 2000 up to October 11, 2000, for the reason that the case filed against her has strained her relationship with her superiors.

And just when her forced leave expired on October 11, or on October 12, 2000, Francisco was once more handed an October 11, 2000 memorandum from Clemente informing her that, due to strained relations between her and Famy and pending evaluation of her betrayal of company trust charge, she has been permanently transferred, without diminution of benefits, to the Club's Cost Accounting Section effective October 12, 2000.

The Court shares the CA's observation that when Francisco was placed on forced leave and transferred to the Cost Accounting Section, not once was Francisco given the opportunity to contest these company actions taken against her. It has also not escaped our attention that just when one penalty has been served by Francisco, another would instantaneously take its place. And all these happened even while the supposed case against her, the alleged charge of "betrayal of company trust," was still pending and remained unresolved. In fact, one of the memoranda was served even at Francisco's residence.

Not even the claim that her relations with her superiors have been strained could justify Francisco's transfer to Cost Accounting Section. Indeed, it appears that her charge was never resolved. And if Famy, Nuevo and Clemente truly believed that their relations with Francisco have been strained, then it puzzles the Court why, despite her transfer, she continues to remain under Famy's direct supervision. Such is the tenor of the memoranda relative to her temporary and subsequently, permanent, transfer to the Cost Accounting Section:

JULY 20, 2000 MEMORANDUM OF FAMY TO CLEMENTE

In view of the recent developments, *i.e.,* the suspension of Ms. Amelia Francisco and her letter of July 5, 2000 x x x, I would like to formally inform you that effective today, July 20, 2000, **Ms. Francisco shall be temporarily given a new assignment in my department** pending the result of the investigation she lodged against the undersigned.

x x x. **She shall remain directly reporting to the Financial Comptroller (Famy)**.[42]

JULY 20, 2000 MEMORANDUM OF FAMY TO FRANCISCO

This is to inform you that effective today, July 20, 2000, Management has approved your temporary transfer of assignment pending the completion of the investigation you lodged against the undersigned.

You shall be handling the Cost Accounting Section together with six (6) Accounting Staffs and **shall remain reporting directly to the undersigned**.[43]

OCTOBER 11, 2000 MEMORANDUM OF CLEMENTE TO FRANCISCO

Because of the strained relationship between you and your department head, Mr. Ernilo Famy, we deem it necessary to transfer you permanently to Cost Accounting effective October 12, 2000. You shall however continue to receive the same benefits **and shall remain under the supervision of Mr. Famy**.[44]

Interestingly, Francisco's transfer was occasioned not by a past infraction or a present one which has just been committed, but by her act of filing a complaint for impropriety against Famy.

For this reason, Francisco's July 20, 2000 temporary transfer and her October 12, 2000 permanent transfer to Cost Accounting Section must be invalidated. For one, there was no valid reason to temporarily transfer Francisco to Cost Accounting Section

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[42] *Id.* at 39. Emphases supplied.

[43] *Id.* at 40. Emphasis supplied.

[44] *Id.* at 58. Emphasis supplied.

on July 20, 2000. She had already served her penalty for her failure to draft the SGV letter, through the 15-day suspension period which she just completed on July 20, 2000. Secondly, the transfer was not even rooted in any new infraction she is accused of committing. There was thus an absolute lack of basis for her July 20, 2000 temporary transfer.

As for her October 12, 2000 permanent transfer, the same is null and void for lack of just cause. Also, the transfer is a penalty imposed on a charge that has not yet been resolved. Definitely, to punish one for an offense that has not been proved is truly unfair; this is deprivation without due process. Finally, the Court sees no necessity for Francisco's transfer; on the contrary, such transfer is outweighed by the need to secure her office and documents from Famy's possible intervention on account of the complaint she filed against him.

We also agree with the findings of the NLRC, as affirmed by the CA, that Francisco's transfer constituted a demotion, *viz*:

> x x x We however, hold that Complainant's transfer resulted to a demotion in her level/rank. The level of Club Accountant is not "Supervisor V" but "Managerial-3" as indicated in the Notice of Personnel Action issued to Complainant on July 20, 2000, signed by her immediate superior Jose Ernilo P. Famy, Department Head of Respondent company on July 10, 2000, and approved by Tomas B. Clemente III, Acting GM & COO on July 11, 2000 x x x. Obviously, the alleged August 15, 1998 Company's Organizational Chart showing the Club Accountant and the Cost Controller occupying the same job grade level, which was attached to Respondent's February 21, 2001 Reply x x x was never implemented, otherwise, the Department Head and the Acting GM & COO would not have specifically indicated "Managerial-3" for Complainant's position of Club Accountant in the Notice of Personnel Action issued to Complainant on July 10, 2000 or two (2) years after the date of the alleged Organizational Chart. Clearly, Complainant was a manager when she occupied the position of Club Accountant. However, when management transferred her to the position of Cost Controller/Accountant, she was demoted to a mere supervisor.

Moreover, in Complainant's December 3, 1997 Job Description as Club Accountant prepared by Jose Ernilo P. Famy and approved by Ian Paul Gardner and Atty. Stellamar C. Flores of HR, it is specifically indicated therein that as Club Accountant, Complainant directly supervises the Cost Controller x x x. Notably, Complainant was never issued any amendment to her December 3, 1997 Job Description, which would have removed from her supervision the Cost Controller. In fact, Respondents do not refute Complainant's allegation that as Club Accountant, she was responsible for the rating of the Cost Controller's performance for the years 1998 to 2000. It becomes clearer now that the alleged August 15, 1998 Company's Organizational Chart showing the Club Accountant and the Cost Controller occupying the same job grade level, which was attached to Respondent's February 22, 2001 Reply x x x was, indeed, never implemented, otherwise, management would have issued Complainant an amendment to her December 3, 1997 Job Description effectively removing from her supervision the position of Cost Controller/Accountant and management would not have let Complainant rate the performance of the Cost Controller/Accountant for the years 1998 to 2000. It is obvious, therefore, that Complainant's position of Club Accountant is higher in level/rank than that of Cost Controller/Accountant. Patently, Complainant's transfer from the position of Club Accountant to the position of Cost Accountant resulted to her demotion in level/ rank. Complainant's transfer resulting to her demotion is, therefore, tantamount to constructive dismissal. x x x[45]

The fact that Francisco continued to report for work does not necessarily suggest that constructive dismissal has not occurred, nor does it operate as a waiver. Constructive dismissal occurs not when the employee ceases to report for work, but when the unwarranted acts of the employer are committed to the end that the employee's continued employment shall become so intolerable. In these difficult times, an employee may be left with no choice but to continue with his employment despite abuses committed against him by the employer, and even during the pendency of a labor dispute between them. This should not be taken against the employee. Instead, we must share the burden of his plight, ever aware of the precept that necessitous men are not free men.

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[45] CA *rollo*, pp. 42-44.

"[A]n employer is free to manage and regulate, according to his own discretion and judgment, all phases of employment, which includes hiring, work assignments, working methods, time, place and manner of work, supervision of workers, working regulations, transfer of employees, lay-off of workers, and the discipline, dismissal and recall of work. While the law recognizes and safeguards this right of an employer to exercise what are clearly management prerogatives, such right should not be abused and used as a tool of oppression against labor. The company's prerogatives must be exercised in good faith and with due regard to the rights of labor. *A priori*, they are not absolute prerogatives but are subject to legal limits, collective bargaining agreements and the general principles of fair play and justice. The power to dismiss an employee is a recognized prerogative that is inherent in the employer's right to freely manage and regulate his business. x x x. Such right, however, is subject to regulation by the State, basically in the exercise of its paramount police power. Thus, the dismissal of employees must be made within the parameters of the law and pursuant to the basic tenets of equity, justice and fair play. It must not be done arbitrarily and without just cause."[46]

The award of attorney's fees is proper.

With respect to the award of attorney's fees, we find the same to be due and owing to respondent given the circumstances prevailing in this case as well as the fact that this case has spanned the whole judicial process from the Labor Arbiter to the NLRC, the CA and all the way up to this Court. Under Article 2208 of the Civil Code, attorney's fees and expenses of litigation other than judicial costs may be recovered if the claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought,[47] and where

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[46] *Philippine-Singapore Transport Services, Inc. v. National Labor Relations Commission,* 343 Phil. 284, 290-293 (1997).

[47] See *Valiant Machinery and Metal Corporation v. Court of Appeals,* 322 Phil. 407, 417 (1996).

the courts deem it just and equitable that attorney's fees and expenses of litigation should be recovered.

As for petitioner's argument that in the absence of an award of exemplary damages, attorney's fees may not be granted, the Court finds this unavailing. An award of attorney's fees is not predicated on a grant of exemplary damages. Given the circumstances of this case, it is regretful that the Labor Arbiter and the NLRC failed to award moral and exemplary damages prayed for by the respondent. But because respondent did not appeal the denial, the Court may no longer modify the ruling in this regard.

Respondent is entitled to receive her accrued salary differential, merit increases and productivity bonuses since 2001.

Respondent raises the side issue pertaining to petitioner's alleged withholding of her accrued salary differential, merit increases and productivity bonuses since 2001.[48] She claims that during the pendency of this case, petitioner effected salary adjustments, merit increases and productivity bonuses to other employees. As proof, she submitted the Notice of Personnel Action-Salary Adjustment[49] of Arsenio Rodrigo Neyra, the former Cost Accountant which position she now occupies, and pertinent portions of the Collective Bargaining Agreement.[50] She now seeks payment of these amounts.

Notably, petitioner does not refute its grant of salary increases, merit increases and productivity bonuses to other employees. In its attempt to rebuff Francisco's claim, petitioner merely argues that the same should no longer be entertained because it was never raised before the proceedings below.[51] Interestingly, it never categorically denied that such salary increases, merit

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[48] *Rollo,* pp. 593-594.

[49] *Id.* at 603.

[50] *Id.* at 608-610.

[51] *Id.* at 617-618, 656-657.

increases and productivity bonuses have indeed been given to the other employees.

At this juncture, it must be stressed that "[t]echnical rules of procedure are not binding in labor cases. The application of technical rules of procedure may be relaxed to serve the demands of substantial justice."[52] "[I]t is more in keeping with the objective of rendering substantial justice if we brush aside technical rules rather than strictly apply its literal reading. There [being] no objective reason to further delay this case by insisting on a technicality when the controversy could now be resolved."[53] Moreover, "there is no need to remand this case to the Labor Arbiter for further proceedings, as the facts are clear and complete on the basis of which a decision can be made."[54] Based on the foregoing, we find no reason to deprive herein respondent of the accrued salary differential, merit increases and productivity bonuses due her since 2001.

WHEREFORE, the Petition is **DENIED** for lack of merit. The January 25, 2007 Decision and May 23, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 80968 are **AFFIRMED.** Petitioner, The Orchard Golf and Country Club, is **ORDERED:**

1. To immediately reinstate respondent Amelia R. Francisco to her former position as Club Accountant without loss of seniority rights and other privileges;

2. Within 15 days from receipt of this Decision, to return and/or pay to the respondent, all her accrued salary differential, merit increases and productivity bonuses due her, with 12% *per annum* interest[55] on outstanding balance from finality of this Decision until full payment; and

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[52] *Samahan ng Manggagawa sa Moldex Products, Inc. v. National Labor Relations Commission,* 381 Phil. 254, 264 (2000).

[53] *Tiu v. Pasaol,* 450 Phil. 370, 378 (2003).

[54] *Samahan ng Manggagawa sa Moldex Products, Inc. v. National Labor Relations Commission, supra* note 52 at 265.

[55] See *Blue Sky Trading Company, Inc. v. Blas,* G.R. No. 190559, March 7, 2012, 667 SCRA 727, 752.

3. Within the same period, to pay the respondent attorney's fees in the amount of ₱50,000.00.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 180681. March 18, 2013]

ROLANDO Z. TIGAS, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, represented by MERCEDITAS N. GUTIERREZ, in her capacity as Ombudsman,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; PARTIALITY RAISED ONLY AFTER PROMULGATION OF ASSAILED RULING AND THE SAME MUST BE ESTABLISHED BY CONVINCING PROOF.—** Prefatorily, the Court notes that petitioner only raised the issue of bias **after** respondent promulgated the assailed rulings. His belated action weakens his claim, given the proscription that litigants cannot be permitted to speculate upon the action of a court, but only to raise an objection pertaining to bias and prejudgment after a decision has been rendered. To impute bias – in no less than a special civil action for *certiorari* – petitioner must show not only **strong** grounds stemming from extrajudicial sources, but also palpable error that may be inferred from the decision or order itself. x x x [Further,] petitioner's election victory over the Ombudsman's brother does not clearly establish prejudice. In *De la Cruz v. DECS,* this Court has declared that kinship alone does not establish bias and partiality. There must be convincing proof

to show bias, otherwise, the presumption of regularity in the performance of official duty prevails.

2. **ID.; ID.; ID.; ID.; FILING AN INDICTMENT FOR OFFENSE DIFFERENT FROM THAT CHARGED IN THE INITIATORY COMPLAINT IS NOT INHERENTLY IRREGULAR.—** [W]e have squarely held in *Galario v. Office of the Ombudsman (Mindanao)* that there is nothing inherently irregular or illegal in filing an indictment against the respondent for an offense different from that charged in the initiatory complaint, if the indictment is warranted by the evidence developed during the preliminary investigation.

3. **POLITICAL LAW; OFFICE OF THE OMBUDSMAN; FINDING OF PROBABLE CAUSE REQUIRES ONLY REASONABLE BELIEF AND THAT FINDING MAY BE THRESHED OUT IN A FULL-BLOWN TRIAL, NOT IN A PETITION UNDER RULE 65.—** [A]s regards the finding of probable cause, it appears extant that the exercise of the wide prerogative by the Office of the Ombudsman was not whimsical, capricious or arbitrary, given the supporting documentary evidence it had appreciated together with the NBI and the Sandiganbayan. In the determination of probable cause, absolute certainty of evidence is not required, for opinion and reasonable belief are sufficient. Besides, any other defense contesting the finding of probable cause that is highly factual in nature must be threshed out in a full-blown trial, and not in a special civil action for *certiorari* before this Court. x x x Rule 65 petition is an inappropriate remedy to question the refusal of the Sandiganbayan to quash an information and, its imposition of suspension *pendente lite*. The remedy still available to petitioners is not the filing of a special civil action for *certiorari*, but the continuance of the case in due course.

APPEARANCES OF COUNSEL

Villanueva Gabionza & De Santos for petitioner.
The Solicitor General for respondent.

RESOLUTION

SERENO, *C.J.*:

Before this Court are the following pleadings filed by petitioner: (1) the 3 December 2007 Petition for *certiorari* and prohibition with prayer for the issuance of a writ of preliminary injunction and/or a temporary restraining order;[1] (2) the 17 September 2008 Supplemental Petition;[2] and (3) the 05 January 2009 Second Supplemental Petition.[3]

Filed under Rule 65 of the Rules of Court, these pleadings assail the ruling[4] of the Office of the Ombudsman in OMB-C-C-07-0340-G, finding probable cause to indict petitioner and his *Sangguniang Bayan* members (SB members) for violation of Section 3 (b) of Republic Act No. (R.A.) 3019; as well as the Resolutions of the Fourth Division of the Sandiganbayan in CC No. SB-07-CRM-0071, denying his plea to quash[5] the criminal Information filed against him. Petitioner also questions the resolution[6] of the Sandiganbayan granting the prosecution's Motion to suspend him *pendente lite*.

R.A. 3019 (Anti-Graft and Corrupt Practices Act), Section 3 (b) provides:

> Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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[1] *Rollo,* pp. 3-49.

[2] *Id.* at 468-503.

[3] *Id.* at 716-743.

[4] *Id.* at 51-80; Resolution dated 21 August 2007 and Order dated 10 October 2007 issued by the Office of the Ombudsman.

[5] *Id.* at 504-518; Resolutions dated 14 July 2008 and 2 September 2008 issued by the Fourth Division of the Sandiganbayan; penned by Associate Justice Jose R. Hernandez, with Associate Justices Gregory S. Ong and Samuel R. Martires concurring.

[6] *Id.* at 796-804; Resolution dated 9 December 2008.

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law.

The facts are as follows:

In purchasing lots intended for a public market, the Municipality of Samal, Bataan, issued a check worth ₱2,923,000 to the seller. However, the SB members gave only ₱2,500,000 to the vendor, of which ₱90,000 was further deducted for capital gains tax. In effect, the SB members received ₱513,000. This amount was not accounted for by receipts or other documentary evidence.[7]

Petitioner Rolando Z. Tigas, then municipal mayor, was also involved in the transaction, to wit:[8] (1) the SB members informed him of their intent to buy the lots; (2) he signed the 3 February 2005 Deed of Conditional Sale one day prior to the issuance of *Sangguniang Bayan* Resolution No. 05-001 dated 4 February 2005, through which they accepted the offer to sell the lots even before the provincial assessor had appraised it; and (3) he asked the provincial assessor to appraise the lot at ₱105 per square meter, notwithstanding the Philippine National Bank's appraisal thereof at ₱97 per square meter.

The National Bureau of Investigation (NBI) got wind of the transaction through an anonymous letter.[9] After its investigation, it filed the 2 May 2007 Complaint[10] with respondent Office of the Ombudsman against petitioner and the SB members for violating Section 3 (g) and (i) of R.A. 3019. In turn, as alleged by the OSG, the Office of the Ombudsman proceeded to conduct a preliminary investigation through Overall Deputy Ombudsman

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[7] *Id.* at 64; Resolution dated 21 August 2007.

[8] *Id.* at 66-67.

[9] *Id.* at 91; National Bureau of Investigation Disposition Form dated 16 April 2007.

[10] *Id.* at 81-89; letter-complaint dated 2 May 2007.

Orlando C. Casimiro, and only after then Ombudsman Merceditas N. Gutierrez had inhibited herself from the proceedings.[11] Subsequently, respondent issued its 21 August 2007 recommendation to the Sandiganbayan for the filing of an Information for violation of Section 3 (b) of R.A. 3019 against petitioner and the SB members and of Section 3 (i) against the SB members alone.[12] Hence, petitioner filed this Rule 65 petition.

Without this Court giving due course to the petition, the incidents before the Sandiganbayan continued. Specifically, the latter refused to quash the Information[13] and even imposed a suspension *pendente lite* against petitioner.[14] As a result, he filed before this Court his Supplemental Petition, followed by his Second Supplemental Petition, assailing the actions of the Sandiganbayan.

In his Rule 65 pleadings, petitioner mainly asserts that grave abuse of discretion attended his case, because then Ombudsman Gutierrez was extremely prejudiced in investigating him. He anchors his imputation of bias on irregularities consisting of the following:[15] (1) his indictment for an offense different from what he was charged with; and (2) the finding of probable cause despite a dearth of evidence. He also supports his allegation of prejudice by citing the fact that the Ombudsman's brother lost in the mayoralty race against him.[16] As for the errors of the Sandiganbayan, he argues that it erred in not quashing the Information and in suspending him *pendente lite*.

In its 3 June 2008 Comment,[17] the Office of the Solicitor General (OSG) refutes the existence of bias on the part of the

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[11] *Id.* at 70; the 21 August 2007 Resolution contained a notation "By virtue of the Routing Slip authorizing the undersigned to handle the case."

[12] *Id.* at 221-223.

[13] *Id.* at 504-518.

[14] *Id.* at 796-804.

[15] *Id.* at 25-32.

[16] *Id.* at 34.

[17] *Id.* at 399-424.

Ombudsman. The OSG also advances that the Office of the Ombudsman's finding of probable cause for violation of Section 3 (b) of R.A. 3019 was based on the records and the evidence on hand. Further, in its 22 February 2009 Consolidated Comment,[18] the OSG posits that a Rule 65 petition is an improper remedy to question the Sandiganbayan's refusal to quash the Information.

Hence, we discuss the pertinent issues in this case:

I. Whether the Office of the Ombudsman gravely abused its discretion and acted with manifest partiality in finding probable cause against petitioner.

II. Whether the Sandiganbayan gravely abused its discretion in refusing to quash the Information and in imposing a suspension *pendente lite* on petitioner.

Prefatorily, the Court notes that petitioner only raised the issue of bias **after** respondent promulgated the assailed rulings. His belated action weakens his claim, given the proscription that litigants cannot be permitted to speculate upon the action of a court, but only to raise an objection pertaining to bias and prejudgment after a decision has been rendered.[19]

To impute bias — in no less than a special civil action for *certiorari* — petitioner must show not only **strong** grounds stemming from extrajudicial sources,[20] but also palpable error that may be inferred from the decision or order itself.[21]

In this case, the alleged irregularities during the proceedings invoked by petitioner cannot be considered as irregularities in the first place.

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[18] *Id.* at 432-463.

[19] *Chavez v. PEA AMARI,* 451 Phil. 1, 41 (2003).

[20] *Ong v. Basco,* G.R. No. 167899, 6 August 2008, 561 SCRA 253, 261.

[21] *Philippine Commercial International Bank v. Spouses Dy,* G.R. No. 171137, 5 June 2009, 588 SCRA 612, 632.

Firstly, we have squarely held in *Galario v. Office of the Ombudsman (Mindanao)*[22] that there is nothing inherently irregular or illegal in filing an indictment against the respondent for an offense different from that charged in the initiatory complaint, if the indictment is warranted by the evidence developed during the preliminary investigation.

Secondly, as regards the finding of probable cause, it appears extant that the exercise of the wide prerogative by the Office of the Ombudsman was not whimsical, capricious or arbitrary,[23] given the supporting documentary evidence it had appreciated together with the NBI and the Sandiganbayan. In the determination of probable cause, absolute certainty of evidence is not required, for opinion and reasonable belief are sufficient.[24] Besides, any other defense contesting the finding of probable cause that is highly factual in nature[25] must be threshed out in a full-blown trial, and not in a special civil action for *certiorari* before this Court.[26]

Thirdly, petitioner's election victory over the Ombudsman's brother does not clearly establish prejudice. In *De la Cruz v. DECS,*[27] this Court has declared that kinship alone does not establish bias and partiality. There must be convincing proof to show bias, otherwise, the presumption of regularity in the performance of official duty prevails.

Since the imputation of bias to the Office of the Ombudsman is without support, this Petition for *certiorari* and prohibition,

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[22] G.R. No. 166797, 10 July 2007 citing *Avila v. Sandiganbayan and Ombudsman,* 366 Phil. 698 (1999); and *Enrile v. Salazar,* 264 Phil. 593 (1990).

[23] *Ramiscal, Jr. v. Sandiganbayan,* G.R. Nos. 172476-99, 15 September 2010, 630 SCRA 505, 517-518.

[24] *Ganaden v. Honorable Office of the Ombudsman,* G.R. Nos. 169359-61, 1 June 2011, 650 SCRA 76, 83.

[25] *Odin Security Agency, Inc. v. Sandiganbayan (Second Division),* 417 Phil. 673, 681-682.

[26] *Esquivel v. The Hon. Ombudsman (Third Division),* 437 Phil. 702, 712 (2002).

[27] 464 Phil. 1033, 1048 (2004).

with prayer for the issuance of a writ of preliminary injunction and/or a temporary restraining order, fails. And because the first petition holds no water, his Supplemental Petition and Second Supplemental Petition have no basis to rely upon. In any event, the OSG correctly argues that a Rule 65 petition is an inappropriate remedy to question the refusal of the Sandiganbayan to quash an information and, its imposition of suspension *pendente lite*. The remedy still available to petitioners is not the filing of a special civil action for *certiorari*, but the continuance of the case in due course.[28]

IN VIEW THEREOF, the 21 August 2007 Resolution and 10 October 2007 Order in OMB-C-C-07-0340-G issued by the Office of the Ombudsman, as well as the 14 July 2008, 2 September 2008 and 9 December 2008 Resolutions in No. SB-07-CRM-0071 issued by the Fourth Division of the Sandiganbayan, are **AFFIRMED.** Consequently, the 3 December 2007 Petition for *certiorari* and prohibition with prayer for the issuance of a writ of preliminary injunction and/or a temporary restraining order, the 17 September 2008 Supplemental Petition, and the 05 January 2009 Second Supplemental Petition filed by petitioner are hereby **DENIED** for lack of merit.

SO ORDERED.

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

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[28] *Raro v. Sandiganbayan,* 390 Phil. 917 (2000).

SECOND DIVISION

[G.R. No. 201363. March 18, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NAZARENO VILLAREAL *y* LUALHATI,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; LAWFUL WARRANTLESS ARREST; WHEN PERSONAL KNOWLEDGE OF THE FACT OF THE COMMISSION OF AN OFFENSE IS ABSOLUTELY REQUIRED.—** Section 5, Rule 113 of the Revised Rules of Criminal Procedure lays down the basic rules on *lawful* warrantless arrests, either by a peace officer or a private person. x x x For the warrantless arrest under paragraph (a) of Section 5 to operate, two elements must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. On the other hand, paragraph (b) of Section 5 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the appellant had committed it. In both instances, **the officer's *personal knowledge* of the fact of the commission of an offense is absolutely required.** Under paragraph (a), the *officer himself witnesses* the crime while under paragraph (b), he knows *for a fact* that a crime has just been committed.

2. **ID.; ID.; ID.; ID.; ID.; FACT OF PREVIOUS ARREST OR EXISTING CRIMINAL RECORD IS NOT PERSONAL KNOWLEDGE.—** [A] previous arrest or existing criminal record, even for the same offense, will not suffice to satisfy the exacting requirements provided under Section 5, Rule 113 in order to justify a *lawful* warrantless arrest. "Personal knowledge" of the arresting officer *that a crime had in fact just been committed* is required. To interpret "personal knowledge" as referring to a person's reputation or past criminal citations would create a dangerous precedent and unnecessarily

stretch the authority and power of police officers to effect warrantless arrests based solely on knowledge of a person's previous criminal infractions, rendering nugatory the rigorous requisites laid out under Section 5.

3. **ID.; EVIDENCE; FLIGHT; ACT OF RUNNING AWAY AS POLICE OFFICER WAS APPROACHING DOES NOT NECESSARILY MEAN GUILT.—** [A]ppellant's act of darting away when PO3 de Leon approached him should not be construed against him. Flight *per se* is not synonymous with guilt and must not always be attributed to one's consciousness of guilt. It is not a reliable indicator of guilt without other circumstances, for even in high crime areas there are many innocent reasons for flight, including fear of retribution for speaking to officers, unwillingness to appear as witnesses, and fear of being wrongfully apprehended as a guilty party. Thus, appellant's attempt to run away from PO3 de Leon is susceptible of various explanations; it could easily have meant guilt just as it could likewise signify innocence.

4. **ID.; CRIMINAL PROCEDURE; ARREST; PROBABLE CAUSE IN ARREST MEANS SUCH FACTS AND CIRCUMSTANCES WHICH LEAD TO THE BELIEF THAT AN OFFENSE HAS BEEN COMMITTED BY THE PERSON TO BE ARRESTED.—** "Probable cause" has been understood to mean a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged. Specifically with respect to arrests, it is such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested, which clearly do not obtain in appellant's case. Thus, while it is true that the legality of an arrest depends upon the reasonable discretion of the officer or functionary to whom the law at the moment leaves the decision to characterize the nature of the act or deed of the person for the urgent purpose of suspending his liberty, it cannot be arbitrarily or capriciously exercised without unduly compromising a citizen's constitutionally-guaranteed right to liberty.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is an appeal from the May 25, 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 31320 which affirmed *in toto* the December 11, 2007 Decision[2] of the Regional Trial Court of Caloocan City, Branch 123 (RTC), convicting appellant Nazareno Villareal *y* Lualhati (appellant) of violation of Section 11, Article II of Republic Act No. 9165[3] (RA 9165) and sentencing him to suffer the penalty of imprisonment for twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of ₱300,000.00.

The Factual Antecedents

On December 25, 2006 at around 11:30 in the morning, as PO3 Renato de Leon (PO3 de Leon) was driving his motorcycle on his way home along 5th Avenue, he saw appellant from a distance of about 8 to 10 meters, holding and scrutinizing in his hand a plastic sachet of *shabu*. Thus, PO3 De Leon, a member of the Station Anti-Illegal Drugs-Special Operation Unit (SAID-SOU) in Caloocan City, alighted from his motorcycle and approached the appellant whom he recognized as someone he had previously arrested for illegal drug possession.[4]

Upon seeing PO3 de Leon, appellant tried to escape but was quickly apprehended with the help of a tricycle driver. Despite

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[1] *Rollo,* pp. 3-20. Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Rebecca de Guia-Salvador and Normandie B. Pizarro, concurring.

[2] CA *rollo*, pp. 14-22. Penned by Judge Edmundo T. Acuña.

[3] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

[4] TSN, May 8, 2007, pp. 2-4.

appellant's attempts to resist arrest, PO3 de Leon was able to board appellant onto his motorcycle and confiscate the plastic sachet of *shabu* in his possession. Thereafter, PO3 de Leon brought appellant to the 9th Avenue Police Station to fix his handcuffs, and then they proceeded to the SAID-SOU office where PO3 de Leon marked the seized plastic sachet with "RZL/ NV 12-25-06," representing his and appellant's initials and the date of the arrest.[5]

Subsequently, PO3 de Leon turned over the marked evidence as well as the person of appellant to the investigator, PO2 Randulfo Hipolito (PO2 Hipolito) who, in turn, executed an acknowledgment receipt[6] and prepared a letter request[7] for the laboratory examination of the seized substance. PO2 Hipolito personally delivered the request and the confiscated item to the Philippine National Police (PNP) Crime Laboratory, which were received by Police Senior Inspector Albert Arturo (PSI Arturo), the forensic chemist.[8]

Upon qualitative examination, the plastic sachet, which contained 0.03 gram of white crystalline substance, tested positive for methylamphetamine hydrochloride, a dangerous drug.[9]

Consequently, appellant was charged with violation of Section 11, Article II of RA 9165 for illegal possession of dangerous drugs in an Information[10] which reads:

> That on or about the 25th day of December, 2006 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control, METHYLAMPHETAMINE HYDROCHLORIDE (*Shabu*) weighing 0.03 gram [which,] when

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[5] *Id.* at 5-7; TSN, July 3, 2007, p. 3.

[6] Exhibit "E", folder of exhibits, p. 4.

[7] Exhibit "A", folder of exhibits, p. 1.

[8] TSN, July 31, 2007, pp. 2-5; TSN, June 19, 2007, pp. 4-6.

[9] Exhibit "C", folder of exhibits, p. 2.

[10] Records, p. 2.

subjected [to] chemistry examination gave positive result of METHYLAMPHETAMINE HYDROCHLORIDE, a dangerous drug.

CONTRARY TO LAW.

When arraigned, appellant, assisted by counsel *de oficio*, entered a plea of *not guilty* to the offense charged.[11]

In his defense, appellant denied PO3 de Leon's allegations and instead claimed that on the date and time of the incident, he was walking alone along Avenida, Rizal headed towards 5th Avenue when someone who was riding a motorcycle called him from behind. Appellant approached the person, who turned out to be PO3 de Leon, who then told him not to run, frisked him, and took his wallet which contained ₱1,000.00.[12]

Appellant was brought to the 9th Avenue police station where he was detained and mauled by eight other detainees under the orders of PO3 de Leon. Subsequently, he was brought to the Sangandaan Headquarters where two other police officers, whose names he recalled were "Michelle" and "Hipolito," took him to the headquarters' firing range. There, "Michelle" and "Hipolito" forced him to answer questions about a stolen cellphone, firing a gun right beside his ear each time he failed to answer and eventually mauling him when he continued to deny knowledge about the cellphone.[13] Thus, appellant sustained head injuries for which he was brought to the Diosdado Macapagal Hospital for proper treatment.[14]

The following day, he underwent inquest proceedings before one Fiscal Guiyab, who informed him that he was being charged with resisting arrest and "Section 11."[15] The first charge was eventually dismissed.

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[11] *Id.* at 10.

[12] TSN, August 21, 2007, pp. 2-4.

[13] *Id*. at 4-7.

[14] TSN, September 11, 2007, pp. 8-9. Exhibit "I", folder of exhibits, p. 7.

[15] TSN, August 21, 2007, pp. 8-9.

The RTC Ruling

After trial on the merits, the RTC convicted appellant as charged upon a finding that all the elements of the crime of illegal possession of dangerous drugs have been established, to wit: (1) the appellant is in possession of an item or object which is identified to be a prohibited drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possesses said drug. Finding no ill motive on the part of PO3 de Leon to testify falsely against appellant, coupled with the fact that the former had previously arrested the latter for illegal possession of drugs under Republic Act No. 6425[16] (RA 6425), the RTC gave full faith and credit to PO3 de Leon's testimony. Moreover, the RTC found the plain view doctrine to be applicable, as the confiscated item was in plain view of PO3 de Leon at the place and time of the arrest.

On the other hand, the RTC gave scant consideration to the defenses of denial and frame-up proffered by the appellant, being uncorroborated, and in the light of the positive assertions of PO3 de Leon. It refused to give credence to appellant's claim that PO3 de Leon robbed him of his money, since he failed to bring the incident to the attention of PO3 de Leon's superiors or to institute any action against the latter.

Consequently, the RTC sentenced appellant to suffer the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of ₱300,000.00.

The CA Ruling

In its assailed Decision, the CA sustained appellant's conviction, finding "a clear case of in *flagrante delicto* warrantless arrest"[17] as provided under Section 5, Rule 113 of the Revised Rules of Criminal Procedure. The CA held that appellant "exhibited an overt act or strange conduct that would reasonably arouse suspicion,"[18] aggravated by the existence of his past

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[16] Otherwise known as The Dangerous Drugs Act of 1972.

[17] *Rollo,* p. 10.

[18] *Id.*

criminal citations and his attempt to flee when PO3 de Leon approached him.

Citing jurisprudence, the appellate court likewise ruled that the prosecution had adequately shown the continuous and unbroken chain of custody of the seized item, from the time it was confiscated from appellant by PO3 de Leon, marked at the police station, turned over to PO2 Hipolito and delivered to the crime laboratory, where it was received by PSI Arturo, the forensic chemist, up to the time it was presented in court for proper identification.

The Issue

The sole issue advanced before the Court for resolution is whether the CA erred in affirming *in toto* the RTC's Decision convicting appellant of the offense charged.

The Ruling of the Court

The appeal is meritorious.

Section 5, Rule 113 of the Revised Rules of Criminal Procedure lays down the basic rules on *lawful* warrantless arrests, either by a peace officer or a private person, as follows:

> Sec. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> x x x x x x x x x

For the warrantless arrest under paragraph (a) of Section 5 to operate, two elements must concur: (1) the person to be arrested

must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[19] On the other hand, paragraph (b) of Section 5 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the appellant had committed it.[20]

In both instances, **the officer's *personal knowledge* of the fact of the commission of an offense is absolutely required.** Under paragraph (a), the *officer himself witnesses* the crime while under paragraph (b), he knows *for a fact* that a crime has just been committed.

In sustaining appellant's conviction in this case, the appellate court ratiocinated that this was a clear case of an "*in flagrante delicto* warrantless arrest" under paragraphs (a) and (b) of Section 5, Rule 113 of the Revised Rules on Criminal Procedure, as above-quoted.

The Court disagrees.

A punctilious assessment of the factual backdrop of this case shows that there could have been no *lawful* warrantless arrest. A portion of PO3 de Leon's testimony on direct examination in court is revelatory:

FISCAL LARIEGO: While you were there at 5th Avenue, was there anything unusual that transpired?

PO3 DE LEON: Yes Ma'am.

Q: What was this incident?

A: While I was on board my motorcycle on my home, I saw a man looking at the *shabu* in his hand, Ma'am.

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[19] *Valdez v. People,* G.R. No. 170180, November 23, 2007, 538 SCRA 611, 624, citing *People v. Tudtud,* 458 Phil. 752, 775 (2003).

[20] *People v. Cuizon,* G.R. No. 109287, April 18, 1996, 256 SCRA 325, 341.

Q:	And exactly what time was this?
A:	Around 11:30 in the morning, Ma'am.
Q:	How far were you from this person that you said was verifying something in his hand?
A:	Eight to ten meters, Ma'am.
Q:	What exactly did you see he was verifying?
A:	The *shabu* that he was holding, Ma'am.
Q:	After seeing what the man was doing, what did you do next?
A:	I alighted from my motorcycle and approached him, Ma'am.
Q:	In the first place why do you say that what he was examining and holding in his hand was a *shabu*?
A:	Because of the numerous arrests that I have done, they were all *shabu*, Ma'am.[21] (Underscoring supplied)

On the basis of the foregoing testimony, the Court finds it inconceivable how PO3 de Leon, even with his presumably perfect vision, would be able to identify with reasonable accuracy, from a distance of about *8 to 10 meters and while simultaneously driving a motorcycle,* a negligible and minuscule amount of powdery substance **(0.03 gram)** inside the plastic sachet allegedly held by appellant. That he had previously effected numerous arrests, all involving *shabu*, is insufficient to create a conclusion that what he *purportedly* saw in appellant's hands was indeed *shabu*.

Absent any other circumstance upon which to anchor a lawful arrest, no other overt act could be properly attributed to appellant as to rouse suspicion in the mind of PO3 de Leon that he (appellant) had just committed, was committing, or was about

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[21] TSN, May 8, 2007, p. 3.

to commit a crime, for the acts *per se* of walking along the street and examining something in one's hands cannot in any way be considered criminal acts. In fact, even if appellant had been exhibiting unusual or strange acts, or at the very least appeared suspicious, the same would not have been sufficient in order for PO3 de Leon to effect a *lawful* warrantless arrest under paragraph (a) of Section 5, Rule 113.

Neither has it been established that the rigorous conditions set forth in paragraph (b) of Section 5, Rule 113 have been complied with, *i.e.*, that an offense had in fact just been committed and the arresting officer had *personal knowledge* of facts indicating that the appellant had committed it. The factual circumstances of the case failed to show that PO3 de Leon had personal knowledge that a crime had been *indisputably* committed by the appellant. It is not enough that PO3 de Leon had reasonable ground to believe that appellant had just committed a crime; a crime must in fact have been committed first, which does not obtain in this case.

Without the overt act that would pin liability against appellant, it is therefore clear that PO3 de Leon was merely impelled to apprehend appellant on account of the latter's previous charge[22] for the same offense. The CA stressed this point when it said:

> It is common for drugs, being illegal in nature, to be concealed from view. PO3 Renato de Leon saw appellant holding and scrutinizing a piece of plastic wrapper containing a white powder[l]y substance. PO3 Renato de Leon was quite familiar with appellant, having arrested him twice before for the same illegal possession of drug. It was not just a hollow suspicion. The third time around, <u>PO3 de Leon had reasonably assumed</u> that the piece of plastic wrapper appellant was holding and scrutinizing also contained *shabu* as <u>he had personal knowledge of facts regarding appellant's person and past criminal record</u>. He would have been irresponsible to just 'wait and see' and give appellant a chance to scamper away. For his part, appellant being, in fact, in possession of illegal drug, sensing trouble from an equally familiar face of authority, ran away. Luckily, however, PO3 de Leon caught up with him through the aid of a tricycle driver.

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[22] Exhibit "H", folder of exhibits, p. 8.

Appellant's act of running away, indeed, validated PO3 de Leon's reasonable suspicion that appellant was actually in possession of illegal drug x x x.[23]

However, a previous arrest or existing criminal record, even for the same offense, will not suffice to satisfy the exacting requirements provided under Section 5, Rule 113 in order to justify a *lawful* warrantless arrest. "Personal knowledge" of the arresting officer *that a crime had in fact just been committed* is required. To interpret "personal knowledge" as referring to a person's reputation or past criminal citations would create a dangerous precedent and unnecessarily stretch the authority and power of police officers to effect warrantless arrests based solely on knowledge of a person's previous criminal infractions, rendering nugatory the rigorous requisites laid out under Section 5.

It was therefore error on the part of the CA to rule on the validity of appellant's arrest based on "*personal knowledge of facts regarding appellant's person and past criminal record,*" as this is unquestionably not what "personal knowledge" under the law contemplates, which must be strictly construed.[24]

Furthermore, appellant's act of darting away when PO3 de Leon approached him should not be construed against him. Flight *per se* is not synonymous with guilt and must not always be attributed to one's consciousness of guilt.[25] It is not a reliable indicator of guilt without other circumstances,[26] for even in high crime areas there are many innocent reasons for flight, including fear of retribution for speaking to officers, unwillingness to appear as witnesses, and fear of being wrongfully apprehended as a guilty party.[27] Thus, appellant's attempt to run away from

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[23] *Rollo,* p. 9.

[24] See *People v. Tudtud, supra* note 19, at 773.

[25] *Valdez v. People, supra* note 19, citing *People v. Lopez,* 371 Phil. 852, 862 (1999).

[26] *Id.,* citing *People v. Shabaz,* 424 Mich. 42, 378 N.W.2d 451 (1985).

[27] *State v. Nicholson,* 188 S.W.3d 649 (Tenn. 2006).

PO3 de Leon is susceptible of various explanations; it could easily have meant guilt just as it could likewise signify innocence.

In fine, appellant's acts of walking along the street and holding something in his hands, even if they appeared to be dubious, coupled with his previous criminal charge for the same offense, are not by themselves sufficient to incite suspicion of criminal activity or to create probable cause enough to justify a warrantless arrest under Section 5 above-quoted. "Probable cause" has been understood to mean a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.[28] Specifically with respect to arrests, it is such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested,[29] which clearly do not obtain in appellant's case.

Thus, while it is true that the legality of an arrest depends upon the reasonable discretion of the officer or functionary to whom the law at the moment leaves the decision to characterize the nature of the act or deed of the person for the urgent purpose of suspending his liberty,[30] it cannot be arbitrarily or capriciously exercised without unduly compromising a citizen's constitutionally-guaranteed right to liberty. As the Court succinctly explained in the case of *People v. Tudtud*:[31]

> The right of a person to be secure against any unreasonable seizure of his body and any deprivation of his liberty is a most basic and fundamental one. The statute or rule which allows exceptions to the requirement of warrants of arrest is strictly construed. Any exception must clearly fall within the situations when securing a warrant would be absurd or is manifestly unnecessary as provided

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[28] *People v. Chua Ho San @Tsay Ho San,* 367 Phil. 703, 717 (1999).

[29] *Id.,* citing Joaquin G. Bernas, S.J., *The Constitution of the Philippines: A Commentary,* 85 (1st ed. 1987).

[30] *People v. Ramos,* 264 Phil. 554, 568 (1990).

[31] *Supra* note 24, at 774.

by the Rule. We cannot liberally construe the rule on arrests without warrant or extend its application beyond the cases specifically provided by law. To do so would infringe upon personal liberty and set back a basic right so often violated and so deserving of full protection.

Consequently, there being no lawful warrantless arrest, the *shabu* purportedly seized from appellant is rendered inadmissible in evidence for being the proverbial fruit of the poisonous tree. As the confiscated *shabu* is the very *corpus delicti* of the crime charged, appellant must be acquitted and exonerated from all criminal liability.

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CR No. 31320 is **REVERSED** and **SET ASIDE**. Appellant Nazareno Villareal *y* Lualhati is **ACQUITTED** on reasonable doubt of the offense charged and ordered immediately released from detention, unless his continued confinement is warranted by some other cause or ground.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 205250. March 18, 2013]

LORRAINE D. BARRA, *petitioner, vs.* **CIVIL SERVICE COMMISSION,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS;

FAILURE TO STATE DATE OF RECEIPT OF CSC DECISION AND FAILURE TO INDICATE THE NOTARY PUBLIC'S OFFICE ADDRESS, NOT FATAL.— In its July 11, 2012 resolution, the CA dismissed the petition (filed under Rule 43) outright for: (a) failure to state the date of receipt of the copy of the October 10, 2011 CSC decision; and (b) failure to indicate the notary public's office address in the notarial certificates in the verification and certification of non-forum shopping and in the affidavit of service. x x x The petitioner's failure to state the date of receipt of the copy of the October 10, 2011 CSC decision is not fatal to her case since the dates are evident from the records. Besides, we have ruled that the more important material date which must be duly alleged in the petition is the date of receipt of the resolution of denial of the motion for reconsideration, which the petitioner has duly complied with. As to the failure to state the notary public's office address, the omission was rectified with the attachment in the motion for reconsideration of the verification and certification of non-forum shopping and of the affidavit of service, with the notary public's office address. Courts should not be unduly strict in cases involving procedural lapses that do not really impair the proper administration of justice. Since litigation is not a game of technicalities, every litigant should be afforded the amplest opportunity for the proper and just determination of his case, free from the constraints of technicalities. Procedural rules are mere tools designed to facilitate the attainment of justice, and even the Rules of Court expressly mandates that it "shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding."

APPEARANCES OF COUNSEL

Edsel S. Deris-Lim for petitioner.
The Solicitor General for respondent.

RESOLUTION

BRION, *J.*:

Before the Court is the petition for review on *certiorari*,[1] filed by petitioner Lorraine D. Barra, assailing the July 11, 2012[2] and the December 7, 2012[3] resolutions of the Court of Appeals (*CA*) in CA-G.R. SP No. 125421, dismissing outright the petitioner's Rule 43 petition for review for procedural defects.

On March 2, 2001, Bureau of Fisheries and Aquatic Resources (*BFAR*) Director Malcolm I. Sarmiento, Jr. appointed the petitioner as Supply Officer II in the BFAR, Region XII. An anonymous letter sent via e-mail questioned the appointments of the petitioner and several individuals, for violation of the prohibition on nepotism under Section 79, Book V of the Revised Administrative Code of 1987.

In a January 6, 2006 letter, Civil Service Commission (*CSC*) Director Macybel Alfaro-Sahi requested BFAR Director Sani D. Macabalang to give her copies of the appointment papers of the petitioner and her colleagues. In Resolution No. 08-0539 dated April 10, 2008, the CSC directed the conduct of further investigation on the appointments of the petitioner and her colleagues, and to file the appropriate disciplinary cases against them.

In a June 15, 2010 order, CSC Director Grace R. Belgado-Saqueton recalled the appointments of the petitioner and Huzaifah D. Disomimba for violation of the prohibition on nepotism. On August 6, 2010, the petitioner and Disomimba filed with the CSC regional office a motion for reconsideration and prayed for the conduct of a preliminary investigation, claiming that

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 5-15.

[2] Penned by Associate Justice Fernanda Lampas Peralta, and concurred in by Associate Justices Francisco P. Acosta and Angelita A. Gacutan; *id*. at 21-22.

[3] *Id.* at 19.

they were denied due process. In a September 20, 2010 order, the CSC Regional Director denied the motion for reconsideration.

The petitioner and Disomimba appealed to the CSC *en banc*. In Decision No. 110581 dated October 10, 2011, the CSC *en banc* affirmed the orders of the CSC Regional Director. When the CSC denied the motion for reconsideration that followed, the petitioner filed a Rule 43 petition for review with the CA.

In its July 11, 2012 resolution,[4] the CA dismissed the petition outright for: (a) failure to state the date of receipt of the copy of the October 10, 2011 CSC decision; and (b) failure to indicate the notary public's office address in the notarial certificates in the verification and certification of non-forum shopping and in the affidavit of service.

After the CA denied[5] her motion for reconsideration,[6] the petitioner filed the present petition.

The petitioner submits that the petition before the CA indicated the date of receipt of the October 10, 2011 CSC decision, and that the failure to indicate the notary public's office address is a mere technicality that does not substantially affect the merits of the case.

We grant the petition.

The petitioner's failure to state the date of receipt of the copy of the October 10, 2011 CSC decision is not fatal to her case since the dates are evident from the records. Besides, we have ruled that the more important material date which must be duly alleged in the petition is the date of receipt of the resolution of denial of the motion for reconsideration, which the petitioner has duly complied with.[7]

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[4] *Supra* note 2.

[5] *Supra* note 3.

[6] *Rollo,* pp. 23-26.

[7] *Acaylar, Jr. v. Harayo,* G.R. No. 176995, July 30, 2008, 560 SCRA 624, 636; and *Security Bank Corporation v. Indiana Aerospace University,* 500 Phil. 51, 60 (2005).

As to the failure to state the notary public's office address, the omission was rectified with the attachment in the motion for reconsideration of the verification and certification of non-forum shopping and of the affidavit of service, with the notary public's office address.[8]

Courts should not be unduly strict in cases involving procedural lapses that do not really impair the proper administration of justice. Since litigation is not a game of technicalities, every litigant should be afforded the amplest opportunity for the proper and just determination of his case, free from the constraints of technicalities. Procedural rules are mere tools designed to facilitate the attainment of justice, and even the Rules of Court expressly mandates that it "shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding."[9]

The demands of justice require the CA to resolve the issues before it, considering that what is at stake is not only the petitioner's position, but her very livelihood. Dismissing the petitioner's appeal could give rise to the impression that the appellate court may be fostering injustice should the appeal turn out to be meritorious. Thus, it is far better and more prudent for the court to excuse a technical lapse and afford the parties a substantive review of the case on appeal, to attain the ends of justice than to dismiss said appeal on technicalities.

Let this case be a reminder to our courts, particularly to the CA, where the inordinate desire to lessen the case load or to clear the dockets may be at the expense of substantive justice; where a case appears to be substantively meritorious and the technical lapses are of the nature that they can be complied with without doing violence to the mandatory provisions of the Rules, the better recourse to follow is to apply the rule of liberality that the Rules of Court provides and to give the deficient party the opportunity to comply, particularly when the amounts and interests involved in the litigation are substantial.

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[8] *Rollo,* pp. 29-30.

[9] RULES OF COURT, Rule 1, Section 6.

WHEREFORE, we **GRANT** the petition. The July 11, 2012 and the December 7, 2012 resolutions of the Court of Appeals in CA-G.R. SP No. 125421 are **REVERSED** and **SET ASIDE.** CA-G.R. SP No. 125421 is **REINSTATED** and **REMANDED** to the Court of Appeals for further proceedings.

SO ORDERED.

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

EN BANC

[A.M. No. RTJ-06-1974. March 19, 2013]
(Formerly A.M. OCA IPI No. 05-2226-RTJ)

CARMEN P. EDAÑO, *complainant, vs.* **JUDGE FATIMA GONZALES-ASDALA and STENOGRAPHER MYRLA DEL PILAR NICANDRO,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; EVADING FINAL JUDGMENT MANIFESTED BY THE FILING OF MULTIPLE MOTIONS FOR RECONSIDERATION IN THE GUISE OF PERSONAL LETTERS, ABHORRED.— [T]he 13 October 2011 letter of respondent (dismissed judge) is in effect her third Motion for Reconsideration. Thus, it should be denied outright if not expunged from the records. x x x [I]t appears to this Court that respondent, in filing multiple Motions for Reconsideration in the guise of personal letters to whoever sits as the Chief Magistrate of the Court, is trifling with the judicial processes to evade the final judgment against her. **WHEREFORE,** the instant third Motion for Reconsideration is hereby **DENIED with FINALITY**. No further pleadings shall be entertained.

APPEARANCES OF COUNSEL

Ramon Maronilla for complainant.
Punzalan & Associates Law Office for Hon. Fatima G. Asdala.
Macarius S. Galutera for Myrla Del Pilar Nicandro.

R E S O L U T I O N

SERENO, C.*J*.:

In a Decision dated 26 July 2007, this Court found Quezon City Regional Trial Court Judge Fatima G. Asdala (respondent) guilty of insubordination and gross misconduct unbefitting a member of the judiciary. Accordingly, she was dismissed from service. The dispositive portion of the Decision reads:

> **IN VIEW WHEREOF**, judgment is hereby rendered:
>
> 1. Respondent Judge Fatima G. Asdala GUILTY of gross insubordination and gross misconduct unbefitting a member of the judiciary and is accordingly DISMISSED from the service with forfeiture of all salaries, benefits and leave credits to which she may be entitled.
>
> x x x x x x x x x
>
> **SO ORDERED**.

On 17 August 2007, respondent filed with this Court a letter[1] addressed to then Chief Justice Reynato S. Puno (Puno) and the Associate Justices of the Court. In her letter, she pleaded for mercy and prayed that she be given one last chance to redeem herself, and that the harshness of her dismissal be tempered with the grant of some of the benefits and leave credits she had earned in her almost 25 years of service in the government.

Before the Court could act on the foregoing letter, respondent wrote another letter[2] to Chief Justice Puno, which was received

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[1] *Rollo,* Vol. 1, pp. 214-222.

[2] *Id.* at 225-229.

by this Court on 10 September 2007. In this letter, respondent begged that she be given the chance to redeem herself within the institution, to wit:

Your Honor, if only I will be given the chance to redeem myself within the institution, I will do everything to prove that I am worth your trust, the position. Please give me the chance Your Honor, at least to stay until I turn 60, for a chance to rebuild my life x x x.[3]

Treating the 17 August 2007 letter as a Motion for Reconsideration, the Court issued its 11 September 2007 Resolution[4] with the following dispositive portion:

IN VIEW WHEREOF, the Court Resolves to **DENY** respondent's motion for reconsideration with **FINALITY**. The Court further Resolves to **GRANT** respondent Asdala, the money equivalent of all her accrued sick and vacation leaves. The dispositive portion of our Decision July 26, 2007 is **MODIFIED** accordingly.

In another Resolution dated 26 November 2007, this Court resolved to note without action respondent's 10 September 2007 letter, "considering that the respondent's motion for reconsideration was already denied with finality in the resolution of September 11, 2007."[5]

On 16 November 2007, the office of Chief Justice Puno received a Memorandum[6] from then Assistant Court Administrator Nimfa C. Vilches stating that in the process of securing the necessary clearance for the Court's 11 September 2007 Resolution, "the Legal Office of the Office of the Court Administrator submitted a list of the several administrative cases against respondent (Annex "B") that are still pending." Thus, the Office of the Court Administrator (OCA) requested that Chief Justice Puno allow it to retain a portion of the

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[3] *Id.* at 228.

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

[5] *Id.* at 238.

[6] *Id.* at 276.

monetary leave benefit of respondent "to answer for any liability that may be adjusted against her in the eight (8) administrative charges."

In a Resolution dated 4 December 2007, this Court ordered the OCA to make a recommendation as to how much to retain from the money equivalent of the accrued leave credits of respondent.

On 5 December 2007, respondent wrote another letter[7] to the OCA praying that the Resolution granting her the money equivalent of all her accrued sick and vacation leaves be implemented as soon as possible. She further added that she was "agreeable to a retention of ₱80,000.00 (inclusive of pre-imposed fine in RTJ-05-1916 (₱40,000); RTJ-00-1546 (₱2,000) from the cash equivalent of my 302.941 leave credits."

In a Resolution dated 11 December 2007,[8] this Court granted respondent's request that ₱80,000 of the money equivalent of her accrued leave credits be retained by the OCA.

On 13 October 2011, another letter [9] was written by respondent to then Chief Justice Renato Corona. In this letter she revealed that eight months after she was dismissed from service, her husband died. So now she prays that "at least the punishment be tempered by granting me the retirement benefits due me for 24 years and 7 months hard work and dedicated government service." Attached to the foregoing letter was a Motion for Reconsideration[10] praying that this Court reconsider its 26 July 2007 Decision.

Respondent's second Motion for Reconsideration was denied by this Court with finality through a Resolution[11] dated 29

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[7] *Id.* at 283-284.

[8] *Id.* at 287.

[9] *Id.* at 293-295.

[10] *Id.* at 296-333.

[11] *Id.* at 406-408.

November 2011. We ruled therein that she had already "admittedly waived her right to ask for the reconsideration of her dismissal."

A year after her second Motion for Reconsideration was denied, respondent filed another 10 October 2012 letter[12] to Chief Justice Maria Lourdes P. A. Sereno. Respondent now requests that she be given half of the retirement benefits that were forfeited in the 26 July 2007 Decision of this Court. She also prays that the ₱100 monthly deductions from her salary for her personal contributions to the GSIS retirement program be returned to her. Supposedly, the GSIS had stopped collecting from the Supreme Court the personal contributions of special members (including judges) since January 1998. Yet, respondent's pay slips revealed that the ₱100 monthly deductions continued until October 2001.

Respondent cites this Court's 9 February 2010 Decision in *Lledo v. Lledo*[13] to support her claim for a refund. In that case, we ordered the GSIS to return to a dismissed government employee his premiums and voluntary deposits plus interest of three per centum per annum. Consequently, respondent herein further requests that her personal contributions to the GSIS from July 1995 to December 1997 be returned to her.

In a Memorandum[14] submitted by the OCA on 30 January 2013, it recommended the following:

1. That the request of respondent for the restitution of one-half of her forfeited benefits be denied

2. That the GSIS be ordered to comment on the letter, as the personal monthly contributions of respondent from July 1995 to December 1997 were directly remitted to it

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[12] *Id.* at 410-418.

[13] A.M. No. P-95-1167.

[14] *Rollo,* Vol. 1, pp. 423-428.

3. That, with respect to the amounts deducted from the salary of respondent from the period January 1998 to October 2001, these were deposited in a separate account being maintained by the OCA and are currently the subject matter of a separate request made by respondent in a case now pending with the OCA

It is clear that the 13 October 2011 letter of respondent is in effect her third Motion for Reconsideration. Thus, it should be denied outright if not expunged from the records. Due to the novelty of some of the issues she raised therein, however, this Court deems it proper to explain why this motion should be denied.

As regards her ₱100 personal monthly contributions to the GSIS from July 1995 to December 1997, considering that these amounts have already been remitted to the GSIS, respondent erred in demanding from this Court the refund of her personal contributions. She should have addressed her letter request/demand to the GSIS, which is the proper forum to decide whether or not she is entitled to the refund of the personal contributions she made from July 1995 to December 1997.

With respect to the amounts deducted from respondent from the period January 1998 to October 2001, it appears from the records of this Court that she has already filed a separate case with the OCA. This specific issue is now best threshed out in the aforesaid matter.

Lastly, it appears to this Court that respondent, in filing multiple Motions for Reconsideration in the guise of personal letters to whoever sits as the Chief Magistrate of the Court, is trifling with the judicial processes to evade the final judgment against her.

WHEREFORE, the instant third Motion for Reconsideration is hereby **DENIED with FINALITY.** No further pleadings shall be entertained.

Respondent Fatima Gonzales-Asdala is **WARNED** not to file any further pleading. A violation hereof shall be dealt with more severely.

SO ORDERED.

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

Del Castillo,[*] *J.*, no part.

EN BANC

[G.R. No. 202202. March 19, 2013]

SILVERIO R. TAGOLINO, *petitioner, vs.* **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL and LUCY MARIE TORRES-GOMEZ,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE (OEC); REMEDIES TO ASSAIL A CANDIDATE'S BID FOR PUBLIC OFFICE; PETITION FOR DISQUALIFICATION UNDER SEC. 68; COMMISSION OF CERTAIN ACTS OF DISQUALIFICATION REFERRING TO ELECTION OFFENSES.— The Omnibus Election Code (OEC) provides for certain remedies to assail a candidate's bid for public office. Among these which obtain particular significance to this case are: (1) a petition for disqualification under Section 68; and (2) a petition to deny due course to and/or cancel a certificate of candidacy under Section 78. The distinctions between the two are well-perceived. Primarily, a disqualification

[*] No part. Penned the Court of Appeals Orders in A.M. No. RTJ-06-1974 dated 21 April 2006, 10 May 2006, 19 May 2006, 24 May 2006, 25 May 2006, and 05 June 2006.

case under Section 68 of the OEC is hinged on either: (*a*) a candidate's possession of a permanent resident status in a foreign country; or (*b*) his or her commission of certain acts of disqualification. Anent the latter, the prohibited acts under Section 68 refer to election offenses under the OEC, and not to violations of other penal laws. In particular, these are: (1) giving money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (2) committing acts of terrorism to enhance one's candidacy;. (3) spending in one's election campaign an amount in excess of that allowed by the OEC; (4) soliciting, receiving or making any contribution prohibited under Sections 89, 95, 96, 97 and 104 of the OEC; and (5) violating Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6 of the OEC. Accordingly, the same provision (Section 68) states that any candidate who, in an action or protest in which he or she is a party, is declared by final decision of a competent court guilty of, or found by the COMELEC to have committed any of the foregoing acts shall be disqualified from continuing as a candidate for public office, or disallowed from holding the same, if he or she had already been elected. It must be stressed that one who is disqualified under Section 68 is still technically considered to have been a candidate, albeit proscribed to continue as such only because of supervening infractions which do not, however, deny his or her statutory eligibility. In other words, while the candidate's compliance with the eligibility requirements as prescribed by law, such as age, residency, and citizenship, is not in question, he or she is, however, ordered to discontinue such candidacy as a form of penal sanction brought about by the commission of the above-mentioned election offenses.

2. ID.; ID.; ID.; ID.; PETITION TO DENY DUE COURSE TO/CANCEL A CERTIFICATE OF CANDIDACY (CoC) UNDER SEC. 78; PREMISED ON MISREPRESENTATION OF ANY OF THE MATERIAL QUALIFICATIONS REQUIRED OF THE POSITION ASPIRED; ELUCIDATED.— [A] denial of due course to and/or cancellation of a CoC proceeding under Section 78 of the OEC is premised on a person's misrepresentation of any of the material qualifications required for the elective office aspired for. It is not enough that a person lacks the relevant qualification; he or she must have also made a false

representation of the same in the CoC. x x x **Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate.** x x x Corollary thereto, it must be noted that the deliberateness of the misrepresentation, much less one's intent to defraud, is of bare significance in a Section 78 petition as it is enough that the person's declaration of a material qualification in the CoC be false. In this relation, jurisprudence holds that an express finding that the person committed any deliberate misrepresentation is of little consequence in the determination of whether one's CoC should be deemed cancelled or not. What remains material is that the petition essentially seeks to deny due course to and/or cancel the CoC on the basis of one's ineligibility and that the same be granted without any qualification. Pertinently, while a disqualified candidate under Section 68 is still considered to have been a candidate for all intents and purposes, on the other hand, a person whose CoC had been denied due course to and/or cancelled under Section 78 is deemed to have not been a candidate at all. The reason being is that a cancelled CoC is considered void *ab initio* and thus, cannot give rise to a valid candidacy and necessarily, to valid votes.

3. ID.; ID.; ID.; CANDIDATE SUBSTITUTION; SEC. 77 OF THE OEC REQUIRES THAT BEFORE SUBSTITUTION, THE CANDIDATE TO BE SUBSTITUTED MUST BE AN ELIGIBLE "OFFICIAL CANDIDATE" WITH VALID CoC.— Section 77 of the OEC provides that if an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, a person belonging to and certified by the same political party may file a CoC to replace the candidate who died, withdrew or was disqualified. x x x Evidently, Section 77 requires that there be an "official candidate" before candidate substitution proceeds. Thus, whether the ground for substitution is death, withdrawal or disqualification of a candidate, the said section unequivocally states that only an official candidate of a registered or accredited party may be substituted. As defined under Section 79(a) of the OEC, the term "candidate" refers to any person aspiring for or seeking an elective public office **who**

has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties. Clearly, the law requires that one must have validly filed a CoC in order to be considered a candidate. The requirement of having a CoC obtains even greater importance if one considers its nature. In particular, a CoC formalizes not only a person's public declaration to run for office but evidences as well his or her statutory eligibility to be elected for the said post. x x x In this regard, the CoC is the document which formally accords upon a person the status of a candidate. In other words, absent a valid CoC one is not considered a candidate under legal contemplation. x x x Considering that Section 77 requires that there be a candidate in order for substitution to take place, as well as the precept that a person without a valid CoC is not considered as a candidate at all, it necessarily follows that if a person's CoC had been denied due course to and/or cancelled, he or she cannot be validly substituted in the electoral process. The existence of a valid CoC is therefore a condition *sine qua non* for a disqualified candidate to be validly substituted.

4. **ID.; ID.; ID.; ID.; CANDIDATE DISQUALIFIED UNDER SEC. 68 CAN BE VALIDLY SUBSTITUTED WHILE CANDIDATE DISQUALIFIED UNDER SEC. 78 CANNOT BE SUBSTITUTED.—** [T]here lies a clear-cut distinction between a disqualification case under Section 68 and denial of due course to and/or cancellation of COC case under Section 78 *vis-a-vis* their respective effects on candidate substitution under Section 77. As explained in the case of *Miranda v. Abaya (Miranda),* a candidate who is disqualified under Section 68 can be validly substituted pursuant to Section 77 because he remains a candidate until disqualified; but a person whose CoC has been denied due course to and/or cancelled under Section 78 cannot be substituted because he is not considered a candidate. Stated differently, since there would be no candidate to speak of under a denial of due course to and/or cancellation of a CoC case, then there would be no candidate to be substituted; the same does not obtain, however, in a disqualification case since there remains to be a candidate to be substituted, although his or her candidacy is discontinued. On this note, it is equally revelatory that Section 77 expressly enumerates the instances where substitution is permissible, that is when an official candidate of a registered or accredited political party **"dies,**

withdraws or is disqualified for any cause.” Noticeably, material misrepresentation cases are not included in the said section and therefore, cannot be a valid basis to proceed with candidate substitution.

5. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; COMMITTED BY THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) WHEN IT DELIBERATELY ADOPTED THE COMELEC *EN BANC'S* FLAWED FINDINGS IN CASE AT BAR.—** Fundamental is the rule that grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence. While it is well-recognized that the HRET has been empowered by the Constitution to be the “sole judge” of all contests relating to the election, returns, and qualifications of the members of the House, the Court maintains jurisdiction over it to check “whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction” on the part of the latter. In other words, when the HRET utterly disregards the law and settled precedents on the matter before it, it commits a grave abuse of discretion. x x x In this regard, the Court does not endeavor to denigrate nor undermine the HRET's independence; rather, it merely fulfills its duty to ensure that the Constitution and the laws are upheld through the exercise of its power of judicial review. In fine, the Court observes that the HRET wantonly disregarded the law by deliberately adopting the COMELEC *En Banc's* flawed findings regarding private respondent's eligibility to run for public office which essentially stemmed from her substitution. In this light, it cannot be gainsaid that the HRET gravely abused its discretion.

6. **POLITICAL LAW; CONSTITUTIONAL LAW; HRET; NOT BOUND BY COMELEC PRONOUNCEMENTS RELATIVE TO THE QUALIFICATIONS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES; DISCUSSED.—** [T]he HRET is not bound by previous COMELEC pronouncements relative to the qualifications of the Members of the House. Being the sole judge of all contests relating to the election, returns, and *qualifications* of its respective members, the HRET cannot be tied down by COMELEC resolutions, else its constitutional mandate be circumvented and rendered nugatory. x x x Notably,

the phrase "election, returns, and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. More particularly, the term "qualifications" refers to matters that could be raised in *a quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility, or the inadequacy of his certificate of candidacy. As used in Section 74 of the OEC, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office. In this relation, private respondent's own qualification to run for public office - which was inextricably linked to her husband's own qualifications due to her substitution — was the proper subject of *quo warranto* proceedings falling within the exclusive jurisdiction of the HRET and independent from any previous proceedings before the COMELEC, lest the jurisdictional divide between the two be blurred.

LEONARDO-DE CASTRO, *J.*, *dissenting opinion:*

1. POLITICAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) RULES; ELECTION PROTEST OR *QUO WARRANTO*; PERIOD TO FILE; PROCLAMATION OF DULY ELECTED REPRESENTATIVE MAY NO LONGER BE ASSAILED AFTER 10 DAYS THEREFROM.— I vote to deny the petition of Silverio R. Tagolino on the ground that after the lapse of the reglementary period of ten (10) days from the date of proclamation of respondent Lucy Marie Torres-Gomez as the duly elected Representative of the Fourth Legislative District of Leyte, the said proclamation can no longer be assailed by an election protest or a petition for *quo warranto*. x x x As correctly asserted by respondent Gomez in her Verified Answer filed before the HRET, the Petition for *Quo Warranto* should have been dismissed outright pursuant to Rule 21 of the Rules of the HRET. x x x This Court has emphasized the importance of compliance with the HRET Rules prescribing reglementary periods to be observed by the parties in an election contest to expedite the disposition of election controversies so as not to frustrate the will of the electorate. In *Hofer v. House of Representatives Electoral Tribunal,* the Court sustained the dismissal by the HRET of the election protest for failure to

comply strictly with the period prescribed by the HRET Rules. Similarly, *Perez v. Commission on Elections* held that remedies are unavailing once the prescriptive period to bring the appropriate petition has set in. x x x The HRET and this Court cannot set aside at will the HRET Rules mandating the timely filing of election contests. Otherwise, a dangerous precedent will be set that will cause uncertainty in the application of the HRET Rules and instability in the holding of an elective post by a proclaimed winning candidate that may adversely affect public service.

2. **ID.; ELECTION LAWS; OMNIBUS ELECTION CODE (OEC); CANDIDATE SUBSTITUTION; PROPER AS CANDIDATE TO BE SUBSTITUTED WAS MERELY DISQUALIFIED, HIS CERTIFICATE OF CANDIDACY (COC) *SANS* DELIBERATE MISREPRESENTATION WAS NOT CANCELLED UNDER SEC. 78.—** [T]he substantive issue extensively discussed in the *ponencia* x x x particularly as to the "divergent effects of disqualification and denial of due course to and/or cancellation of COC (Certificate of Candidacy) cases *vis-a-vis* candidate substitution" is inappropriate. Firstly, the certificate of candidacy of Richard Gomez, the husband of respondent Gomez, was not cancelled by the COMELEC. Secondly, the decision by the COMELEC not to cancel said certificate of candidacy was proper as the COMELEC did not reach any finding that Richard Gomez **deliberately** committed a misrepresentation, which is a requisite for the cancellation of a certificate of candidacy under Section 78 of the Omnibus Election Code. x x x Since the COMELEC did not cancel the certificate of candidacy of Richard Gomez but only disqualified him from running in the elections, the substitution by respondent Gomez of Richard Gomez squarely falls within the ambit of Section 77 of the Omnibus Election Code (OEC), which uses the broad language "disqualification for any cause."

3. **ID.; LEGISLATIVE DEPARTMENT; HRET RULES; PETITION FOR *QUO WARRANTO*; NOT PROPER REMEDY TO ASSAIL VALIDITY OF CANDIDATE SUBSTITUTION AS CANDIDATE TO BE SUBSTITUTED WAS QUALIFIED.—** Regarding the issue of whether a Petition for *Quo Warranto* is a proper legal remedy to assail the validity of the substitution of a candidate under Section 77 of the OEC, it suffices here to

state that, under Rule 17 of the HRET Rules, the grounds for a Petition for *Quo Warranto* are ineligibility to run for a public office or disloyalty to the Republic of the Philippines. Pertinently, Section 6, Article VI of the Constitution, which provides for the qualifications of a Member of the House of Representatives, states as follows: Section 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereat for a period of not less than one year immediately preceding the day of the election. The above-quoted provision refers to the personal attributes of a candidate. The *ponencia* did not find any of the above qualifications absent in the case of respondent Gomez.

ABAD, *J.*, *dissenting opinion:*

POLITICAL LAW; CONSTITUTIONAL LAW; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); THE HRET HAS NO AUTHORITY TO REVIEW FINAL AND EXECUTORY RESOLUTIONS RENDERED BY THE COMELEC PURSUANT TO ITS POWERS UNDER THE CONSTITUTION.— The real issue in this case is whether or not the HRET can review and reverse a COMELEC Decision involving a member of the House of Representatives that had become final and executory. x x x The HRET has no authority to review final and executory resolutions or decisions of the COMELEC that it rendered pursuant to its powers under the Constitution, no matter if such resolutions or decisions are erroneous. The parties cannot by agreement confer such authority on HRET. Neither the HRET nor the Court can set aside the COMELEC's final and executory resolutions that paved the way for Lucy Gomez to substitute her husband.

APPEARANCES OF COUNSEL

G.E. Garcia Law Office and *Chang & Padilla Law Office* for petitioner.

The Solicitor General for public respondent.

Gana Atienza Avisado Law Offices for private respondent.

D E C I S I O N

PERLAS-BERNABE, *J*.:

Assailed in this Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court is the March 22, 2012 Decision[1] of the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 10-031 (QW) which declared the validity of private respondent Lucy Marie Torres-Gomez's substitution as the Liberal Party's replacement candidate for the position of Leyte Representative (Fourth Legislative District) in lieu of Richard Gomez.

The Facts

On November 30, 2009, Richard Gomez (Richard) filed his certificate of candidacy[2] (CoC) with the Commission on Elections (COMELEC), seeking congressional office as Representative for the Fourth Legislative District of Leyte under the ticket of the Liberal Party. Subsequently, on December 6, 2009, one of the opposing candidates, Buenaventura Juntilla (Juntilla), filed a Verified Petition,[3] alleging that Richard, who was actually a resident of Colgate Street, East Greenhills, San Juan City, Metro Manila, misrepresented in his CoC that he resided in 910 Carlota

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[1] *Rollo,* pp. 48-65. Signed by Supreme Court Associate Justices Presbitero J. Velasco, Jr., Diosdado M. Peralta, and Lucas P. Bersamin, Representatives Franklin P. Bautista, Joselito Andrew R. Mendoza; Justin Marc SB. Chipeco, Rufus B. Rodriguez (dissented), and Ma. Theresa B. Bonoan-David (abstained).

[2] *Id.* at 257.

[3] *Id.* at 246-253.

Hills, Can-adieng, Ormoc City. In this regard, Juntilla asserted that Richard failed to meet the one (1) year residency requirement under Section 6, Article VI[4] of the 1987 Philippine Constitution (Constitution) and thus should be declared disqualified/ineligible to run for the said office. In addition, Juntilla prayed that Richard's CoC be denied due course and/or cancelled.[5]

On February 17, 2010, the COMELEC First Division rendered a Resolution[6] granting Juntilla's petition without any qualification. The dispositive portion of which reads:

> **WHEREFORE,** premises considered, the Commission **RESOLVED,** as it hereby **RESOLVES,** to **GRANT** the Petition to Disqualify Candidate for Lack of Qualification filed by **BUENAVENTURA O. JUNTILLA** against **RICHARD I. GOMEZ.** Accordingly, **RICHARD I. GOMEZ** is **DISQUALIFIED** as a candidate for the Office of Congressman, Fourth District of Leyte, for lack of residency requirement.
>
> **SO ORDERED.**

Aggrieved, Richard moved for reconsideration but the same was denied by the COMELEC *En Banc* through a Resolution dated May 4, 2010.[7] Thereafter, in a Manifestation of even date, Richard accepted the said resolution with finality "in order

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[4] Sec. 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and **a resident thereof for a period of not less than one year immediately preceding the day of the election.** (Emphasis supplied)

[5] *Rollo*, pp. 252-253.

[6] *Id.* at 259-265. Signed by Presiding Commissioner Rene V. Sarmiento, Commissioners Armando C. Velasco and Gregorio Y. Larrazabal (no part).

[7] *Id.* at 266-277. Penned by Commissioner Elias R. Yusoph, with Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Nicodemo T. Ferrer, and Armando C. Velasco, concurring, Commissioners Jose A.R. Melo and Gregorio Y. Larrazabal, no part.

to enable his substitute to facilitate the filing of the necessary documents for substitution."[8]

On May 5, 2010, Lucy Marie Torres-Gomez (private respondent) filed her CoC[9] together with a Certificate of Nomination and Acceptance[10] from the Liberal Party endorsing her as the party's official substitute candidate vice her husband, Richard, for the same congressional post. In response to various letter-requests submitted to the COMELEC's Law Department (Law Department), the COMELEC *En Banc,* in the exercise of its administrative functions, issued Resolution No. 8890[11] on May 8, 2010, approving, among others, the recommendation of the said department to allow the substitution of private respondent. The recommendation reads:

STUDY AND OBSERVATION

On the same date, this Department received an Opposition from Mr. Buenaventura O. Juntilla, thru his counsel, opposing the candidacy of Ms. Lucy Marie Torres Gomez, as a substitute candidate for Mr. Richard I. Gomez.

The crux of the opposition stemmed from the issue that there should be no substitution because there is no candidate to substitute for.

It must be stressed that the resolution of the First Division, this Commission, in SPA No. 09-059 speaks for disqualification of candidate Richard I. Gomez and **not of cancellation** of his Certificate of Candidacy:

> 'Wherefore, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to GRANT the Petition to Disqualify Candidate for Lack of Qualification filed x x x against RICHARD I. GOMEZ. Accordingly, RICHARD I. GOMEZ **is DISQUALIFIED** as a candidate for the Office of Congressman, Fourth District of Leyte, for lack of residency requirement.'

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[8] *Id.* at 278-280.

[9] *Id.* at 297.

[10] *Id.* at 298.

[11] *Id.* at 132-139.

The said resolution was affirmed by the Commission *En Banc* on May 04, 2010.

The disqualification of a candidate does not automatically cancel one's certificate of candidacy, especially when it is nominated by a political party. In effect, the political party is still allowed to substitute the candidate whose candidacy was declared disqualified. After all, the right to substitute is a privilege given to a political party to exercise and not dependent totally to a candidate.

Nonetheless, in case of doubt, the same must always be resolved to the qualification of a candidate to run in the public office.

The substitution complied with the requirements provided under Section 12 in relation to Section 13 of Comelec Resolution No. 8678 dated October 6, 2009.

x x x x x x x x x

In view of the foregoing, the Law Department RECOMMENDS the following:

x x x x x x x x x

2. **TO ALLOW CANDIDATE LUCY MARIE TORRES GOMEZ AS A SUBSTITUTE CANDIDATE FOR RICHARD GOMEZ;** (Emphasis and underscoring supplied)

x x x x x x x x x

The following day, or on May 9, 2010, Juntilla filed an Extremely Urgent Motion for Reconsideration[12] (May 9, 2010 Motion) of the above-mentioned COMELEC *En Banc* resolution.

Pending resolution of Juntilla's May 9, 2010 Motion, the national and local elections were conducted as scheduled on May 10, 2010. During the elections, Richard, whose name remained on the ballots, garnered 101,250 votes while his opponents, namely, Eufrocino Codilla, Jr. and herein petitioner Silverio Tagolino, obtained 76,549 and 493 votes, respectively.[13] In view of the aforementioned substitution, Richard's votes were credited in

[12] *Id.* at 311-326.

[13] *Id.* at 98.

favor of private respondent and as a result, she was proclaimed the duly-elected Representative of the Fourth District of Leyte.

On May 11, 2010, Juntilla filed an Extremely Urgent Motion to resolve the pending May 9, 2010 Motion relative to Resolution No. 8890.[14] The said motion, however, remained unacted.

On May 24, 2010, petitioner filed a Petition[15] for *quo warranto* before the HRET in order to oust private respondent from her congressional seat, claiming that: (1) she failed to comply with the one (1) year residency requirement under Section 6, Article VI of the Constitution considering that the transfer of her voter registration from San Rafael, Bulacan[16] to the Fourth District of Leyte was only applied for on July 23, 2009; (2) she did not validly substitute Richard as his CoC was void *ab initio*; and (3) private respondent's CoC was void due to her non-compliance with the prescribed notarial requirements *i.e.,* she failed to present valid and competent proof of her identity before the notarizing officer.[17]

In her Verified Answer,[18] private respondent denied petitioner's allegations and claimed that she validly substituted her husband in the electoral process. She also averred that she was personally known to the notary public who notarized her CoC, one Atty. Edgardo Cordeno, and thus, she was not required to have presented any competent proof of identity during the notarization of the said document. Lastly, she asserted that despite her marriage to Richard and exercise of profession in Metro Manila, she continued to maintain her residency in Ormoc City which was the place where she was born and raised.

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[14] See *Torres-Gomez v. Codilla,* G.R. No. 195191, March 20, 2012, 668 SCRA 600.

[15] *Rollo,* pp. 85-93.

[16] Registered in Precinct No. 0004A of San Rafael, Bulacan.

[17] *Rollo,* pp. 87-92.

[18] *Id.* at 102-119.

During the preliminary conference, and as shown in the Preliminary Conference Order dated September 2, 2010, the parties agreed on the following issues for resolution:

1. Whether or not the instant petition for *quo warranto* is meritorious;
2. Whether or not the substitution of respondent is valid;
3. Whether or not a petition for *quo warranto* can be used as a substitute for failure to file the necessary petition for disqualification with the COMELEC;
4. Whether or not respondent's COC was duly subscribed; and
5. Whether or not respondent is ineligible for the position of Representative of the Fourth District of Leyte for lack of residency requirement.[19]

Ruling of the HRET

After due proceedings, the HRET issued the assailed March 22, 2012 Decision[20] which dismissed the *quo warranto* petition and declared that private respondent was a qualified candidate for the position of Leyte Representative (Fourth Legislative District). It observed that the resolution denying Richard's candidacy *i.e.,* the COMELEC First Division's February 17, 2010 Resolution, spoke of disqualification and not of CoC cancellation. Hence, it held that the substitution of private respondent in lieu of Richard was legal and valid.[21] Also, it upheld the validity of private respondent's CoC due to petitioner's failure to controvert her claim that she was personally known to the notary public who notarized her CoC.[22] Finally, the HRET ruled that while it had been admitted that private respondent resides in Colgate Street, San Juan City and lived in San Rafael, Bulacan, the fact was she continued to retain her domicile in

[19] *Id.* at 54-55.

[20] *Id.* at 48-65.

[21] *Id.* at 56.

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

Ormoc City given that her absence therefrom was only temporary.

Hence, the instant petition.

Issues Before the Court

The crux of the present controversy is whether or not the HRET gravely abused its discretion in finding that Richard was validly substituted by private respondent as candidate for Leyte Representative (Fourth Legislative District) in view of the former's failure to meet the one (1) year residency requirement provided under Section 6, Article VI of the Constitution.

It is petitioner's submission that the HRET gravely abused its discretion when it upheld the validity of private respondent's substitution despite contrary jurisprudence holding that substitution is impermissible where the substituted candidate's CoC was denied due course to and/or cancelled, as in the case of Richard. On the other hand, respondents maintain that Richard's CoC was not denied due course to and/or cancelled by the COMELEC as he was only "disqualified" and therefore, was properly substituted by private respondent.

Ruling of the Court

The petition is meritorious.

A. Distinction between a petition for disqualification and a petition to deny due course to/cancel a certificate of candidacy

The Omnibus Election Code[23] (OEC) provides for certain remedies to assail a candidate's bid for public office. Among these which obtain particular significance to this case are: (1) a petition for disqualification under Section 68; and (2) a petition to deny due course to and/or cancel a certificate of candidacy

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[23] BATAS PAMBANSA BILANG No. 881, AS AMENDED.

under Section 78. The distinctions between the two are well-perceived.

Primarily, a disqualification case under Section 68 of the OEC is hinged on either: (*a*) a candidate's possession of a permanent resident status in a foreign country;[24] or (*b*) his or her commission of certain acts of disqualification. Anent the latter, the prohibited acts under Section 68 refer to election offenses under the OEC, and not to violations of other penal laws.[25] In particular, these are: (1) giving money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (2) committing acts of terrorism to enhance one's candidacy; (3) spending in one's election campaign an amount in excess of that allowed by the OEC; (4) soliciting, receiving or making any contribution prohibited under Sections 89, 95, 96, 97 and 104 of the OEC; and (5) violating Sections 80,[26] 83,[27] 85,[28] 86[29] and 261, paragraphs d,[30] e,[31] k,[32] v,[33] and cc, sub-

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[24] The exception to this is when the said status is waived. Sec. 68 of the OEC partly provides:

Sec. 68. Disqualifications. — x x x Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

[25] *Aratea v. COMELEC,* G.R. No. 195229, October 9, 2012.

[26] Refers to election campaign or political activity outside the campaign period.

[27] Refers to the removal, destruction or defacement of lawful election propaganda.

[28] Refers to certain forms of election propaganda.

[29] Refers to violation of rules and regulations on election propaganda through mass media.

[30] Refers to coercion of subordinates.

[31] Refers to threats, intimidation, terrorism, use of fraudulent device or other forms of coercion.

[32] Refers to unlawful electioneering.

[33] Refers to the release, disbursement or expenditure of public funds.

paragraph 6[34] of the OEC. Accordingly, the same provision (Section 68) states that any candidate who, in an action or protest in which he or she is a party, is declared by final decision of a competent court guilty of, or found by the COMELEC to have committed any of the foregoing acts shall be disqualified from continuing as a candidate for public office, or disallowed from holding the same, if he or she had already been elected.[35]

It must be stressed that one who is disqualified under Section 68 is still technically considered to have been a candidate, albeit proscribed to continue as such only because of supervening infractions which do not, however, deny his or her statutory eligibility. In other words, while the candidate's compliance with the eligibility requirements as prescribed by law, such as age, residency, and citizenship, is not in question, he or she is, however, ordered to discontinue such candidacy as a form of penal sanction brought about by the commission of the above-mentioned election offenses.

On the other hand, a denial of due course to and/or cancellation of a CoC proceeding under Section 78 of the OEC[36] is premised on a person's misrepresentation of any of the material qualifications required for the elective office aspired for. It is not enough that a person lacks the relevant qualification; he or she must have also made a false representation of the same

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[34] Refers to the solicitation of votes or undertaking any propaganda on the day of the election.

[35] See BATAS PAMBANSA BILANG NO. 881, AS AMENDED, Section 68.

[36] Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material misrepresentation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after notice and hearing, not later than fifteen days before the election.

in the CoC.[37] The nature of a Section 78 petition was discussed in the case of *Fermin v. COMELEC*,[38] where the Court illumined:

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. **Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. <u>If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate.</u>** Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate. (Emphasis supplied)

Corollary thereto, it must be noted that the deliberateness of the misrepresentation, much less one's intent to defraud, is of bare significance in a Section 78 petition as it is enough that the person's declaration of a material qualification in the CoC be false. In this relation, jurisprudence holds that an express finding that the person committed any deliberate misrepresentation is of little consequence in the determination of whether one's CoC should be deemed cancelled or not.[39] What remains material is that the petition essentially seeks to deny due course to and/or cancel the CoC on the basis of one's ineligibility and that the same be granted without any qualification.[40]

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[37] *Talaga v. COMELEC,* G.R. Nos. 196804 and 197015, October 9, 2012, citing *Fermin v. COMELEC,* G.R. No. 179695, December 18, 2008, 574 SCRA 782.

[38] *Fermin v. COMELEC, id.*

[39] See *Miranda v. Abaya,* 370 Phil. 642.

[40] *Id.*

Pertinently, while a disqualified candidate under Section 68 is still considered to have been a candidate for all intents and purposes, on the other hand, a person whose CoC had been denied due course to and/or cancelled under Section 78 is deemed to have not been a candidate at all. The reason being is that a cancelled CoC is considered void *ab initio* and thus, cannot give rise to a valid candidacy and necessarily, to valid votes.[41] In *Talaga v. COMELEC*[42] (Talaga), the Court ruled that:

> x x x While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, a person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC.

The foregoing variance gains utmost importance to the present case considering its implications on candidate substitution.

B. Valid CoC as a condition sine qua non for candidate substitution

Section 77 of the OEC provides that if an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, a person belonging to and certified by the same political party may file a CoC to replace the candidate who died, withdrew or was disqualified. It states that:

> Sec. 77. Candidates in case of death, disqualification or withdrawal of another. — If after the last day for the filing of certificates of candidacy, an **official candidate** of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. (Emphasis supplied)

Evidently, Section 77 requires that there be an "official candidate" before candidate substitution proceeds. Thus, whether the ground for substitution is death, withdrawal or disqualification of a candidate, the said section unequivocally states that only

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[41] *Supra* note 25, citing *Bautista v. COMELEC,* 359 Phil. 1, 16 (1998).

[42] *Supra* note 37.

an official candidate of a registered or accredited party may be substituted.[43]

As defined under Section 79 (a) of the OEC, the term "candidate" refers to any person aspiring for or seeking an elective public office **who has filed a certificate of candidacy** by himself or through an accredited political party, aggroupment, or coalition of parties. Clearly, the law requires that one must have validly filed a CoC in order to be considered a candidate. The requirement of having a CoC obtains even greater importance if one considers its nature. In particular, a CoC formalizes not only a person's public declaration to run for office but evidences as well his or her statutory eligibility to be elected for the said post. In *Sinaca v. Mula*,[44] the Court has illumined:

> A certificate of candidacy is in the **nature of a formal manifestation** to the whole world of the candidate's political creed or lack of political creed. **It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned <u>and</u> that he is eligible for the office,** the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated. (Emphasis and underscoring supplied.)

In this regard, the CoC is the document which formally accords upon a person the status of a candidate. In other words, absent a valid CoC one is not considered a candidate under legal contemplation. As held in *Talaga*:[45]

> x x x a person's declaration of his intention to run for public office and his affirmation that he possesses the eligibility for the position he seeks to assume, followed by the timely filing of such declaration, constitute a **valid CoC that render the person making the declaration a valid or official candidate.** (Emphasis supplied)

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[43] *Id.*

[44] 373 Phil. 896, 908, citing Ruperto G. Marting, The Revised Election Code with Annotations 41 (First Edition).

[45] *Supra* note 37.

Considering that Section 77 requires that there be a candidate in order for substitution to take place, as well as the precept that a person without a valid CoC is not considered as a candidate at all, it necessarily follows that if a person's CoC had been denied due course to and/or cancelled, he or she cannot be validly substituted in the electoral process. The existence of a valid CoC is therefore a condition *sine qua non* for a disqualified candidate to be validly substituted.[46]

C. Divergent effects of disqualification and denial of due course to and/or cancellation of COC cases vis-à-vis candidate substitution

Proceeding from the foregoing discourse, it is evident that there lies a clear-cut distinction between a disqualification case under Section 68 and denial of due course to and/or cancellation of COC case under Section 78 *vis-à-vis* their respective effects on candidate substitution under Section 77.

As explained in the case of *Miranda v. Abaya*[47] (*Miranda*), a candidate who is disqualified under Section 68 can be validly substituted pursuant to Section 77 because he remains a candidate until disqualified; but a person whose CoC has been denied due course to and/or cancelled under Section 78 cannot be substituted because he is not considered a candidate.[48] Stated differently, since there would be no candidate to speak of under a denial of due course to and/or cancellation of a CoC case, then there would be no candidate to be substituted; the same does not obtain, however, in a disqualification case since there remains to be a candidate to be substituted, although his or her candidacy is discontinued.

On this note, it is equally revelatory that Section 77 expressly enumerates the instances where substitution is permissible, that is when an official candidate of a registered or accredited political

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[46] *Supra* notes 25 and 37.

[47] *Supra* note 39.

[48] *Id.*

party "**dies, withdraws or is disqualified for any cause.**" Noticeably, material misrepresentation cases are not included in the said section and therefore, cannot be a valid basis to proceed with candidate substitution.

D. Application to the case at bar

In this case, it is undisputed that Richard was disqualified to run in the May 10, 2010 elections due to his failure to comply with the one year residency requirement.[49] The confusion, however, stemmed from the use of the word "disqualified" in the February 17, 2010 Resolution of the COMELEC First Division, which was adopted by the COMELEC *En Banc* in granting the substitution of private respondent, and even further perpetuated by the HRET in denying the *quo warranto* petition. In short, a finding that Richard was merely disqualified — and not that his CoC was denied due course to and/or cancelled — would mean that he could have been validly substituted by private respondent, thereby legitimizing her candidacy.

Yet the fact that the COMELEC First Division's February 17, 2010 Resolution did not explicitly decree the denial of due course to and/or cancellation of Richard's CoC should not have obviated the COMELEC *En Banc* from declaring the invalidity of private respondent's substitution. It should be stressed that the clear and unequivocal basis for Richard's "disqualification" is his failure to comply with the residency requirement under Section 6, Article VI of the Constitution which is a ground for the denial of due course to and/or cancellation a CoC under Section 78 of the OEC, not for disqualification.[50] As earlier mentioned, the material misrepresentation contemplated under a Section 78 petition refers to statements affecting one's qualifications for elective office such as age, **residence** and citizenship or non-possession of natural-born Filipino status.[51]

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[49] *Rollo,* p. 264.

[50] *Fermin v. COMELEC, supra* note 37.

[51] *Gonzalez v. COMELEC,* G.R. No. 192856, March 8, 2011, 644 SCRA 761, 775-776.

There is therefore no legal basis to support a finding of disqualification within the ambit of election laws. Accordingly, given Richard's non-compliance with the one year residency requirement, it cannot be mistaken that the COMELEC First Division's unqualified grant of Juntilla's "Verified Petition to Disqualify Candidate for Lack of Qualification"[52] — which prayed that the COMELEC declare Richard "DISQUALIFIED and INELIGIBLE from seeking the office of Member of the House of Representatives" and "x x x **that [his] Certificate of Candidacy x x x be DENIED DUE COURSE and/or CANCELLED**"[53] — carried with it the denial of due course to and/or cancellation of Richard's CoC pursuant to Section 78.

Case law dictates that if a petition prays for the denial of due course to and/or cancellation of CoC and the same is granted by the COMELEC without any qualification, the cancellation of the candidate's CoC is in order. This is precisely the crux of the *Miranda* ruling wherein the Court, in upholding the COMELEC *En Banc's* nullification of the substitution in that case, decreed that the COMELEC Division's unqualified grant of the petition necessarily included the denial of due course to and/or cancellation of the candidate's CoC, notwithstanding the use of the term "disqualified" in the COMELEC Division's resolution, as the foregoing was prayed for in the said petition:

> The question to settle next is whether or not aside from Joel "Pempe" Miranda being disqualified by the COMELEC in its May 5, 1998 resolution, his certificate of candidacy had likewise been denied due course and cancelled.
>
> The Court rules that it was.
>
> Private respondent's petition in SPA No. 98-019 specifically prayed for the following:
>
> WHEREFORE, it is respectfully prayed that the Certificate of Candidacy filed by respondent for the position of Mayor

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[52] *Rollo*, p. 246.

[53] *Id.* at 252-253; emphasis and underscoring supplied.

> for the City of Santiago **be not given due course and/or cancelled.**
>
> Other reliefs just and equitable in the premises are likewise prayed for.
>
> In resolving the petition filed by private respondent specifying a very particular relief, the COMELEC ruled favorably in the following manner:
>
> WHEREFORE, in view of the foregoing, the Commission (FIRST DIVISION) **GRANTS the Petition.** Respondent JOSE "Pempe" MIRANDA is hereby **DISQUALIFIED** from running for the position of mayor of Santiago City, Isabela, in the May 11, 1998 national and local elections.
>
> SO ORDERED.
>
> From a plain reading of the dispositive portion of the COMELEC resolution of May 5, 1998 in SPA No. 98-019, **it is sufficiently clear that the prayer specifically and particularly sought in the petition was GRANTED, there being no qualification on the matter whatsoever.** The disqualification was simply ruled over and above the granting of the specific prayer for denial of due course and cancellation of the certificate of candidacy.
>
> x x x x x x x x x
>
> **There is no dispute that the complaint or petition filed by private respondent in SPA No. 98-019 is one to deny due course and to cancel the certificate of candidacy of Jose "Pempe" Miranda.** There is likewise no question that the **said petition was GRANTED without any qualification whatsoever.** It is rather clear, therefore, that whether or not the COMELEC granted any further relief in SPA No. 98-019 by disqualifying the candidate, **the fact remains that the said petition was granted and that the certificate of candidacy of Jose "Pempe" Miranda was denied due course and cancelled.** (Emphasis and underscoring supplied)

The same rule was later discussed in the case of *Talaga*, *viz.*:

> 3. Granting without any qualification of petition in SPA No. 09-029(DC) manifested COMELEC's intention to declare Ramon disqualified and to cancel his CoC

x x x x x x x x x

In *Miranda v. Abaya,* the specific relief that the petition prayed for was that **the CoC "be not given due course and/or cancelled".** The COMELEC categorically granted "the petition" and then pronounced — in apparent contradiction — that Joel Pempe Miranda was "disqualified." The Court held that the COMELEC, **by granting the petition without any qualification,** disqualified Joel Pempe Miranda and **at the same time cancelled Jose Pempe Miranda's CoC.**

x x x x x x x x x

The crucial point of *Miranda v. Abaya* was that the COMELEC actually granted the particular relief of cancelling or denying due course to the CoC prayed for in the petition by not subjecting that relief to any qualification. (Emphasis and underscoring supplied)

In view of the foregoing rulings, the COMELEC *En Banc* direly misconstrued the COMELEC First Division's February 17, 2010 Resolution when it adopted the Law Department's finding that Richard was only "disqualified" and that his CoC was not denied due course to and/or cancelled, paving the way for the approval of private respondent's substitution. It overlooked the fact that the COMELEC First Division's ruling encompassed the cancellation of Richard's CoC and in consequence, disallowed the substitution of private respondent. It was therefore grave and serious error on the part of the COMELEC *En Banc* to have approved private respondent's substitution.

Consequently, in perpetuating the COMELEC *En Banc's* error as above-discussed, the HRET committed a grave abuse of discretion, warranting the grant of the instant petition.

Fundamental is the rule that grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence.[54] While it is well-recognized that the HRET has been empowered by the Constitution to be the "sole judge" of all contests relating to the election, returns, and qualifications of the members of the House, the Court

[54] See *Fernandez v. COMELEC,* G.R. No. 171821, October 9, 2006, 504 SCRA 116.

maintains jurisdiction over it to check "whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction" on the part of the latter.[55] In other words, when the HRET utterly disregards the law and settled precedents on the matter before it, it commits a grave abuse of discretion.

Records clearly show that: (1) Richard was held ineligible as a congressional candidate for the Fourth District of Leyte due to his failure to comply with the one year residency requirement; (2) Juntilla's petition prayed for the denial of due course to and/or cancellation of his CoC; and (3) the COMELEC First Division granted the foregoing petition without any qualification. By these undisputed and essential facts alone, the HRET should not have adopted the COMELEC *En Banc's* erroneous finding that the COMELEC First Division's February 17, 2010 Resolution "speaks [only] of "disqualification and not of cancellation of [Richard's] CoC"[56] and thereby, sanctioned the substitution of private respondent.

Lest it be misunderstood, the HRET is not bound by previous COMELEC pronouncements relative to the qualifications of the Members of the House. Being the sole judge[57] of all contests relating to the election, returns, and *qualifications* of its respective members, the HRET cannot be tied down by

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[55] See *Bengson III v. HRET,* 409 Phil. 633 (2001); citations omitted.

[56] *Rollo,* p. 133.

[57] In the case of *Lazatin v. HRET*, 250 Phil. 390, 399-400 (1988), the Court stated that under the 1987 Philippine Constitution, the jurisdiction of the Electoral Tribunal is original and exclusive, *viz.*:

The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred. The exercise of power by the Electoral Commission under the 1935 Constitution has been described as "**intended to be as complete and unimpaired as if it had originally remained in the legislature.**" Earlier this grant of power to the legislature was characterized by Justice Malcolm as "**full, clear and complete**; Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as **full, clear and complete** as that previously granted the Legislature and the Electoral Commission. The same may be said with regard to the jurisdiction of the Electoral Tribunal under the 1987 Constitution. (Emphasis supplied; citations omitted)

COMELEC resolutions, else its constitutional mandate[58] be circumvented and rendered nugatory. Instructive on this point is the Court's disquisition in *Fernandez v. HRET*,[59] to wit:

> Private respondent concludes from the above that petitioner had no legal basis to claim that the HRET, when reference to the qualification/s of Members of the House of Representatives is concerned, is "co-equal," to the COMELEC, such that the HRET cannot disregard any ruling of COMELEC respecting the matter of eligibility and qualification of a member of the House of Representatives. **The truth is the other way around, because the COMELEC is subservient to the HRET when the dispute or contest at issue refers to the eligibility and/or qualification of a Member of the House of Representatives.** A petition for *quo warranto* is within the exclusive jurisdiction of the HRET as sole judge, and cannot be considered forum shopping **even if another body may have passed upon in administrative or quasi-judicial proceedings the issue of the Member's qualification while the Member was still a candidate**. There is forum-shopping only where two cases involve the same parties and the same cause of action. The two cases here are distinct and dissimilar in their nature and character. (Emphasis and underscoring supplied)

Notably, the phrase "election, returns, and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. More particularly, the term "qualifications" refers to matters that could be raised in a *quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility, or the inadequacy of his certificate of candidacy.[60] As used in Section 74 of the OEC, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of

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[58] Art. 6, Sec. 17 of the Constitution states:

Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the **sole judge of all contests relating to the election, returns, and qualifications of their respective Members.** (Emphasis supplied)

[59] G.R. No. 187478, December 21, 2009, 608 SCRA 733, 747-748.

[60] See *Liwayway Vinzons-Chato v. COMELEC,* G.R. No. 172131, April 2, 2007, 520 SCRA 166.

the ineligibilities to run for the public office.[61] In this relation, private respondent's own qualification to run for public office — which was inextricably linked to her husband's own qualifications due to her substitution — was the proper subject of *quo warranto* proceedings falling within the exclusive jurisdiction of the HRET and independent from any previous proceedings before the COMELEC, lest the jurisdictional divide between the two be blurred.

Nonetheless, it must be pointed out that the HRET's independence is not without limitation. As earlier mentioned, the Court retains *certiorari* jurisdiction over the HRET if only to check whether or not it has gravely abused its discretion. In this regard, the Court does not endeavor to denigrate nor undermine the HRET's independence; rather, it merely fulfills its duty to ensure that the Constitution and the laws are upheld through the exercise of its power of judicial review.

In fine, the Court observes that the HRET wantonly disregarded the law by deliberately adopting the COMELEC *En Banc's* flawed findings regarding private respondent's eligibility to run for public office which essentially stemmed from her substitution. In this light, it cannot be gainsaid that the HRET gravely abused its discretion.

Owing to the lack of proper substitution in this case, private respondent was therefore not a *bona fide* candidate for the position of Representative for the Fourth District of Leyte when she ran for office, which means that she could not have been elected. Considering this pronouncement, there exists no cogent reason to further dwell on the other issues respecting private respondent's own qualification to office.

WHEREFORE, the petition is **GRANTED.** Accordingly, the March 22, 2012 Decision rendered by the House of Representatives Electoral Tribunal in HRET Case No. 10-031 (QW) is hereby **REVERSED** and **SET ASIDE.**

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[61] *Supra* note 25, citing the Oxford Dictionary of English (Oxford University Press 2010).

SO ORDERED.

Sereno, C.J., Carpio, Villarama, Jr., Perez, Reyes, and *Leonen, JJ.,* concur.

Leonardo-de Castro, J., see dissenting opinion.

Del Castillo and *Mendoza, JJ.,* join the dissent of *J*. Abad.

Abad, J., see dissenting opinion.

Velasco, Jr., Brion, and *Bersamin, JJ.,* no part due to previous participation in the HRET.

Peralta, J., no part, incumbent member, HRET.

DISSENTING OPINION

LEONARDO-DE CASTRO, *J*.:

I vote to deny the petition of Silverio R. Tagolino on the ground that after the lapse of the reglementary period of ten (10) days from the date of proclamation of respondent Lucy Marie Torres-Gomez as the duly elected Representative of the Fourth Legislative District of Leyte, the said proclamation can no longer be assailed by an election protest or a petition for *quo warranto*. Moreover, the substitution by said respondent of her husband Richard Gomez cannot be questioned, there being no factual basis to assail the decision of the Commission on Elections (COMELEC) not to cancel the certificate of candidacy of respondent's husband.

The Petition for *Quo Warranto* was filed out of time.

Respondent Gomez was proclaimed as the winning candidate for the position of Member of the House of Representatives on May 12, 2010 whereas the Petition for *Quo Warranto* was filed by petitioner Tagolino on May 24, 2010, or twelve days after the proclamation of respondent Gomez.

The pertinent provisions of the Rules of the House of Representatives Electoral Tribunal (HRET) provide as follows:

RULE 16. *Election Protest.* — A verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten (10) days after the proclamation of the winner. The party filing the protest shall be designated as the protestant while the adverse party shall be known as the protestee.

No joint election protest shall be admitted, but the Tribunal, for good and sufficient reasons, may consolidate individual protests and hear and decide them jointly.

The protest is verified by an affidavit that the affiant has read it and that the allegations therein are true and correct of his knowledge and belief. A verification based on "information and belief," or upon "knowledge, information and belief," is not a sufficient verification.

An unverified election protest shall not suspend the running of the reglementary period to file the protest.

RULE 17. *Quo Warranto.* — A verified petition for *quo warranto* contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any voter within ten (10) days after the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

The rule on verification provided in Section 16 hereof shall apply to petitions for *quo warranto*.

As correctly asserted by respondent Gomez in her Verified Answer filed before the HRET, the Petition for *Quo Warranto* should have been dismissed outright pursuant to Rule 21 of the Rules of the HRET, quoted below:

RULE 21. *Summary Dismissal of Election Contest.* — An election protest or petition for *quo warranto* may be summarily dismissed by the Tribunal without the necessity of requiring the protestee or respondent to answer if, *inter alia*: x x x

> (2) The petition is filed beyond the period provided in Rules 16 and 17 of these Rules[.]

This Court has emphasized the importance of compliance with the HRET Rules prescribing reglementary periods to be observed by the parties in an election contest to expedite the disposition of election controversies so as not to frustrate the will of the electorate. In *Hofer v. House of Representatives Electoral Tribunal*,[1] the Court sustained the dismissal by the HRET of the election protest for failure to comply strictly with the period prescribed by the HRET Rules.

Similarly, *Perez v. Commission on Elections*[2] held that remedies are unavailing once the prescriptive period to bring the appropriate petition has set in. The pertinent ruling of the Court in *Perez* is quoted as follows:

> Petitioner's remedies should have been (1) to reiterate her prayer in the petition for disqualification, and move for the issuance of an order by the COMELEC suspending the proclamation of private respondent pending the hearing of the said petition and, in the event the motion was denied before the proclamation of private respondent, file a petition for *certiorari* in this Court with a prayer for a restraining order to enjoin the proclamation of private respondent; or (2) to file a petition for *quo warranto* in the House of Representatives Electoral Tribunal within ten (10) days after the proclamation of private respondent as Representative-elect on May 16, 1998. Obviously, neither of these remedies can be availed of now.[3]

The HRET and this Court cannot set aside at will the HRET Rules mandating the timely filing of election contests. Otherwise, a dangerous precedent will be set that will cause uncertainty in the application of the HRET Rules and instability in the holding of an elective post by a proclaimed winning candidate that may adversely affect public service.

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[1] G.R. No. 158833, May 12, 2004, 428 SCRA 383, 386-387.

[2] 375 Phil. 1106 (1999).

[3] *Id.* at 1116.

In view of the foregoing, I submit that the HRET is bereft of jurisdiction to entertain the Petition for *Quo Warranto* filed by Tagolino, after the lapse of the reglementary period prescribed by its own Rules. The proclamation of respondent Gomez has become incontrovertible or unassailable after the expiration of ten (10) days from its date.

No factual basis to cancel the certificate of candidacy.

The lack of jurisdiction on the part of the HRET to entertain the untimely Petition for *Quo Warranto* assailing the proclamation of private respondent Gomez would suffice to dismiss outright the instant petition. Moreover, the substantive issue extensively discussed in the *ponencia* of the Honorable Associate Justice Estela Perlas Bernabe, particularly as to the "divergent effects of disqualification and denial of due course to and/or cancellation of COC (Certificate of Candidacy) cases *vis-à-vis* candidate substitution" is inappropriate.

Firstly, the certificate of candidacy of Richard Gomez, the husband of respondent Gomez, was not cancelled by the COMELEC.

Secondly, the decision by the COMELEC not to cancel said certificate of candidacy was proper as the COMELEC did not reach any finding that Richard Gomez **deliberately** committed a misrepresentation, which is a requisite for the cancellation of a certificate of candidacy under Section 78 of the Omnibus Election Code. In *Mitra v. Commission on Elections,*[4] the Court ruled:

> **Section 74,** in relation to **Section 78,** of the Omnibus Election Code (*OEC*) governs the cancellation of, and grant or denial of due course to, COCs. The combined application of these sections requires that the candidate's stated facts in the COC be true, under pain of the COC's denial or cancellation if any false representation of a material fact is made. x x x

The false representation that these provisions mention must necessarily pertain to a material fact. The critical material facts are

[4] G.R. No. 191938, July 2, 2010, 622 SCRA 744, 768-770.

those that refer to a candidate's qualifications for elective office, such as his or her citizenship and residence. The candidate's status as a registered voter in the political unit where he or she is a candidate similarly falls under this classification as it is a requirement that, by law (the Local Government Code), must be reflected in the COC. The reason for this is obvious: the candidate, if he or she wins, will work for and represent the political unit where he or she ran as a candidate.

The false representation under Section 78 must likewise be a **"deliberate attempt to mislead, misinform, or hide a fact** that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws.

Based on these standards, we find that Mitra did not commit any deliberate material misrepresentation in his COC. The COMELEC gravely abused its discretion in its appreciation of the evidence, leading it to conclude that Mitra is not a resident of Aborlan, Palawan. **The COMELEC, too, failed to critically consider whether Mitra deliberately attempted to mislead, misinform or hide a fact** that would otherwise render him ineligible for the position of Governor of Palawan. (Emphases supplied and citations omitted.)

The *ponencia* of Justice Bernabe indulged in the legal fiction that the certificate of candidacy of Richard Gomez was cancelled when it in fact was not. Neither can the Court now on its own decree such cancellation in the absence of any factual basis or evidentiary support for a finding that Richard Gomez committed a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render [him] ineligible."

Substitution was valid.

Since the COMELEC did not cancel the certificate of candidacy of Richard Gomez but only disqualified him from

running in the elections, the substitution by respondent Gomez of Richard Gomez squarely falls within the ambit of Section 77 of the Omnibus Election Code (OEC), which uses the broad language "disqualification for any cause," as follows:

> **Section 77.** *Candidates in case of death, disqualification or withdrawal of another*. — If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is **disqualified for any cause,** only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission.

Petition for *Quo Warranto* lacked factual basis.

Regarding the issue of whether a Petition for *Quo Warranto* is a proper legal remedy to assail the validity of the substitution of a candidate under Section 77 of the OEC, it suffices here to state that, under Rule 17 of the HRET Rules, the grounds for a Petition for *Quo Warranto* are ineligibility to run for a public office or disloyalty to the Republic of the Philippines.

Pertinently, Section 6, Article VI of the Constitution, which provides for the qualifications of a Member of the House of Representatives, states as follows:

> Section 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a

resident thereat for a period of not less than one year immediately preceding the day of the election.

The above-quoted provision refers to the personal attributes of a candidate. The *ponencia* did not find any of the above qualifications absent in the case of respondent Gomez. However, the *ponencia* attributed the ineligibility of respondent Gomez to its erroneous assumption that the certificate of candidacy of Richard Gomez, whom she substituted, should have been cancelled. As explained above, the COMELEC correctly did not so cancel said certificate, it having found no factual basis to do so. This being the case and the fact that the Petition for *Quo Warranto* was filed out of time, there is no need to dwell on the issue of whether the Petition for *Quo Warranto* may validly question the validity of the substitution of a candidate and to discuss the constitutional boundaries of the respective jurisdictions of the COMELEC and the HRET.

In view of the foregoing, I reiterate my vote to dismiss the Petition for *Certiorari* filed by Tagolino.

DISSENTING OPINION

ABAD, *J.*:

On November 30, 2009 Richard Gomez (Richard) filed his certificate of candidacy (CoC) for Congressman of Leyte's 4th District under the Liberal Party (LP) in the May 10, 2010 elections. He gave his residence as 910 Carlota Hills, Barangay Can-Adieng, Ormoc City. After a week, Buenaventura O. Juntilla, a registered voter of the district, filed a *Verified Petition to Disqualify Candidate for Lack of Qualification*[1] before the Commission on Elections (COMELEC) in SPA 09-059 (DC) on the ground that Richard was not an Ormoc City resident. Juntilla asked the COMELEC two things: a) disqualify Richard and b) deny due course to or cancel his CoC for material misrepresentation regarding his residence since he in fact resided in Greenhills, Mandaluyong City.

[1] *Rollo,* pp. 246-253.

On February 17, 2010 the COMELEC First Division issued a resolution disqualifying Richard for failing to present "sufficient proof that would establish his ties to Ormoc." The resolution failed, however, to order the denial of due course or cancellation of his CoC. The dispositive portion of the resolution reads:

> WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to GRANT the Petition to Disqualify Candidate for Lack of Qualification filed by BUENAVENTURA O. JUNTILLA against RICHARD I. GOMEZ. Accordingly, RICHARD I. GOMEZ is **DISQUALIFIED as a candidate** for the Office of Congressman, Fourth District of Leyte, **for lack of residency requirement**.[2] (Emphasis supplied.)

On February 20, 2010 Richard moved for reconsideration of the above resolution. Juntilla, on the other hand, did not file a similar motion even when the COMELEC failed to grant his other prayer for denial of due course or cancellation of Richard's CoC.

On May 4, 2010 the COMELEC *En Banc* issued a Resolution[3] dismissing Richard's motion for reconsideration. On the same day, Richard filed with the COMELEC a Manifestation[4] informing it of his acceptance of its decision in his case to enable a substitute to take his place. Acting on the Manifestation, the COMELEC *En Banc* issued an Order on May 5 declaring its May 4 Resolution final and executory.

On May 5, 2010 the LP Secretary-General wrote the Provincial Election Supervisor of Leyte, nominating respondent Lucy Gomez as a substitute candidate for her husband, Richard. Lucy Gomez promptly filed her CoC with COMELEC as substitute candidate. On the same date, Juntilla filed with the COMELEC a Counter-Manifestation,[5] followed by a letter to the COMELEC Law Department, opposing Lucy Gomez's substitution of her husband,

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[2] *Id.* at 259-265.

[3] *Id.* at 266-277.

[4] *Id.* at 278-279.

[5] *Id.* at 281-286.

claiming that the substitution was invalid since she had no one to substitute in view of the COMELEC's disqualification of Richard by final order.

On May 8, 2010, the COMELEC *En Banc* issued Resolution 8890[6] approving and adopting, among other things, its Law Department's study and recommendation that Lucy Gomez be allowed to substitute for Richard, given that the 1st Division's ruling which did not cancel Richard's CoC but merely "disqualified" him, had already become final and executory. The pertinent portion of the study and recommendation that the *En Banc* adopted states:

The crux of the opposition stemmed from the issue that there should be no substitution because there is no candidate to substitute for.

It must be stressed that the **resolution** of the First Division, this Commission, in SPA No. 09-059 **speaks of disqualification** of candidate Richard I. Gomez and **not of cancellation** of his Certificate of Candidacy:

"Wherefore, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to GRANT the Petition to Disqualify Candidate for Lack of Qualification filed against RICHARD I. GOMEZ. Accordingly, RICHARD I. GOMEZ is **DISQUALIFIED** as a candidate for the Office of Congressman, Fourth District of Leyte, for lack of residency requirement."

The said resolution was affirmed by the Commission *En Banc* on May 4, 2010.

x x x x x x x x x

In view of the foregoing, the Law Department RECOMMENDS the following:

x x x x x x x x x

2. TO ALLOW CANDIDATE LUCY MARIE TORRES GOMEZ AS A SUBSTITUTE CANDIDATE FOR RICHARD GOMEZ; (Emphasis supplied)

On the same day the COMELEC *En Banc* issued its May 8, 2010 resolution allowing the substitution, Juntilla filed an

[6] *Id.* at 303-310.

Extremely Urgent Motion for Reconsideration[7] of the same but the motion remained unacted upon, obviously owing to the supervening May 10 elections. Juntilla never elevated or questioned the matter before the Supreme Court.

On May 12, 2010 the Leyte Provincial Board of Canvassers proclaimed Lucy Gomez as Congresswoman-elect to represent the 4th District of Leyte, having obtained 101,250 votes. Petitioner Silvestre R. Tagolino and another candidate, Eufrocino C. Codilla, Jr., garnered 493 votes and 76,549 votes, respectively.

In due time, Tagolino brought a *quo warranto* action[8] against Lucy Gomez with the House of Representatives Electoral Tribunal (HRET) pursuant to its Rule 17 which allows the filing of a petition for *quo warranto* contesting the election of a member of the House of Representatives "on the ground of ineligibility or disloyalty to the Republic." Juntilla did not join Tagolino in this action.

Tagolino alleged in his petition (1) that Lucy Gomez was not a resident of Ormoc City at least one year immediately preceding the election; (2) that she was not a registered voter in the 4th District of Leyte; and (3) that her CoC was void for failing to comply with the requirements of Section 2 of the 2004 Notarial Law.[9] Tagolino did not raise in his petition the question of the validity of Lucy Gomez's substitution of her husband Richard.

In her Answer,[10] Lucy Gomez averred: (a) that the petition was filed beyond 10 days from proclamation; (b) that the petition assails the validity of her CoC, which is outside the jurisdiction

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[7] *Id.* at 311-324.

[8] *Id.* at 85-92.

[9] SEC. 2. *Affirmation or Oath*. — The term "Affirmation" or "Oath" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; x x x

[10] *Rollo,* pp. 23-39.

of the HRET and should have been assailed before the COMELEC through a petition to deny due course to or cancel her CoC; (c) that the COMELEC had already resolved her substitution of Richard with finality in its Resolution 8890; (d) that she did not have to present proof of her identity when her CoC was notarized the notary public personally knew her; and (e) she never abandoned her domicile in Ormoc City despite her change of residence and transfer of voting registration to San Rafael, Bulacan, arising from her marriage to Richard.

On March 22, 2010 the HRET rendered a Decision[11] dismissing the *quo warranto* petition and declaring Lucy Gomez a qualified candidate during the May 2010 election for the subject position, her substitution of her disqualified husband being valid and legal. HRET ruled that Lucy Gomez's domicile continued to be Ormoc City despite her marriage to Richard. Tagolino moved for reconsideration but HRET denied the same on May 28, 2012, hence, this petition.

Question Presented

As the *ponencia* would have it, the issue boils down to the question of whether or not Lucy Gomez validly substituted Richard whom the COMELEC declared disqualified for lack of residency.

But the above is not an accurate statement of the real issue in this case. The real issue in this case is whether or not the HRET can review and reverse a COMELEC Decision involving a member of the House of Representatives that had become final and executory.

Discussion

The election of Lucy Gomez as Congresswoman of the 4th District of Leyte was preceded by two separate incidents before the COMELEC:

The <u>first</u> incident involved Richard. It consists in Juntilla's self-titled Verified Petition to Disqualify Candidate for Lack of Qualification. Juntilla asked for Richard's disqualification,

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[11] Annex "A", Petition, *id.* at 48-64.

consistent with the substance of his petition, but added in his prayer that the candidate's CoC be also cancelled or denied due course. The COMELEC First Division granted the petition and disqualified Richard but did not cancel or deny due course to his CoC.

The second incident involved Lucy Gomez. Juntilla opposed her substitution of Richard on the ground that the substitution was invalid since she had no one to substitute in view of the COMELEC First Division's disqualification of Richard by final order. But the COMELEC *En Banc* denied the opposition and allowed the substitution, given that the First Division's resolution, which merely disqualified Richard, had already become final and executory.

The key issue in this case is actually whether or not the HRET was correct in ruling that the COMELEC First Division's February 17, 2010 Resolution that disqualified Richard but did not cancel his CoC or deny it due course had already become final and executory. For, if it had indeed become final and executory, that resolution would, as the COMELEC *En Banc* held in its May 8, 2010 Resolution, provide legal basis for Lucy Gomez's substitution of Richard.

It is clear from the facts that the COMELEC First Division's February 17, 2010 Resolution, which merely disqualified Richard but did not cancel or deny due course to his CoC, became final and executory. That resolution may be in error, as the *ponencia* would have it, but it certainly became final and executory for the following reasons:

First. Juntilla never filed a motion for reconsideration of that resolution. Consequently, he could not help its becoming final and executory as to him.

Second. Only Richard filed a motion for reconsideration of the COMELEC First Division's February 17, 2010 Resolution, which merely disqualified him. When the COMELEC *En Banc* dismissed that motion for reconsideration on May 4, 2010, Richard filed a manifestation on the same day, accepting its validity. On May 5 the COMELEC *En Banc* declared its May 4, 2010

Resolution final and executory. Consequently, what remained the last window of opportunity to review and possibly reverse the COMELEC First Division's February 17, 2010 Resolution closed down.

Third. Juntilla attempted to revive the issue concerning the COMELEC First Division's February 17, 2010 Resolution when he opposed Lucy Gomez's substitution of Richard. He claimed that the First Division's resolution resulted in the COMELEC denying due course to Richard's CoC with the effect that, without a valid one, he could not be substituted. But Juntilla is clearly in error since the COMELEC *En Banc* already declared on May 5 that the First Division's February 17 Resolution merely ordered Richard's disqualification and such resolution had irreversibly become final and executory.

Juntilla of course filed on May 8, 2010 a motion for reconsideration of the COMELEC *En Banc*'s Resolution of the same date that allowed Lucy Gomez's substitution of Richard, but the motion remained unacted upon, obviously owing to the supervening May 10, 2010 elections. At any rate, Juntilla may be deemed to have abandoned that motion for reconsideration for he never insisted that it be resolved. And he never raised before this Court the issue of the validity of that COMELEC *En Banc*'s May 8 Resolution that allowed the substitution. Unchallenged, that resolution became final and executory as well.

The Court has of course ruled in *Guerrero v. Commission on Elections*[12] that, since the Constitution makes the HRET "the sole judge of all contests relating to the election, returns and qualifications" of its members, it has the jurisdiction to pass upon the validity of substitution involving such members. Said the Court:

> Whether respondent [Rodolfo] Fariñas **validly substituted** Chevylle V. Fariñas and whether respondent became a legitimate candidate, in our view, **must likewise be addressed to the sound judgment of the Electoral Tribunal.** Only thus can we demonstrate fealty to the

[12] 391 Phil. 344 (2000).

Constitutional provision that the Electoral Tribunal of each House of Congress shall be the "*sole judge* of all contests relating to the election, returns and qualifications of their respective members."[13] (Emphasis supplied)

But the above ruling should be understood in the context of the facts of the *Fariñas* case. Guillermo Ruiz, a registered voter, filed a petition with the COMELEC's Second Division seeking the perpetual disqualification of Rodolfo Fariñas as candidate for Congressman for the May 11, 1998 elections on the ground that he had been campaigning for that position despite his failure to file a CoC. Eventually, Fariñas filed his CoC on May 8, 1998 in substitution of Chevylle Fariñas who withdrew earlier on April 3. Because of this supervening event, on May 10 the Second Division dismissed Ruiz's petition for lack of merit.

Fariñas won the elections and was promptly proclaimed. On May 16, 1998, however, Ruiz filed a motion for reconsideration of the Second Division's May 10 Resolution, contending that Fariñas could not validly substitute for Chevylle, since the latter was not the official candidate of the *Lakas ng Makabayan Masang Pilipino* but was an independent candidate. Meantime, on June 3, 1998 Fariñas took his oath as member of the House of Representatives.

On June 10, 1998 petitioner Arnold Guerrero, a rival candidate, filed a petition-in-intervention with the COMELEC, assailing Fariñas' substitution of Chevylle. On January 6, 1999, the COMELEC *En Banc* dismissed Ruiz's motion for reconsideration and Guerrero's petition-in-intervention for lack of jurisdiction since Fariñas had in the meantime assumed office.

Upon Guerrero's petition, this Court held that while the COMELEC has the power to declare a CoC valid or invalid, its refusal to exercise that power, following Fariñas' proclamation and assumption of office, simply recognized the jurisdictional boundaries between the COMELEC and the HRET. The Court

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[13] *Id.* at 354.

said that whether Fariñas validly substituted Chevylle must now be addressed to the sound judgment of the HRET. The COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins.

Tagolino cannot invoke the *Fariñas* ruling for three reasons:

First, the Court's thesis in *Fariñas* is that the HRET can take over a pending matter before the COMELEC since the latter may be considered ousted of its jurisdiction over the same upon the winner's assumption of office. The HRET takes over the authority to resolve such pending matter.

Here, however, the key issue of whether or not the COMELEC First Division's February 17, 2010 Resolution, which merely disqualified Richard but did not cancel his CoC, is no longer a pending matter. It became final and executory since, as pointed out above, Juntilla did not file a motion for its reconsideration and the COMELEC *En Banc* had found it to be the case.

Second, Guerrero had the right to raise the issue of Fariñas' disqualification before the HRET since he intervened and joined cause with Guillermo in his action before the COMELEC. This gave Guerrero a stake in the resolution of Guillermo's motion for reconsideration after the COMELEC declined to further act on the same.

Here, Tagolino never intervened in Juntilla's actions before the COMELEC. He stayed out of it. Consequently, he has no right to ask the HRET to resolve Juntilla's May 8, 2010 motion for reconsideration of the COMELEC *En Banc*'s order of the same date. The right to press for the resolution of that May 8 motion for reconsideration belonged to Juntilla who alone filed it. But, as it happened, he abandoned his motion when he did not come up either to the Supreme Court or to the HRET to cause it to be resolved.

And *third*, Tagolino is barred from claiming that, in disqualifying Richard, the COMELEC's First Division in effect

caused the cancellation of his CoC. Tagolino made a binding admission during the Preliminary Conference before the HRET that the COMELEC did not in fact order such cancellation of Richard's CoC.[14] Thus, Tagolino admitted that:

x x x x x x x x x

3. By Resolution of February 17, 2010, the Comelec disqualified Richard I. Gomez as candidate for Representative of the Fourth District of Leyte for lack of residency;

4. Gomez filed a motion for reconsideration, which the Comelec *En Banc* dismissed for lack of merit by Resolution of May 4, 2010;

5. **Said May 4, 2010 Resolution of the Comelec did not order the cancellation of Gomez' certificate of candidacy;** (Emphasis supplied)

x x x x x x x x x

Tagolino's admission in paragraph 5 above — that the COMELEC did not order the cancellation of Richard Gomez's certificate of candidacy — is binding on him, especially since he makes no allegation that he made such admission through palpable mistake.[15]

True, the parties raised before the HRET the issue of "whether the substitution of respondent is valid." But this merely accords with Lucy Gomez's defense in her answer that the COMELEC had already resolved her substitution of Richard with finality in its Resolution 8890. It did not mean that the parties were submitting to the HRET for resolution the issue of the final and executory nature of the COMELEC First Division's resolution that enabled her to substitute for Richard.

So the Court comes to the real issue in this case: whether or not the HRET can review and reverse a COMELEC decision,

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[14] HRET Records, Vol. 1, p. 504.

[15] Section 4, Rule 139, *Rules of Evidence. Judicial admissions*. — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. (2a)

involving a member of the House of Representatives, that had already become final and executory.

The HRET has no authority to review final and executory resolutions or decisions of the COMELEC that it rendered pursuant to its powers under the Constitution, no matter if such resolutions or decisions are erroneous. The parties cannot by agreement confer such authority on HRET. Neither the HRET nor the Court can set aside the COMELEC's final and executory resolutions that paved the way for Lucy Gomez to substitute her husband.

As for Lucy Gomez's residency qualification, the evidence presented in the case amply supports HRET's conclusion that she met such qualification.

For all of the above reasons, I vote to deny the petition.

EN BANC

[G.R. No. 203833. March 19, 2013]

MAMERTO T. SEVILLA, JR., *petitioner, vs.* **COMMISSION ON ELECTIONS and RENATO R. SO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; CONCURRENCE OF MAJORITY VOTE OF ALL MEMBERS NECESSARY FOR THE PRONOUNCEMENT OF A DECISION.— Section 7, Article IX -A of the Constitution requires that "[e]ach Commission shall **decide by a majority vote of all its members**, any case or matter brought before it within sixty days from the date of its submission for decision or resolution." Pursuant to this Constitutional mandate, the

Comelec provided in Section 5(a), Rule 3 of the Comelec Rules of Procedure the votes required for the pronouncement of a decision, resolution, order or ruling when the Comelec sits *en banc*, *viz*.: Section 5. *Quorum; Votes Required*. - (a) When sitting *en banc*, four (4) Members of the Commission shall constitute a quorum for the purpose of transacting business. The **concurrence of a majority of the Members of the Commission** shall be necessary for the pronouncement of a decision, resolution, order or ruling. We have previously ruled that a **majority vote requires a vote of four members** of the Comelec *en banc*. In *Marcoleta v. Commission on Elections*, we declared "that Section 5(a) of Rule 3 of the Comelec Rules of Procedure and Section 7 of Article IX -A of the Constitution require that a **majority vote of all the members** of the Comelec [*en banc*], and not only those who participated and took part in the deliberations, is necessary for the pronouncement of a decision, resolution, order or ruling.

2. **ID.; ID.; ID.; ID.; WHERE OPINION IS EQUALLY DIVIDED, REHEARING IS MANDATED.—** To break the legal stalemate in case the opinion is equally divided among the members of the Comelec *en banc*, Section 6, Rule 18 of the Comelec Rules of Procedure mandates a rehearing where parties are given the opportunity anew to strengthen their respective positions or arguments and convince the members of the Comelec *en banc* of the merit of their case. Thus, Section 6. *Procedure if Opinion is Equally Divided*. - **When the Commission *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard**, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied.

APPEARANCES OF COUNSEL

San Pedro and Partners Law Offices for petitioner.
The Solicitor General for public respondent.
Benedicto D. Buenaventura for private respondent.

RESOLUTION

BRION, *J.*:

Before this Court is the petition for *certiorari*, with prayer for the issuance of a Writ of Preliminary Injunction and/or Status Quo Ante Order,[1] filed by petitioner Mamerto T. Sevilla, Jr., to nullify the May 14, 2012 Resolution[2] of the Commission on Elections (*Comelec*) Second Division and the October 6, 2012 Resolution[3] of the Comelec *en banc* in SPR (BRGY-SK) No. 70-2011. These assailed Resolutions reversed and set aside the May 4, 2011 Order of the Muntinlupa City Metropolitan Trial Court, Branch 80 (*MeTC*), dismissing respondent Renato R. So's election protest against Sevilla.

The Facts

Sevilla and So were candidates for the position of Punong Barangay of Barangay Sucat, Muntinlupa City during the October 25, 2010 Barangay and Sangguniang Kabataan Elections. On October 26, 2010, the Board of Election Tellers proclaimed Sevilla as the winner with a total of 7,354 votes or a winning margin of 628 votes over So's 6,726 total votes. On November 4, 2010, So filed an election protest with the MeTC on the ground that Sevilla committed electoral fraud, anomalies and irregularities in all the protested precincts. So pinpointed twenty percent (20%) of the total number of the protested precincts. He also prayed for a manual revision of the ballots.[4]

Following the recount of the ballots in the pilot protested precincts, the MeTC issued an Order dated May 4, 2011 dismissing the election protest. On May 9, 2011, So filed a

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[1] *Rollo,* pp. 3-43.

[2] Penned by Presiding Commissioner Lucenito N. Tagle and concurred in by Commissioner Elias R. Yusoph: *id.* at 46-52.

[3] Commissioners Lucenito N. Tagle, Armando C. Velasco and Elias R. Yusoph, concurring; Chairman Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento and Christian Robert S. Lim, dissenting. *Id.* at 53-58.

[4] *Id.* at 47.

motion for reconsideration from the dismissal order instead of a notice of appeal; he also failed to pay the appeal fee within the reglementary period. On May 17, 2011, the MeTC denied the motion for reconsideration on the ground that it was a prohibited pleading pursuant to Section 1, Rule 6 of A.M. No. 07-04-15-SC.[5]

In response, So filed a petition for *certiorari* on May 31, 2011 with the Comelec, alleging grave abuse of discretion on the part of the MeTC Judge. So faults the MeTC for its non-observance of the rule that in the appreciation of ballots, there should be a clear and distinct presentation of the specific details of how and why a certain group of ballots should be considered as having been written by one or two persons.[6]

The Comelec Second Division Ruling

In its May 14, 2012 Resolution, the Comelec Second Division granted So's petition. The Comelec Second Division held that *certiorari* can be granted despite the availability of appeals when the questioned order amounts to an oppressive exercise of judicial authority, as in the case before it. It also ruled that the assailed Order was fraught with infirmities and irregularities in the appreciation of the ballots, and was couched in general terms: "these are not written by one person observing the different strokes, slant, spacing, size and indentation of handwriting and the variance in writing[.]"[7]

The Comelec En Banc Ruling

The Comelec *en banc*, by a vote of 3-3,[8] affirmed the Comelec Second Division's ruling in its October 6, 2012 Resolution whose dispositive portion reads:

> WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED for lack of merit. Respondent judge is directed to

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[5] *Id.* at 7.

[6] *Id.* at 48.

[7] *Id.* at 51.

[8] *Supra* note 3.

conduct another revision of the contested ballots in Election Protest Case No. SP-6719 with dispatch.[9]

It ruled that where the dismissal was capricious, *certiorari* lies as the petition challenges not the correctness but the validity of the order of dismissal. The Comelec *en banc* emphasized that procedural technicalities should be disregarded for the immediate and final resolution of election cases inasmuch as ballots should be read and appreciated with utmost liberality so that the will of the electorate in the choice of public officials may not be defeated by technical infirmities.

It found that the MeTC Judge committed grave abuse of discretion amounting to lack of jurisdiction when she did not comply with the mandatory requirements of Section 2 (d), Rule 14 of A.M. No. 07-4-15-SC on the form of the decision in election protests involving pairs or groups of ballots written by two persons. It noted that based on the general and repetitive phraseology of the Order, the MeTC Judge's findings were "copy-pasted" into the decision and ran counter to the mandate of the aforementioned rule. Also, the MeTC Judge failed to mention in her appreciation of the ballots that she examined the Minutes of Voting and Counting to ascertain whether there were illiterate voters or assisted voters in the protested precincts.[10]

Commissioner Lim's Dissent[11]

The dissent posited that So's petition should be dismissed outright as it mired in procedural errors. *First,* So should have filed an appeal within five (5) days from receipt of the MeTC's Order; a motion for reconsideration was improper as the Order amounted to the final disposition of the protest. *Second,* So should not have filed the motion for reconsideration even if he believed that the Order was interlocutory since a motion for reconsideration is a prohibited pleading. Also, he could have simply filed the petition for *certiorari* without the

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[9] *Id.* at 57.

[10] *Id.* at 56.

[11] Joined by Chairman Brillantes and Commissioner Sarmiento.

necessity of filing the motion for reconsideration. *Third,* the petition for *certiorari* cannot be a substitute for the lost appeal. The Comelec could not even treat the *certiorari* as an appeal since the petition was filed 25 days after So received the assailed Order; thus, the Order already attained finality. *Finally*, procedural rules should not be lightly shunned in favor of liberality when, as in this case, So did not give a valid excuse for his errors.

The Petition

The Comelec gravely abused its discretion when it gave due course to the petition for certiorari

Sevilla argues that the Comelec gravely abused its discretion when it entertained So's petition despite its loss of jurisdiction to entertain the petition after the court *a quo's* dismissal order became final and executory due to So's wrong choice of remedy. Instead of filing an appeal within five (5) days from receipt of the Order and paying the required appeal fee, So filed a motion for reconsideration — a prohibited pleading that did not stop the running of the prescriptive period to file an appeal. Sevilla also emphasizes that So's petition for *certiorari* should not have been given due course since it is not a substitute for an appeal and may only be allowed if there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.[12]

The dismissal of the election protest was proper

Sevilla also contends that the dismissal was not tainted with grave abuse of discretion since the MeTC Judge complied with the rules; she made clear, specific and detailed explanations pertaining to the specific strokes, figures or letters showing that the ballots had been written by one person. Granting that the decision was tainted with errors, *certiorari* would still not lie because a mere error of judgment is not synonymous with grave abuse of discretion. Lastly, a liberal application of the

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[12] *Rollo,* pp. 13-15.

rules cannot be made to a petition which offers no explanation for the non-observance of the rules.[13]

On November 13, 2012,[14] the Court resolved to require the Comelec and the respondent to comment on the petition and to observe the *status quo* prevailing before the issuance of the assailed Comelec Second Division's Resolution of May 14, 2012 and the Comelec *en banc's* Resolution of October 6, 2012.[15]

In his Comment, the respondent contends that the petition was filed prematurely. He emphasizes that the October 6, 2012 Resolution of the Comelec *en banc* was not a majority decision considering that three Commissioners voted for the denial of the motion for reconsideration and the three others voted to grant the same. So notes that the assailed October 6, 2012 Resolution was deliberated upon only by six (6) Commissioners because the 7th Commissioner had not yet been appointed by the President at that time. Considering that the October 6, 2012 Resolution was not a majority decision by the Comelec *en banc,* So prays for the dismissal of the petition so that it can be remanded to the Comelec for a rehearing by a full and complete Commission.[16]

The Court's Ruling

We resolve to DISMISS the petition for having been prematurely filed with this Court, and remand the case to the COMELEC for its appropriate action.

The October 6, 2012 Comelec en banc's Resolution lacks legal effect as it is not a majority decision required by the Constitution and by the Comelec Rules of Procedure

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[13] *Id.* at 15-39.

[14] *Id.* at 168.

[15] *Id.* at 168.

[16] *Id.* at 171-173.

Section 7, Article IX-A of the Constitution requires that "[e]ach Commission shall **decide by a majority vote of all its members**, any case or matter brought before it within sixty days from the date of its submission for decision or resolution."[17] Pursuant to this Constitutional mandate, the Comelec provided in Section 5 (a), Rule 3 of the Comelec Rules of Procedure the votes required for the pronouncement of a decision, resolution, order or ruling when the Comelec sits *en banc*, *viz.*:

Section 5. *Quorum; Votes Required.* — (a) When sitting *en banc*, four (4) Members of the Commission shall constitute a quorum for the purpose of transacting business. The **concurrence of a majority of the Members of the Commission** shall be necessary for the pronouncement of a decision, resolution, order or ruling. [italics supplied; emphasis ours]

We have previously ruled that a **majority vote requires a vote of four members** of the Comelec *en banc*. In *Marcoleta v. Commission on Elections*,[18] we declared "that Section 5 (a) of Rule 3 of the Comelec Rules of Procedure and Section 7 of Article IX-A of the Constitution require that a **majority vote of all the members** of the Comelec [*en banc*], and not only those who participated and took part in the deliberations, is necessary for the pronouncement of a decision, resolution, order or ruling."

In the present case, while the October 6, 2012 Resolution of the Comelec *en banc* appears to have affirmed the Comelec Second Division's Resolution and, in effect, denied Sevilla's motion for reconsideration, the equally divided voting between three Commissioners concurring and three Commissioners dissenting is not the majority vote that the Constitution and the Comelec Rules of Procedure require for a valid pronouncement of the assailed October 6, 2012 Resolution of the Comelec *en banc*.

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[17] Emphasis ours.

[18] G.R. Nos. 181377 and 181726, April 24, 2009, 586 SCRA 765, 773-774; citation omitted.

In essence, based on the 3-3 voting, the Comelec *en banc* did not sustain the Comelec Second Division's findings on the basis of the three concurring votes by Commissioners Tagle, Velasco and Yusoph; conversely, it also did not overturn the Comelec Second Division on the basis of the three dissenting votes by Chairman Brillantes, Commissioner Sarmiento and Commissioner Lim, as either side was short of one (1) vote to obtain a majority decision. Recall that under Section 7, Article IX-A of the Constitution, a majority vote of <u>all</u> the members of the Commission *en banc* is necessary to arrive at a ruling. In other words, the vote of four (4) members must <u>always</u> be attained in order to decide, irrespective of the number of Commissioners in attendance. Thus, for all intents and purposes, the assailed October 6, 2012 Resolution of the Comelec *en banc* had no legal effect whatsoever except to convey that the Comelec failed to reach a decision and that further action is required.

The October 6, 2012 Comelec en banc's Resolution must be reheard pursuant to the Comelec Rules of Procedure

To break the legal stalemate in case the opinion is equally divided among the members of the Comelec *en banc*, Section 6, Rule 18 of the Comelec Rules of Procedure mandates a rehearing where parties are given the opportunity anew to strengthen their respective positions or arguments and convince the members of the Comelec *en banc* of the merit of their case.[19] Section 6, Rule 18 of the Comelec Rules of Procedure reads:

> Section 6. *Procedure if Opinion is Equally Divided.* — **When the Commission *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard**, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; and

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[19] *Juliano v. COMELEC,* 521 Phil. 395, 403 (2006).

in all incidental matters, the petition or motion shall be denied. [emphasis ours; italics supplied]

In *Juliano v. Commission on Elections*,[20] only three members of the Comelec *en banc* voted in favor of granting Estrelita Juliano's motion for reconsideration (from the Decision of the Comelec Second Division dismissing her petition for annulment of proclamation of Muslimin Sema as the duly elected Mayor of Cotabato City), three members dissented, and one member took no part. In ruling that the Comelec acted with grave abuse of discretion when it failed to order a rehearing required by the Comelec Rules of Procedure, the Court ruled:

> Section 6, Rule 18 of the Comelec Rules of Procedure specifically states that if the opinion of the Comelec *En Banc* is equally divided, the case shall be **reheard**. The Court notes, however, that the Order of the Comelec *En Banc* dated February 10, 2005 clearly stated that what was conducted was a mere "re-consultation."
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> A "re-consultation" is definitely not the same as a "rehearing."
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> A consultation is a "deliberation of persons on some subject;" hence, a re-consultation means a second deliberation of persons on some subject.
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> Rehearing is defined as a "second consideration of cause for purpose of calling to court's or administrative board's attention any error, omission, or oversight in first consideration. ***A retrial of issues presumes notice to parties entitled thereto and opportunity for them to be heard[.]"*** (italics supplied). But as held in *Samalio v. Court of Appeals,*
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>> A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand.
>
> Thus, a rehearing clearly presupposes the participation of the opposing parties for the purpose of presenting additional evidence, if any, and further clarifying and amplifying their arguments; whereas, a re-consultation involves a re-evaluation of the issues and arguments

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[20] *Ibid.*

already on hand only by the members of the tribunal, without the participation of the parties.

In *Belac v. Comelec,* when the voting of the Comelec *En Banc* on therein petitioner's motion for reconsideration was equally divided, the Comelec *En Banc* first issued an order setting the case for hearing and allowed the parties to submit their respective memoranda before voting anew on therein petitioner's motion for reconsideration. This should have been the proper way for the Comelec *En Banc* to act on herein petitioner's motion for reconsideration when the first voting was equally divided. Its own Rules of Procedure calls for a rehearing where the parties would have the opportunity to strengthen their respective positions or arguments and convince the members of the Comelec *En Banc* of the merit of their case. Thus, when the Comelec *En Banc* failed to give petitioner the rehearing required by the Comelec Rules of Procedure, said body acted with grave abuse of discretion.[21] (italics supplied; emphases ours)

To the same effect, in *Marcoleta v. Commission on Elections*,[22] the Court ruled that the Comelec *en banc* did not gravely abuse its discretion when it ordered a rehearing of its November 6, 2007 Resolution for failing to muster the required majority voting. The Court held:

The Comelec, despite the obvious inclination of three commissioners to affirm the Resolution of the *First* Division, cannot do away with a rehearing since its Rules clearly provide for such a proceeding for the body to have a solicitous review of the controversy before it. A rehearing clearly presupposes the participation of the opposing parties for the purpose of presenting additional evidence, if any, and further clarifying and amplifying their arguments.

To reiterate, neither the assenters nor dissenters can claim a majority in the *En Banc* Resolution of November 6, 2007. The Resolution served no more than a record of votes, lacking in legal effect despite its pronouncement of reversal of the *First* Division Resolution. Accordingly, the Comelec did not commit any grave

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[21] *Id.* at 402-403; citations omitted.

[22] *Supra* note 18.

abuse of discretion in ordering a rehearing.[23] (italics supplied; citation omitted)

In the present case, it appears from the records that the Comelec *en banc* did not issue an Order for a rehearing of the case in view of the filing in the interim of the present petition for *certiorari* by Sevilla. In both the cases of *Juliano* and *Marcoleta*, cited above, we remanded the cases to the Comelec *en banc* for the conduct of the required rehearing pursuant to the Comelec Rules of Procedure. Based on these considerations, we thus find that a remand of this case is necessary for the Comelec *en banc* to comply with the rehearing requirement of Section 6, Rule 18 of the Comelec Rules of Procedure.

WHEREFORE, we hereby **DISMISS** the petition and **REMAND** SPR (BRGY-SK) No. 70-2011 to the Comelec *en banc* for the conduct of the required rehearing under the Comelec Rules of Procedure. The Comelec *en banc* is hereby **ORDERED** to proceed with the rehearing with utmost dispatch.

No costs.

SO ORDERED.

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

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[23] *Id.* at 774.

EN BANC

[G.R. No. 204123. March 19, 2013]

MARIA LOURDES B. LOCSIN, *petitioner, vs.* **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL and MONIQUE YAZMIN MARIA Q. LAGDAMEO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) IS THE SOLE JUDGE OF ALL CONTESTS RELATING TO THE ELECTION, RETURNS AND QUALIFICATIONS OF THEIR MEMBERS; INTERFERENCE BY THE COURT ONLY IN CASE OF GRAVE ABUSE OF DISCRETION.—** The Constitution (Article VI, Section 17) provides that public respondent House of Representatives Electoral Tribunal (HRET) is the *sole judge* of all contests relating to the election, returns, and qualifications of their members. This Court's jurisdiction to review HRET's decisions and orders is exercised only upon showing that HRET acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Otherwise, this Court will not interfere with an electoral tribunal's exercise of its discretion or jurisdiction.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT APPRECIATED IN THE INQUIRY AS TO THE CORRECTNESS OF THE EVALUATION OF EVIDENCE OF THE HRET DECISION.—** "Grave abuse of discretion" has been defined as the capricious and whimsical exercise of judgment, the exercise of power in an arbitrary manner, where the abuse is so patent and gross as to amount to an evasion of positive duty. Time and again, this Court has held that mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation

of law. x x x An inquiry as to the correctness of the evaluation of evidence is not within the ambit of the extraordinary remedy of *certiorari*. "Where the court has jurisdiction over the subject matter, its orders upon all questions pertaining to the cause are orders within its jurisdiction, and however erroneous they may be, they cannot be corrected by *certiorari*." This rule applies to decisions by the HRET whose independence as a constitutional body has consistently been upheld by this Court. Well settled also is the rule that the Supreme Court is not a trier of facts, and factual issues are beyond its authority to review. x x x Neither was there arbitrariness or use of power as to constitute denial of due process. In fact, petitioner was given several opportunities to present its evidence and raise its arguments. These were considered by public respondent that discussed meticulously its factual and legal bases in reaching its decision.

3. **POLITICAL LAW; ELECTIONS; BALLOT APPRECIATION; OBJECTIVE IS TO DISCOVER AND GIVE EFFECT TO, RATHER THAN FRUSTRATE, THE INTENTION OF THE VOTER; RULE ON THE APPRECIATION OF AMBIGUOUS VOTES AND MARKED BALLOTS.—** The cardinal objective in ballot appreciation is to discover and give effect to, rather than frustrate, the intention of the voter. Extreme caution is observed before any ballot is invalidated and doubts are resolved in favor of the ballot's validity. Public respondent HRET was guided by this principle and the existing rules and rulings in its appreciation of the contested ballots. Ballots with an *Ambiguous Vote* have a mark that is allegedly neither a definite vote nor a non-vote. This may happen if the mark is too light or the voter inadvertently made a small mark inside the oval or other similar cases. The tribunal determined whether the voter clearly intended to draw the mark or if this was made inadvertently. x x x *Marked Ballots* contain a mark intentionally written or placed by the voter for the purpose of identifying the ballot or the voter. x x x Marks made by the voter unintentionally do not invalidate the ballot. Neither do marks made by some person other than the voter. Moreover, the Omnibus Election Code provides explicitly that every ballot shall be presumed valid unless there is clear and good reason to justify its rejection. Unless it should clearly appear that they have been deliberately put by the voter to serve as identification

marks, commas, dots, lines, or hyphens between the first name and surname of a candidate, or in other parts of the ballot, traces of the letter "T", "J", and other similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing and unintentional or accidental flourishes, strokes, or strains, shall not invalidate the ballot.

4. **ID.; ID.; SPURIOUS OR SUBSTITUTED BALLOTS DEFECTIVELY SIGNED BY THE CHAIR OF THE BOARD OF ELECTION INSPECTORS (BEI); CONSISTENT RULE IS THAT A BALLOT IS CONSIDERED VALID AND GENUINE WHEN IT BEARS ANY ONE OF THE AUTHENTICATING MARKS; CASE AT BAR.—** Petitioner objected to most of the ballots on the ground that these were *Spurious or Substituted* ballots. These are ballots that allegedly do not contain the signature of the Chairperson of the Board of Election Inspectors (BEI) at the designated space or the signature is allegedly different from the BEI Chairperson's signature appearing on other election documents. In *Punzalan v. Comelec,* this Court held that "[i]t is a well-settled rule that the failure of the BEI chairman or any of the members of the board to comply with their mandated administrative responsibility, *i.e.*, signing, authenticating and thumbmarking of ballots, should not penalize the voter with disenfranchisement, thereby frustrating the will of the people." The consistent rule is that a ballot is considered valid and genuine when it bears any one of the following authenticating marks: (a) the COMELEC watermark or (b) the signature or initials or thumbprint of the Chairman of the BEI; and (c) in those cases where the COMELEC watermarks are blurred or not readily apparent to the naked eye, the presence of red and blue fibers in the ballots. In this case, ultra-violet (UV) lamps were used to confirm the presence of the UV code or seal placed as security markings at the upper center of the automated ballots. This UV code or seal was inserted to identify ballots that were cast and fed to the PCOS machines. The HRET found these ballots authentic and admitted as valid the 1,808 ballots objected by petitioner and favoring Lagdameo. On the other hand, the HRET admitted 1,905 ballots objected by Lagdameo and favoring Locsin.

APPEARANCES OF COUNSEL

G.R. Garcia Law Office for petitioner.
The Solicitor General for public respondent.
Juanito G. Arcilla for private respondent.

D E C I S I O N

LEONEN, *J.*:

The Constitution provides that public respondent House of Representatives Electoral Tribunal (HRET) is the *sole judge* of all contests relating to the election, returns, and qualifications of their members.[1] This Court's jurisdiction to review HRET's decisions and orders is exercised only upon showing that HRET acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Otherwise, this Court will not interfere with an electoral tribunal's exercise of its discretion or jurisdiction.[2]

This is a *Petition for Certiorari and Prohibition* under Rule 65 of the Rules of Court filed by petitioner Locsin praying:

> i. for the WRIT OF *CERTIORARI* declaring the assailed *Decision* promulgated on 17 September 2012 and *HRET Resolution No. 12-209* dated 15 October 2012 as NULL AND VOID and/or to REVERSE OR SET ASIDE the issuances for having been issued with grave abuse of discretion amounting to lack of or in excess of jurisdiction;
>
> ii. for the WRIT OF PROHIBITION to enjoin and prohibit the Public Respondent HRET from implementing the assailed *Decision* promulgated on 17 September 2012 and *HRET Resolution No. 12-209* dated 15 October 2012;
>
> iii. to NULLIFY the proclamation of private respondent Lagdameo;

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[1] CONSTITUTION, Art. VI, Sec. 17. Emphasis supplied.

[2] *Dueñas v. HRET,* G.R. No. 191550, May 4, 2010, 620 SCRA 78, 80.

iv. to DECLARE and PROCLAIM petitioner Locsin as the duly elected Representative of the First District of Makati City having received the HIGHEST NUMBER OF VALID VOTES during the May 10, 2010 elections.[3]

Petitioner Locsin and private respondent Lagdameo, along with three other candidates, vied for the position to represent the First Legislative District of Makati in the 2010 national elections. Respondent Lagdameo was proclaimed winner by the City Board of Canvassers on 11 May 2010 garnering 42,102 votes. Petitioner came in second with 41,860 votes or a losing margin of 242 votes.[4]

On 21 May 2010, petitioner Locsin instituted an election protest before the HRET impugning the election results in all 233 clustered precincts in Makati's First District.[5] Petitioner alleged that the results were tainted by election fraud, anomalies, and irregularities. On 2 July 2010, Lagdameo filed her *Answer with Counter-Protest* questioning the results in 123 clustered precincts.

During the preliminary conference, Locsin designated 59 clustered precincts as the pilot precincts for her protest while Lagdameo designated 31 clustered precincts as the pilot precincts for her counter-protest. The revision/recount proceedings for 59 clustered precincts covering 25% of the pilot protested precincts were conducted from 14 April 2011 to 19 April 2011. Thereafter, petitioner presented her documentary evidence. By *Resolution No. 11-268*, the HRET admitted in evidence all documentary exhibits offered by petitioner subject to the Comment/Objections of private respondent.

Lagdameo's winning margin increased from 242 to 265 votes after the revision and appreciation of ballots in 25% of the pilot protested precincts.[6] Nevertheless, HRET through the 1 December 2011 Resolution continued the revision proceedings

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[3] *Rollo,* pp. 63-64.

[4] *Id.* at 69.

[5] *Id.* at 114-135.

[6] *Id.* at 109 and 575.

to clear all doubts surrounding the victory of private respondent. Revision proceedings covered the remaining 174 clustered precincts from 18 January 2012 to 31 January 2012.

Petitioner Locsin continued her presentation of additional documentary exhibits. By *Resolution No. 12-061* dated 8 March 2012, the HRET admitted the exhibits subject to private respondent's Comment/Opposition filed on 27 February 2012.

Private respondent Lagdameo presented her evidence for the counter-protested precincts. By *Order* dated 27 April 2012, the HRET admitted all exhibits subject to the Comment/ Opposition filed by petitioner on 24 April 2012.

After the parties filed their respective memoranda, the HRET promulgated on 17 September 2012 the assailed *Decision*[7] dismissing petitioner's election protest, the dispositive portion of which reads:

> **WHEREFORE,** for failure to show a reasonable recovery of votes, this election protest is **DISMISSED** and the proclamation of protestee Monique Yazmin Maria Q. Lagdameo as the duly elected Representative of the First Legislative District of Makati City in the May 10, 2010 Automated National and Local Elections is **AFFIRMED**.[8]

The HRET discussed in detail the results of the recount and its appreciation of the contested ballots.[9] The results showed that Lagdameo's proclamation margin of 242 votes increased to 265 votes after revision proceedings in the 25% pilot protested clustered precincts. The margin rose to 335 votes after the revision and appreciation of ballots in the remaining precincts.[10] On the allegations of fraud and election irregularities, respondent tribunal found no compelling evidence that may cast doubt on the credibility of the results generated by the Precinct Count Optical Scan (PCOS) electronic system.[11]

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[7] HRET Decision dated September 17, 2012. *Rollo*, pp. 68-110.

[8] *Id.* at 110.

[9] *Id.* at 89-106.

[10] *Id.* at 109.

[11] *Id.*

The HRET also denied with finality petitioner's motion for reconsideration by *Resolution No. 12-209* dated 15 October 2012.[12]

On 16 November 2012, Locsin filed the present petition on the ground that public respondent HRET committed grave abuse of discretion amounting to lack or excess of jurisdiction when:

1. it promulgated the assailed *Decision* on 17 September 2012 dismissing the election protest filed by the petitioner on the basis of the erroneous appreciation of the petitioner's contested and claimed ballots.

2. it issued the assailed *Resolution No. 12-209* dated 15 October 2012 denying with finality the motion for reconsideration filed by the petitioner despite the presence of substantial grounds for the reconsideration of the assailed 17 September 2012 *Decision*.

3. it resolved to admit the 2,455 ballots of the private respondent despite the valid, legitimate and substantial objections of the petitioner.

4. it resolved to deny the 471 claimed ballots of the petitioner despite the existence of bona fide and compelling grounds for their admission.[13]

Locsin alleged that the HRET committed grave abuse of discretion when it ignored the presence of 2,457 invalid, irregular, and rejectible ballots for Lagdameo and 663 bona fide claimed ballots for petitioner.[14] Specifically, only two of the 2,457 contested ballots were rejected by the HRET, and only 192 of the 663 ballots claimed by petitioner were admitted by the HRET.[15] Petitioner argued that a re-examination of the private respondent's ballots would show that markings were placed

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[12] *Id.* at 113.

[13] *Rollo,* pp. 12-13.

[14] *Id.* at 14.

[15] *Id.* at 15.

intentionally for identification, and the ballots should have been rejected. Those which contained shadings below the 50% threshold should have been rejected also.

In its Comment, public respondent argued that under the Constitution, the HRET alone shall have the authority to determine the form, manner, and conduct by which an election controversy is settled and decided with no further appeal.

For its part, private respondent Lagdameo argued that the HRET's rulings on the recount, revision and appreciation of objected and claimed ballots are in accord with law and evidence.[16]

The sole issue in the present petition is whether the HRET committed grave abuse of discretion in dismissing petitioner's election protest.

Article VI, Section 17 of the Constitution provides that the HRET shall be the "*sole judge* of all contests relating to the election, returns, and qualifications of their respective members."[17] As this Court held in *Lazatin v. House of Representatives Electoral Tribunal*:[18]

> The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as complete and unimpaired as if it had remained originally in the legislature." Earlier, this grant of power to the legislature was characterized by Justice Malcolm "as full, clear and complete." Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution.[19]

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[16] *Id.* at 538.

[17] Emphasis supplied.

[18] 250 Phil. 390 (1988).

[19] *Id.* at 399-400, citing *Angara v. Electoral Commission,* 63 Phil. 139 (1936).

Thus, this Court's jurisdiction to review HRET's decisions and orders is exercised only upon showing that the HRET acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[20] Otherwise, this Court shall not interfere with the HRET's exercise of its discretion or jurisdiction.[21] "Grave abuse of discretion" has been defined as the capricious and whimsical exercise of judgment, the exercise of power in an arbitrary manner, where the abuse is so patent and gross as to amount to an evasion of positive duty.[22]

Time and again, this Court has held that mere abuse of discretion is not enough.[23] It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[24]

In the present case, we find no grave abuse of discretion on the part of public respondent HRET when it dismissed petitioner's election protest.

Public respondent HRET conducted a revision and appreciation of all the ballots from all the precincts. This was done despite the fact that results of initial revision proceedings in 25% of the precincts increased the winning margin of private respondent from 242 to 265 votes. Out of due diligence and to remove all doubts on the victory of private respondent, the HRET directed continuation of revision proceedings. This was done despite the dissent of three of its members, representatives Franklin

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[20] CONSTITUTION, Art. VIII, Sec. 1.

[21] *Dueñas v. HRET, supra* note 2.

[22] *Id.* at 80.

[23] *Tañada v. Angara,* 338 Phil. 546, 604 (1997), citing *San Sebastian College v. CA,* 197 SCRA 138 (1991); *Commissioner of Internal Revenue v. CTA,* 195 SCRA 444, 458 (1991); *Simon v. Civil Service Commission,* 215 SCRA 410, (1992); and *Bustamante v. Commissioner on Audit,* 216 SCRA 134, 136, (1992).

[24] *Id.* at 604.

P. Bautista, Rufus B. Rodriguez, and Joselito Andrew R. Mendoza. The three voted "for the dismissal of the instant election protest without further proceedings for lack of reasonable recovery of votes in the pilot protested clustered precincts."[25]

Thus, in reaching the assailed decision, the HRET took pains in reviewing the validity or invalidity of each contested ballot with prudence. This is evident from the decision's ballot enumeration specifying with concrete basis and clarity the reason for its denial or admittance.[26] The results, as well as the objections, claims, admissions, and rejections of ballots were explained sufficiently and addressed by the HRET in its *Decision*.

In essence, this petition under Rule 65 seeks a re-examination by this Court of the contested ballots.

An inquiry as to the correctness of the evaluation of evidence is not within the ambit of the extraordinary remedy of *certiorari*.[27] "Where the court has jurisdiction over the subject matter, its orders upon all questions pertaining to the cause are orders within its jurisdiction, and however erroneous they may be, they cannot be corrected by *certiorari*."[28] This rule applies to decisions by the HRET whose independence as a constitutional body has consistently been upheld by this Court.[29]

Well settled also is the rule that the Supreme Court is not a trier of facts, and factual issues are beyond its authority to review.[30]

In the absence of any showing of grave abuse of discretion by the HRET, there is no reason for this Court to annul respondent tribunal's decision or to substitute it with its own. As held by

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[25] HRET Resolution dated 1 December 2011. *Rollo*, p. 597.

[26] HRET Decision dated 17 September 2012. *Rollo*, pp. 88-106.

[27] See *Garcia v. House of Representatives Electoral Tribunal,* 371 Phil. 280, 292 (1999).

[28] *Robles v. HRET,* 260 Phil. 831, 836 (1990).

[29] *Id.*

[30] *Sema v. HRET,* G.R. No. 190734, 616 SCRA 670, 681, March 26, 2010.

this Court in Garcia vs. House of Representatives Electoral Tribunal:[31]

> [T]he Court has ruled that the power of the Electoral Commission 'is beyond judicial interference except, in any event, upon a clear showing of arbitrary and improvident use of power as will constitute a denial of due process.' The Court does not, to paraphrase it in *Co vs. HRET*,[32] venture into the perilous area of correcting perceived errors of independent branches of the Government; it comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution itself calls for remedial action.[33]

Petitioner's bare assertions of grave abuse of discretion by public respondent were not substantiated. Neither was there arbitrariness or use of power as to constitute denial of due process. In fact, petitioner was given several opportunities to present its evidence and raise its arguments. These were considered by public respondent that discussed meticulously its factual and legal bases in reaching its decision.[34]

But still, to erase all lingering doubts, this Court looked into the contested ballots as summarized by Locsin in the petition.

I. Objected Ballots

Petitioner alleges that the HRET acted with grave abuse of discretion in rejecting only two (2) out of the 2,457 Lagdameo-identified ballots which were contested timely by petitioner during the judicial recount and revision proceedings. Petitioner claims that these ballots were marked ballots (MB), spurious ballots (SB), and miscellaneous/stray ballots (MISC/STRAY) which should have been rejected. The petition included tables enumerating the contested ballots, ground for their rejection and findings, and organized by *barangay* and clustered precinct

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[31] *Supra* note 28.

[32] 199 SCRA 692 (1991).

[33] *Supra* note 28 at 287.

[34] *Rollo,* pp. 88-106.

number.[35] Petitioner's findings are consolidated and summarized as follows:

No. of Ballots	Findings	Grounds
446	No BEI signature	SB
30	- No BEI signature - Signature affixed on lower leftportion of the ballot deliberately done to mark the ballot	SB MB
13	No signature on the BEI Chairman's signature box/No BEI Chairman's signature	SB
3	The signature on the BEI Chairman's signature box is different from the signature on the other election documents.	SB
1	Two different signatures written inside rectangle intended for BEI Chairman slot	MB
575	- Different BEI signature	SB
1	- Different BEI signature - With distinctive "C" voting mark beside oval shape on candidate number "128" partylist deliberately done to mark the ballot	SB MB
2	The signatures of these ballots are different from the rest of the ballots and	SB

[35] *Id.* at 16-28.

No. of Ballots	Findings	Grounds
	from the signatures on the election documents.	
5	Different BEI signature affixed on the upper right portion of the ballot	MB
1	BEI signature affixed on president slot portion of ballot deliberately done to mark the ballot	MB
49	With distinctive voting marks written... deliberately done to mark the ballot	MB
1	Thumb print on the slot for *sangguniang panglungsod* no. 27 which serves no purpose other than to mark the ballot for identification.	MB
4	"X" mark drawn over the oval shape beside the pre-printed name "[*different candidate*]," which serves no purpose other than to mark the ballot for identification.	MB
5	Voter's signature affixed . . . deliberately done to mark the ballot.	MB
17	Oval shape beside pre-printed name "LAGDAMEO" are only shaded below 50% threshold required by the rules, hence, it should be stray.	MISC/STRAY

No. of Ballots	Findings	Grounds
10	Oval shape beside pre-printed name "[*different candidate*]." [*different position*], is only shaded below 50% threshold required by the rules, hence, it should be stray.	MISC/STRAY
1	Oval shape beside pre-printed name of Lagdameo was crossed out, hence, it should be stray.	MISC/STRAY
1	Oval shape beside "[*different candidate*]," [*different position*], was slashed, hence, it should be stray.	MISC/STRAY

Petitioner argues that in election law, irrelevant expressions, impertinent figures, words or phrases, and unnecessary and identifying expressions nullify ballots. Petitioner cites Section 195 of the Omnibus Election Code which states that it shall be unlawful to apply "any distinguishing mark" or "make use of any other means to identify the vote of the voter."[36] Petitioner also cites *Alfelor v. Fuentebella*,[37] which states that it is illegitimate practice to include in the ballot unnecessary writings that detract from the solemnity of the exercise of suffrage. The 1935 case of *Cecilio v. Tomacruz*[38] and the 1958 case of *Amurao v. Calangi*[39] were also cited saying that ballots containing impertinent, irrelevant, unnecessary words or expressions are null ballots with these markings serving no other

[36] *Rollo,* p. 29.

[37] HRET Case No. 194 (1969).

[38] 62 Phil. 689 (1935).

[39] 104 Phil. 347 (1958).

purpose than to identify the ballot. Finally, petitioner cites the 1962 case of *Tajanlangit v. Cazenas*[40] indicating that ballots containing the signature of voters shall be invalidated.[41]

The cardinal objective in ballot appreciation is to discover and give effect to, rather than frustrate, the intention of the voter.[42] Extreme caution is observed before any ballot is invalidated and doubts are resolved in favor of the ballot's validity.[43] Public respondent HRET was guided by this principle and the existing rules and rulings in its appreciation of the contested ballots.[44]

Ballots with an *Ambiguous Vote* have a mark that is allegedly neither a definite vote nor a non-vote. This may happen if the mark is too light or the voter inadvertently made a small mark inside the oval or other similar cases. The tribunal determined whether the voter clearly intended to draw the mark or if this was made inadvertently. On this ground, the HRET admitted all 250 ballots objected by petitioner in favor of Lagdameo. On the other hand, the HRET admitted all 439 ballots objected by Lagdameo and containing a definite vote for petitioner.

Marked Ballots contain a mark intentionally written or placed by the voter for the purpose of identifying the ballot or the voter. In *Cailles v. Gomez,*[45]

> The distinguishing mark which the law forbids to be placed in the ballots is that which the elector may have placed with the intention of facilitating the means of identifying said ballot, for the purpose of defeating the secrecy of the suffrage which the law establishes.

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[40] G.R. No. L-18894, 30 June 1962, 5 SCRA 567.

[41] *Rollo,* p. 29.

[42] See *Torres vs. House of Representatives Electoral Tribunal,* 404 Phil. 125, 142 (2001).

[43] *Silverio v. Castro,* 125 Phil. 917, 925 (1967).

[44] HRET Decision, *Rollo*, p. 91.

[45] 42 Phil. 496 (1921).

As this is a question of fact, it should be resolved with the ballot itself in view.[46]

Marks made by the voter unintentionally do not invalidate the ballot.[47] Neither do marks made by some person other than the voter.[48]

Moreover, the Omnibus Election Code provides explicitly that every ballot shall be presumed valid unless there is clear and good reason to justify its rejection.[49] Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines, or hyphens between the first name and surname of a candidate, or in other parts of the ballot, traces of the letter "T", "J", and other similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing and unintentional or accidental flourishes, strokes, or strains, shall not invalidate the ballot.[50]

On the premise that the alleged markings in the ballots, *i.e.*, "/" ")" and other similar marks do not qualify to identify the ballot, the HRET admitted as not marked the 381 ballots objected by petitioner in favor of Lagdameo. On the other hand, the HRET admitted as not marked 4,562 ballots objected by Lagdameo in favor of petitioner. Only one (1) ballot for petitioner was rejected while only two (2) ballots for Lagdameo were rejected for being marked.

Petitioner objected to most of the ballots on the ground that these were *Spurious* or *Substituted* ballots. These are ballots that allegedly do not contain the signature of the Chairperson of the Board of Election Inspectors (BEI) at the designated space or the signature is allegedly different from the BEI Chairperson's signature appearing on other election documents.

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[46] *Id.* at 533.

[47] *Id.*

[48] *Tajanlangit v. Cazeñas*, 5 SCRA 567, 579 (1962).

[49] Omnibus Election Code, Sec. 211.

[50] *Id.* at Sec. 211 (22).

In *Punzalan v. Comelec*,[51] this Court held that "[i]t is a well-settled rule that the failure of the BEI chairman or any of the members of the board to comply with their mandated administrative responsibility, *i.e.,* signing, authenticating and thumbmarking of ballots, should not penalize the voter with disenfranchisement, thereby frustrating the will of the people."[52] The consistent rule is that a ballot is considered valid and genuine when it bears any one of the following authenticating marks: (a) the COMELEC watermark or (b) the signature or initials or thumbprint of the Chairman of the BEI; and (c) in those cases where the COMELEC watermarks are blurred or not readily apparent to the naked eye, the presence of red and blue fibers in the ballots.[53]

In this case, ultra-violet (UV) lamps were used to confirm the presence of the UV code or seal placed as security markings at the upper center of the automated ballots.[54] This UV code or seal was inserted to identify ballots that were cast and fed to the PCOS machines. The HRET found these ballots authentic and admitted as valid the 1,808 ballots objected by petitioner and favoring Lagdameo. On the other hand, the HRET admitted 1,905 ballots objected by Lagdameo and favoring Locsin.

Ballots with an *Over-Voting* count occur when a voter shaded more than two or more ovals pertaining to two or more candidates for representative. The HRET admitted 10 ballots in favor of Lagdameo owing to the untenability of the objections raised. On the other hand, all 597 ballots in favor of petitioner Locsin were admitted.

Lastly, the HRET found without merit objections made on miscellaneous grounds and admitted one (1) ballot for petitioner and four (4) ballots for Lagdameo.[55]

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[51] 352 Phil. 538 (1998).

[52] *Id.* at 551.

[53] *Libanan v. HRET,* 347 Phil. 797, 813 (1997).

[54] *Rollo,* p. 98.

[55] *Id.* at 101.

This Court finds no grave abuse of discretion by the HRET in its findings after HRET's careful review of the objected ballots and guided by existing principles, rules and rulings on its appreciation.

II. Claimed Ballots

Petitioner also alleged that the HRET acted with grave abuse of discretion in admitting only 192 out of the 663 stray, common or PCOS-rejected ballots claimed timely and duly by the petitioner during the judicial recount and revision proceedings. The petition included tables enumerating the contested ballots, ground for their rejection and findings, organized by *barangay* and clustered precinct number.[56] Petitioner's findings are consolidated and summarized as follows:

Number of Ballots	Findings
1	The names of LAGDAMEO and LOCSIN are both shaded but the shading for LAGDAMEO is more prominent.
3	Oval shape beside pre-printed name "LOCSIN, LAGDAMEO" was shaded, the voter's intention is to vote for "LOCSIN" as Congressman.
17	The shaded oval beside the name "LOCSIN MARIA LOURDES" is clear and more pertinent as compared to the other candidate. The intention of the voter is clear to vote for "LOCSIN" for representative.
427	Oval shape beside pre-printed name "LOCSIN. . ." was shaded, the intention of the voter is to vote for LOCSIN as Congressman.
15	Oval shape beside pre-printed name "LOCSIN" was shaded, the intention of the

[56] *Rollo,* pp. 31-61.

Number of Ballots	Findings
	voter is to vote for "LOUIE LOCSIN" as Congressman.
2	Oval shape beside pre-printed name "BARBERS, IBAY, LOCSIN" was shaded, the intention of the voter is to vote for "LOCSIN" for Congressman.
1	Oval shape beside pre-printed name "BARBERS, LOCSIN" was shaded, the intention of the voter is to vote for "LOCSIN" as Congressman.
4	Oval shape beside pre-printed name "BARBERS, IBAY, CARBONFIL, LAGDAMEO, LOCSIN" was shaded, the intention of the voter is to vote for "LOCSIN" as Congressman.
1	Oval shape beside pre-printed name "LOCSIN, MARIA LOURDES B. "LOUIE" was shaded 60% by semi-illiterate voter, other entries shaded on the ballot done by another person, the intention of voter to vote for "LOCSIN."
2	Ballot is clean and no reported incident in the MOV. Therefore, the voter's intention to vote for "LOCSIN MARIA LOURDES" for representative of the 1st district of Makati should not be disenfranchised.
1	Oval shape beside pre-printed name "LOCSIN" was shaded, the voter's intention is to vote for LOCSIN as Congressman. ("One and more ambiguous mark" was written on the ballot.)
2	Oval shape beside pre-printed name "LOCSIN" was shaded, the intent of voter is to vote for LOCSIN as Congressman. (The ballots were marked "Rejected" signed by the BEI Chairman.)

The HRET discussed in the assailed decision that under the 2010 automated election system, parties' claims are now limited to the applicability of the intent rule. This requires compliance with the following conditions: (a) only the oval beside the name of the claimant is shaded or marked; (b) the ballot belongs to the clustered precinct concerned; (c) the ballot is not marked; and (d) the ballot is authentic.[57]

The HRET applied this rule on its appreciation of the claimed ballots. For *Stray* ballots, the tribunal admitted two (2) ballots out of the 451 stray ballots claimed by petitioner and in fact admitted only one (1) out of the 606 stray ballots claimed by Lagdameo. For *PCOS Machine-Rejected* ballots, these may still be admissible for the claimant provided that upon physical examination, the four requisites for the applicability of the intent rule are present. The HRET admitted 190 claimed ballots in favor of petitioner and 191 in favor of Lagdameo.

The final results of the appreciation of contested ballots were summarized by respondent tribunal as follows:[58]

Objected Ballots				
OBJECTION BASIS	**LOCSIN**		**LAGDAMEO**	
	Admitted	**Rejected**	**Admitted**	**Rejected**
Ballots with an Ambiguous Vote	439	0	250	0
Ballots Shaded by More than One Person	1,118	0	0	0
Ballots Objected as Marked	4,562	(1)	381	(2)

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[57] *Rollo,* p. 102.

[58] *Id.* at 106.

Ballots with Pattern Voting	10,625	0	0	0
Spurious/ Substituted Ballots	1,905	0	1,808	0
Ballots with an Over-Voting Count	597	0	10	0
Combination of Grounds	0	0	2	0
Miscellaneous Grounds	1	(1)	4	0
No Stated Objection	1	0	0	0
TOTAL	**19,248**	**(2)**	**2,455**	**(2)**

Claimed Ballots				
CLAIM BASIS	**LOCSIN**		**LAGDAMEO**	
	Admitted	**Denied**	**Admitted**	**Denied**
Stray Ballots	2	(449)	1	(605)
PCOS Machine-Rejected Ballots	190	(22)	191	(11)
TOTAL	**192**	**(471)**	**192**	**(616)**

The HRET did not act with grave abuse of discretion when it in fact applied meticulously the existing rules and rulings on the ballot appreciation for the objected and claimed ballots made by both parties.

Clearly, Lagdameo received 42,484 votes. Locsin, on the other hand, received 42,149 votes.

WHEREFORE, the instant petition is **DISMISSED** for lack of merit. The *Decision* promulgated on 17 September 2012 and *HRET Resolution No. 12-209* dated 15 October 2012 are **AFFIRMED.**

SO ORDERED.

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

Velasco, Jr., Brion, Peralta, and *Bersamin, JJ.,* no part due to HRET participation.

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***ACCION PAULIANA* (REMEDY OF RESCISSION)**

Complaint for — With respect to an *accion pauliana*, the ultimate facts constituting the following requisites must all be alleged in the complaint: 1) that the plaintiff asking for rescission, has credit prior to the alienation, although demandable later; 2) that the debtor has made a subsequent contract conveying a patrimonial benefit to a third person; 3) that the creditor has no other legal remedy to satisfy his claim, but would benefit by rescission of the conveyance to the third person; 4) that act being impugned is fraudulent; and 5) that the third person who received the property conveyed, if by onerous title, has been an accomplice in the fraud. (Anchor Savings Bank [Formerly Anchor Finance and Investment Corp.] *vs*. Furigay, G.R. No. 191178, March 13, 2013) p. 378

Nature — In relation to an action for rescission, the remedy of rescission is subsidiary in nature; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same; a creditor would have a cause of action to bring an action for rescission, if it is alleged that the following successive measures have already been taken: 1) exhaust the properties of the debtor through levying by attachment and execution upon all the property of the debtor, except such as are exempt by law from execution; 2) exercise all the rights and actions of the debtor, save those personal to him (*accion subrogatoria*); and 3) seek rescission of the contracts executed by the debtor in fraud of their rights (*accion pauliana*). (Anchor Savings Bank [Formerly Anchor Finance and Investment Corp.] *vs*. Furigay, G.R. No. 191178, March 13, 2013) p. 378

ACTIONS

Cause of action — A cause of action is an act or omission which violates the rights of another; allegation of non-compliance with the obligation under the contract

necessitates the determination by the Regional Trial Court of whether there was indeed a breach, whether it would warrant rescission and/or damages. (Anchor Savings Bank [Formerly Anchor Finance and Investment Corp.] *vs.* Furigay, G.R. No. 191178, March 13, 2013) p. 378

— Failure to make a sufficient allegation of a cause of action in the complaint warrants its dismissal; the rules of procedure require that the complaint must contain a concise statement of the ultimate or essential facts constituting the plaintiff's cause of action; the test of the sufficiency of the facts alleged in the complaint is whether or not, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer of the plaintiff. *(Id.)*

— The following elements must concur: 1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; 2) an obligation on the part of the named defendant to respect or not to violate such right; and 3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief. *(Id.)*

ADMINISTRATIVE PROCEEDINGS

Penalty of dismissal from service — In determining the proper penalty, the Court looks into the respondent's past administrative cases; the record shows that he had previously been administratively charged with grave abuse of authority and gross discourtesy; although the charge was dismissed, he was reminded to be more circumspect in dealing with litigants and their counsel; his repeated infractions seriously compromise efficiency and hamper public service which the Court can no longer tolerate; thus, the penalty of dismissal from the service. (OCAD *vs.* Hon. Tormis, A.M. No. MTJ-12-1817 [Formerly A.M. No. 09-2-30-MTCC], March 12, 2013) p. 113

AMPARO, WRIT OF

Privilege of the writ of amparo — Cannot be granted based upon a trespass on petitioners' ampalaya farm; granting that the intrusion occurred, it was merely a violation of petitioners' property rights; as held in *Tapuz vs. Del Rosario*, the writ of *amparo* does not envisage the protection of concerns that are purely property or commercial in nature. (Sps. Pador *vs*. Barangay Capt. Arcayan, G.R. No. 183460, March 12, 2013) p. 190

— The barangay captain's act of sending invitation letters to petitioners and failure to sign the receiving copy of their letter-reply did not violate or threaten their constitutional right to life, liberty or security; the allegation of petitioner of future harassment cases, false accusations and possible violence from respondents is baseless, unfounded, and grounded merely on pure speculations and conjectures. *(Id.)*

— To be entitled to the privilege of the writ, petitioners must prove by substantial evidence that their rights to life, liberty and security are being violated or threatened by an unlawful act or omission; Section 1 of the Rule on the Writ of *Amparo* provides that the petition for a writ of *amparo* is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. *(Id.)*

Purpose — The privilege of the writ of *amparo* is an extraordinary remedy adopted to address the special concerns of extra-legal killings and enforced disappearances; accordingly, the remedy ought to be resorted to and granted judiciously, lest the ideal sought by the *Amparo* Rule be diluted and undermined by the indiscriminate filing of *amparo* petitions for purposes less than the desire to secure *amparo* reliefs and protection and/or on the basis of unsubstantiated allegations. (Sps. Pador *vs*. Barangay Capt. Arcayan, G.R. No. 183460, March 12, 2013) p. 190

APPEALS

Appeal from quasi-judicial agencies to the Court of Appeals — Failure to state the date of receipt of the CSC decision is not fatal since the dates are evident from the records while the failure to state the notary public's office address was rectified with the attachment in the motion for reconsideration of the verification and certification of non-forum shopping and of the affidavit of service, with the notary public's office address; procedural rules are mere tools designed to facilitate the attainment of justice, and even the Rules of Court expressly mandates that it shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. (Barra *vs*. CSC, G.R. No. 205250, March 18, 2013) p. 523

Appeal from the Court of Appeals' decision — Under Section 1, Rule 45 of the Rules of Court, the proper remedy to question the Court of Appeal's judgment, final order or resolution is a petition for review on certiorari, which must be filed within fifteen (15) days from notice of the judgment, final order or resolution appealed from; or of the denial of petitioner's motion for reconsideration filed in due time after notice of the judgment. (Indoyon, Jr. *vs*. CA, G.R. No. 193706, March 12, 2013) p. 200

Factual findings of the Court of Appeals — Settled is the rule that when supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court; as such, only errors of law are reviewed by the Court in petitions for review of CA decisions; by way of exception, the Court will exercise its equity jurisdiction and re-evaluate, review and re-examine the factual findings of the CA when, as in this case, the same are contradicting with the findings of the labor tribunals. (Torres *vs*. Rural Bank of San Juan, Inc., G.R. No. 184520, March 13, 2013) p. 355

Petition for review on certiorari to the Supreme Court under Rule 45 — Failure to attach material portions of the record was not meant to be an ironclad rule such that the failure to follow the same would merit the outright dismissal of the petition; in accordance with Section 7 of Rule 45, the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate; Section 8 of Rule 45 declares that if the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice. (Robern Devt. Corp. *vs*. People's Landless Assn., G.R. No. 173622, March 11, 2013) p. 24

Points of law, theories, issues and arguments — A party cannot change the legal theory of this case under which the controversy was heard and decided in the trial court; it should be the same theory under which the review on appeal is conducted; points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal; this will be offensive to the basic rules of fair play, justice, and due process. (Hon. Fernando *vs*. St. Scholastica's College G.R. No. 161107, March 12, 2013) p. 138

Rules on appeal — An acquittal via a Petition for Certiorari is not allowed because "the authority to review perceived errors of the trial court in the exercise of its judgment and discretion are correctible only by appeal by writ of error;" in filing a Petition for Certiorari instead of an appeal, petitioner availed of the wrong remedy and since his right to appeal the RTC's decision has long prescribed, it is no longer open to an appeal. (Almuete *vs*. People of the Phils., G.R. No. 179611, March 12, 2013) p. 166

— An appeal is not a matter of right, but of sound judicial discretion; thus, it may be availed of only in the manner provided by law and the rules; failure to follow procedural

rules merits the dismissal of the case, especially when the rules themselves expressly say so; the policy of liberal construction may be invoked only in situations in which there is some excusable formal deficiency or error in a pleading, but not when the application of the policy results in the utter disregard of procedural rules. (Indoyon, Jr. *vs*. CA, G.R. No. 193706, March 12, 2013) p. 200

— Court cannot tolerate ignorance of the law on appeals; paragraph 4(e) of Supreme Court Circular 2-90 specifically warns litigants' counsels to follow to the letter the requisites prescribed by the law on appeals – the filing of an improper remedy of special civil action for certiorari under Rule 65, when the proper remedy should have been to file a petition for review on certiorari under Rule 45, merits outright dismissal of a petition; the invocation of substantial justice is not a magic potion that will automatically compel this Court to set aside technical rules. *(Id.)*

— Under Section 18, Rule 70 of the Rules of Court, the RTC is mandated to decide the appeal based on the entire record of the MTC proceedings and such pleadings submitted by the parties or required by the RTC; even without this provision, an appellate court is clothed with ample authority to review matters, even if they are not assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a just decision of the case, or is closely related to an error properly assigned, or upon which the determination of the question raised by error properly assigned is dependent. (Guzman *vs*. Guzman, G.R. No. 172588, March 13, 2013) p. 319

— When the RTC issued its decision and orders in the exercise of its appellate jurisdiction, the proper remedy therefrom is a Rule 42 petition for review; the filing of a second motion for reconsideration results to the party's losing the right to appeal; a second motion for reconsideration being a prohibited pleading pursuant to Section 5, Rule 37 of the Rules of Court; the petitioner's subsequent motions

for reconsideration should be considered as mere scraps of paper, not having been filed at all, and unable to toll the reglementary period for an appeal. *(Id.)*

ARREST

Probable cause in arrest — Such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested; while it is true that the legality of an arrest depends upon the reasonable discretion of the officer or functionary to whom the law at the moment leaves the decision to characterize the nature of the act or deed of the person for the urgent purpose of suspending his liberty, it cannot be arbitrarily or capriciously exercised without unduly compromising a citizen's constitutionally-guaranteed right to liberty. (People of the Phils. *vs*. Villareal *y* Lualhati, G.R. No. 201363, March 18, 2013) p. 511

Warrantless arrest — A previous arrest or existing criminal record, even for the same offense, will not suffice to satisfy the exacting requirements in order to justify a lawful warrantless arrest; "personal knowledge" of the arresting officer that a crime had in fact just been committed is required; to interpret "personal knowledge" as referring to a person's reputation or past criminal citations would create a dangerous precedent and unnecessarily stretch the authority and power of police officers to effect warrantless arrests based solely on knowledge of a person's previous criminal infractions. (People of the Phils. *vs*. Villareal *y* Lualhati, G.R. No. 201363, March 18, 2013) p. 511

— Section 5, Rule 113 of the Revised Rules of Criminal Procedure lays down the basic rules on lawful warrantless arrests, either by a peace officer or a private person; two elements must concur: 1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and 2) such overt act is done in the presence or within the view of the arresting officer; explained. *(Id.)*

ATTORNEYS

Code of Professional Responsibility — Every attorney owes fidelity to the causes and concerns of his clients; his duty to safeguard the clients' interests commences from his engagement as such, and lasts until his effective release by the clients; in that time, he is expected to take every reasonable step and exercise ordinary care as his clients' interests may require; Rule 18.03, Canon 18 of the Code of Professional Responsibility, expressly so demanded that a lawyer shall serve his client with competence and diligence. (Pesto *vs*. Millo, Adm. Case No. 9612, March 13, 2013) p. 286

Disbarment — Court will outright dismiss a complaint for disbarment when on its face, it is clearly wanting in merit, depending on the merits of the case, the Court has the discretion either to proceed with the case by first requiring the parties to file their respective responsive pleadings or to dismiss the same outright; likewise, it can proceed to resolve the case without need of informing the parties that the case is already submitted for resolution. (Rodica *vs*. Atty. Manuel "Lolong" M. Lazaro, A.C. No. 9259, March 13, 2013) p. 279

Disbarment or suspension — A serious administrative complaint should not be taken for granted or lightly by any respondent attorney; an attorney who is made a respondent in a disbarment proceeding should submit an explanation, and should meet the issue and overcome the evidence against him; the reason for the requirement is that an attorney thus charged must prove that he still maintained that degree of morality and integrity expected of him at all times. (Pesto *vs*. Millo, Adm. Case No. 9612, March 13, 2013) p. 286

Gross negligence, gross incompetence and gross ignorance of the law — Committed when the lawyer failed to appeal the decision of the trial court in the *quo warranto* case before the COMELEC within the reglementary period; the inexperience of respondent counsel, considered as a mitigating

circumstance. (Baldado *vs*. Atty. Mejica, A.C. No. 9120 [Formerly CBD Case No. 06-1783], March 11, 2013) p. 1

Negligence in protecting the interest of his client — Once a lawyer agrees to take up the cause of a client, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law. (Baldado *vs*. Atty. Mejica, A.C. No. 9120 [Formerly CBD Case No. 06-1783], March 11, 2013) p. 1

ATTORNEY'S FEES

Award of — Article 2208 of the Civil Code allows the grant thereof when the court deems it just and equitable that attorney's fees should be recovered; proper if one was forced to litigate and incur expenses to protect one's rights and interest by reason of an unjustified act or omission on the part of the party from whom the award is sought. (Orchard Golf and Country Club *vs*. Francisco, G.R. No. 178125, March 18, 2013) p. 479

— Legally and morally justifiable where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest; pursuant to Article 111 of the Labor Code, ten percent (10%) of the total award is the reasonable amount of attorney's fees. (Torres *vs*. Rural Bank of San Juan, Inc., G.R. No. 184520, March 13, 2013) p. 355

— Two commonly accepted concepts of attorney's fees; in its ordinary concept, it is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; in its extraordinary concept, it is deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party; Article 111 of the Labor Code, as amended, contemplates the extraordinary concept of attorney's fees and is an exception to the declared policy of strict construction in the award of attorney's fees; in case of illegal termination wherein the worker was impelled to litigate to protect his interests, he

is entitled to receive attorney's fees. (Tangga-An *vs*. Phils. Transmarine Carriers, Inc., G.R. No. 180636, March 13, 2013) p. 339

Return of — Court may direct the repayment of attorney's fees received on the basis that a respondent attorney did not render efficient service to the client, plus interest of 6% per annum, reckoned from the finality of this decision. (Pesto *vs*. Millo, Adm. Case No. 9612, March 13, 2013) p. 286

AUTOMATED ELECTION SYSTEM ACT (R.A. NO. 9369)

Digital ballot images — The ballot images in the CF cards, as well as the printouts of such images, are the functional equivalent of the official physical ballots filled up by the voters, and may be used in an election protest; the consolidated cases of *Vinzons-Chato vs. House of Representatives Electoral Tribunal and Panotes vs. House of Representatives Electoral Tribunal and Vinzons-Chato* stated that "the picture images of the ballots, as scanned and recorded by the PCOS, are likewise 'official ballots' that faithfully capture in electronic form the votes cast by the voter, as defined by Section 2(3) of R.A. No. 9369." (Mayor Maliksi *vs*. Commission on Elections, G.R. No. 203302, March 12, 2013) p. 214

Inhibition of Commissioners — There is nothing wrong with the inclusion of the matter of inhibition of Commissioners in the resolution; the matter of inhibition is better left to the Commissioner's discretion and thus, he could not impose the inhibition of two other Commissioners just because one commissioner inhibited himself from the case; the dissent of the two Commissioners in one case is not a prejudgment of another case. (Mayor Maliksi *vs*. Commission on Elections, G.R. No. 203302, March 12, 2013) p. 214

Official physical ballots and the ballot images in the of cards — The ballot images are the counterparts produced by electronic recording which accurately reproduce the original, and thus are the equivalent of the original; the official physical ballots and the ballot images in the CF cards are both original documents and have the same evidentiary weight; discussed in Section 1 and Section 2 of Rule 4 of A.M. No. 01-7-01-SC. (Mayor Maliksi *vs*. Commission on Elections, G.R. No. 203302, March 12, 2013) p. 214

Rules on revision of ballots — COMELEC *En Banc's* resolution that provided the explanation as to the First Division's resort to the picture images of the ballots, did not cure the First Division's lapse and did not erase the irregularity that had already invalidated the proceedings; the resolution of the Division was unusually mute about the factual bases for the finding of ballot box tampering, and did not particularize its conclusion that the integrity of the ballots had been compromised. (Mayor Maliksi *vs*. Commission on Elections, G.R. No. 203302, March 12, 2013; *Bersamin, J., dissenting opinion*) p. 214

— In the event the Recount Committee determines that the integrity of the ballots has been violated or has not been preserved, or are wet and otherwise in such a condition that it cannot be recounted, the Chairman of the Committee shall request from the Election Records and Statistics Department (ERSD), the printing of the image of the ballots of the subject precinct stored in the CF card used in the elections in the presence of the parties; printing of the ballot images shall proceed only upon prior authentication and certification by a duly authorized personnel of the ERSD that the data or the images to be printed are genuine and not substitutes. *(Id.)*

— Official ballots are still considered as the primary or best evidence of the voter's will; the official ballot and its picture image are considered "original documents" and both are given equal probative weight; the courts, the

COMELEC, and the Electoral Tribunals are not authorized to quickly and unilaterally resort to the printouts of the picture images of the ballots in the proceedings had before them without notice to the parties. *(Id.)*

— Printing of the picture images of the ballots may be resorted to only after the proper revision/recount committee has first determined that the integrity of the ballots and the ballot box was not preserved; the decryption of the images stored in the CF cards and the printing of the decrypted images take place during the revision or recount proceedings, and it is the Revision/Recount Committee that determines whether the ballots are unreliable; rationale. *(Id.)*

BILL OF RIGHTS

Equal protection clause — Directed principally against undue favor and individual or class privilege; it does not require absolute equality, but merely that all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed; the classification does not violate the equal protection guarantee if the classification is germane to the purpose of the law, concerns all members of the class, and applies equally to present and future conditions. (Goldenway Merchandising Corp. *vs*. Equitable PCI Bank, G.R. No. 195540, March 13, 2013) p. 427

— The difference in the treatment of juridical persons and natural persons was based on the nature of the properties foreclosed – whether these are used as residence, for which the more liberal one-year redemption period is retained, or used for industrial or commercial purposes, in which case a shorter term is deemed necessary. *(Id.)*

Non-impairment clause — The purpose of the non-impairment clause of the Constitution is to safeguard the integrity of contracts against unwarranted interference by the State; as a rule, contracts should not be tampered with by subsequent laws that would change or modify the rights and obligations of the parties; impairment is anything

that diminishes the efficacy of the contract i.e., a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties. (Goldenway Merchandising Corp. *vs*. Equitable PCI Bank, G.R. No. 195540, March 13, 2013) p. 427

Right to property and privacy — Has long been considered a fundamental right guaranteed by the Constitution that must be protected from intrusion or constraint; the right to privacy is essentially the right to be let alone, as governmental powers should stop short of certain intrusions into the personal life of its citizens; it is inherent in the concept of liberty, enshrined in the Bill of Rights in Sections 1, 2, 3(1), 6, 8, and 17, Article III of the 1987 Constitution; compelling the respondents to construct their fence in accordance with the assailed ordinance is a clear encroachment on their right to property and privacy, hence, it is invalid and cannot be enforced. (Hon. Fernando *vs*. St. Scholastica's College, G.R. No. 161107, March 12, 2013) p. 138

CERTIORARI

Grave abuse of discretion as a ground — A special civil action for certiorari under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist; grave abuse of discretion, as contemplated by the Rules of Court, is "the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power" that is so patent and gross that it "amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law"; such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order. (Locsin *vs*. House of Representatives Electoral Tribunal, G.R. No. 204123, March 19, 2013) p. 590

(Novateknika Land Corp. *vs*. PNB, G.R. No. 194104, March 13, 2013) p. 414

— Rule applies to decisions by the HRET whose independence as a constitutional body has consistently been upheld by this Court. (Locsin *vs*. House of Representatives Electoral Tribunal, G.R. No. 204123, March 19, 2013) p. 590

Petition for — For a proper invocation of the remedy of certiorari under Rule 65 of the Revised Rules of Court, one of the essential requisites is that there be no appeal or any plain, speedy, and adequate remedy in the ordinary course of law; certiorari is not a substitute for a lost appeal. (Indoyon, Jr. *vs*. CA, G.R. No. 193706, March 12, 2013) p. 200

— Petitioner, in a special civil action for certiorari, only raised the issue of bias after respondent promulgated the assailed rulings; he must show not only strong grounds stemming from extrajudicial sources but also palpable error that may be inferred from the decision or order itself; kinship alone does not establish bias and partiality; there must be convincing proof to show bias, otherwise, the presumption of regularity in the performance of official duty prevails. (Tigas *vs*. Office of the Ombudsman, G.R. No. 180681, March 18, 2013) p. 503

— To prosper, the petitioner must be able to show, among others, that he does not have any other plain, speedy and adequate remedy in the ordinary course of law; the filing of a motion for reconsideration is a prerequisite to the filing of a special civil action for certiorari, subject to certain exceptions, to wit: a) where the order is a patent nullity, as where the court a quo has no jurisdiction; b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner or the subject matter of the action is perishable;

d) where, under the circumstances, a motion for reconsideration would be useless; e) where petitioner was deprived of due process and there is extreme urgency for relief; f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; g) where the proceedings in the lower court are a nullity for lack of due process; h) where the proceedings were ex parte or in which the petitioner had no opportunity to object; and i) where the issue raised is one purely of law or where public interest is involved. (Novateknika Land Corp. *vs*. PNB, G.R. No. 194104, March 13, 2013) p. 414

When proper — The remedies of appeal and certiorari are mutually exclusive, not alternative or successive; certiorari, by its very nature, is proper only when appeal is not available to the aggrieved party; it cannot substitute for a lost appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse; as a legal recourse, certiorari is a limited form of review; it is restricted to resolving errors of jurisdiction and grave abuse of discretion, not errors of judgment. (Guzman *vs*. Guzman, G.R. No. 172588, March 13, 2013) p. 319

Writ of — An extraordinary prerogative writ that is never demandable as a matter of right; to warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; the abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law; no grave abuse of discretion when the Court of Appeals was simply implementing the rules that the Court itself has set forth in several circulars. (Indoyon, Jr. *vs*. CA, G.R. No. 193706, March 12, 2013) p. 200

CLERK OF COURTS

Simple neglect of duty — Committed by respondent personnel for failure to calendar the case for promulgation and for serving copies of the decision to the accused without the judgment having been promulgated first and at the time when the judge who rendered the decision was serving her suspension; duty in the promulgation of judgments provided in Section 6, Rule 120 of the Rules of Court. (OCAD *vs*. Hon. Tormis, A.M. No. MTJ-12-1817 [Formerly A.M. No. 09-2-30-MTCC], March 12, 2013) p. 113

COMMISSION ON ELECTIONS (COMELEC)

Powers and duties of the Presiding Commissioner of a Division — Powers and duties in cases pending before the Division, stated in Section 6 (f), Rule 2 of the COMELEC Rules of Procedure, as follows: (f) To take such other measures as he may deem proper upon consultation with the other members of the Division. (Mayor Maliksi *vs*. Commission on Elections, G.R. No. 203302, March 12, 2013) p. 214

Powers of — To take such measures as the Presiding Commissioner may deem proper; it upheld the Division's deviation from the standard procedures by allowing the conduct of the revision/recount proceedings instead of remanding the protest to the trial court and directing the reconstitution of the revision committee for the decryption and printing of the picture images and the revision of the ballots on the basis thereof. (Mayor Maliksi *vs*. Commission on Elections, G.R. No. 203302, March 12, 2013; *Bersamin, J., dissenting opinion*) p. 214

— Where the First Division did not simply review the findings of the RTC and the Revision Committee, but actually conducted its own recount proceedings using the printouts of the picture image of the ballots, it was bound to notify the parties to enable them to participate in the proceedings, for only by their participation would the COMELEC's proceedings attain credibility as to the result. *(Id.)*

Pronouncement of a decision — Section 7, Article IX-A of the Constitution requires for each Commission to decide by a majority vote of all its members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution; in *Marcoleta vs. Commission on Elections*, the Court declared "that Section 5(a) of Rule 3 of the COMELEC Rules of Procedure and Section 7 of Article IX-A of the Constitution require that a majority vote of all the members of the COMELEC [en banc], and not only those who participated and took part in the deliberations, is necessary for the pronouncement of a decision, resolution, order or ruling." (Sevilla Jr. *vs*. Commission on Elections, G.R. No. 203833, March 19, 2013) p. 578

— To break the legal stalemate in case the opinion is equally divided among the members of the Comelec en banc, Section 6, Rule 18 of the COMELEC Rules of Procedure mandates a rehearing where parties are given the opportunity anew to strengthen their respective positions or arguments and convince the members of the Comelec *en banc* of the merit of their case. *(Id.)*

Rules of procedure — No existing rule of procedure allowed the COMELEC First Division to conduct the recount in the first instance; the recount proceedings authorized under Section 6, Rule 15 of COMELEC Resolution No. 8804, are to be conducted by the COMELEC Divisions only in the exercise of their exclusive original jurisdiction over all election protests involving elective regional (the autonomous regions), provincial and city officials. (Mayor Maliksi *vs*. Commission on Elections, G.R. No. 203302, March 12, 2013; *Bersamin, J., dissenting opinion*) p. 214

COMPLAINT

Allegations in accion pauliana — With respect to an *accion pauliana*, the ultimate facts constituting the following requisites must all be alleged in the complaint: 1) that the plaintiff asking for rescission, has credit prior to the alienation, although demandable later; 2) that the debtor

has made a subsequent contract conveying a patrimonial benefit to a third person; 3) that the creditor has no other legal remedy to satisfy his claim, but would benefit by rescission of the conveyance to the third person; 4) that act being impugned is fraudulent; and 5) that the third person who received the property conveyed, if by onerous title, has been an accomplice in the fraud. (Anchor Savings Bank (Formerly Anchor Finance and Investment Corp.) *vs*. Furigay, G.R. No. 191178, March 13, 2013) p. 378

Filing an indictment for a different offense — The Court held in *Galario vs. Office* of the Ombudsman (Mindanao) that there is nothing inherently irregular or illegal in filing an indictment against the respondent for an offense different from that charged in the initiatory complaint, if the indictment is warranted by the evidence developed during the preliminary investigation. (Tigas *vs*. Office of the Ombudsman, G.R. No. 180681, March 18, 2013) p. 503

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — The failure to strictly follow the directives of Section 21 of R.A. No. 9165 is not fatal and will not necessarily render the items confiscated from an accused inadmissible; what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused; in the present case, the integrity and evidentiary value of the drugs seized from the petitioner were duly proven not to have been compromised; the police officers explained during trial the reason for their failure to strictly comply with Section 21 of R.A. No. 9165; jurisprudence holds that the phrase "marking upon immediate confiscation" contemplates even marking at the nearest police station or office of the apprehending team. (Marquez *y* Rayos Del Sol *vs*. People of the Phils., G.R. No. 197207, March 13, 2013) p. 453

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. (Marquez *y* Rayos Del Sol *vs*. People of the Phils., G.R. No. 197207, March 13, 2013) p. 453

CONTEMPT

Indirect contempt —Procedural requisites that must be complied with before petitioner may be punished for indirect contempt: first, there must be an order requiring the petitioner to show cause why she should not be cited for contempt; second, she must be given the opportunity to comment on the charge against her; third, there must be a hearing and the court must investigate the charge and consider petitioner's answer; and finally, only if found guilty will petitioner be punished accordingly. (Valmores-Salinas *vs*. Judge Bitas, A.M. No. RTJ-12-2335 [Formerly OCA IPI No. 12-3829-RTJ], March 18, 2013) p. 472

CONTRACTS

Interpretation of — In determining whether a document is an affidavit or a contract, the Court looks beyond the title of the document, since the denomination or title given by the parties in their document is not conclusive of the nature of its contents; the intention of the parties is primordial and is to be pursued; if the terms of the document are clear and leave no doubt on the intention of the contracting parties, the literal meaning of its stipulations shall control; if the words appear to be contrary to the parties' evident intention, the latter shall prevail. (Cruz *vs*. Atty. Delfin Gruspe, G.R. No. 191431, March 13, 2013) p. 406

CORPORATIONS

Alter ego theory (instrumentality theory) — Three-pronged test to determine the application of this theory, namely: 1) control, not mere majority or complete stock control,

but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; 2) such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and 3) the aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of; the absence of any of these elements prevents piercing the corporate veil. (PNB *vs*. Hydro Resources Contractors Corp., G.R. No. 167530, March 13, 2013) p. 297

Doctrine of piercing the veil of corporate fiction — Corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation; for reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons; the doctrine applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. (PNB *vs*. Hydro Resources Contractors Corp., G.R. No. 167530, March 13, 2013) p. 297

Principle of limited liability — As a consequence of its status as a distinct legal entity and as a result of a conscious policy decision to promote capital formation, a corporation incurs its own liabilities and is legally responsible for payment of its obligations; by virtue of the separate juridical

personality of a corporation, the corporate debt or credit is not the debt or credit of the stockholder. (PNB *vs*. Hydro Resources Contractors Corp., G.R. No. 167530, March 13, 2013) p. 297

COURT PERSONNEL

Administrative complaint against court personnel — In order for the Court to acquire jurisdiction over an administrative proceeding, the complaint must be filed during the incumbency of the respondent public official or employee; rationale; once jurisdiction has attached, the same is not lost; cessation from office by reason of resignation, death or retirement is not a ground to dismiss the case filed against the said officer or employee at the time that he was still in the public service or render it moot and academic. (OCA *vs*. Grageda, A.M. No. RTJ-10-2235 [Formerly A.M. No. 10-3-94-RTC], March 11, 2013) p. 15

DAMAGES

Moral and exemplary damages — Illegal dismissal, by itself alone, does not entitle the dismissed employee to moral damages; additional facts must be pleaded and proven to warrant the grant of moral damages; bad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud; in case no moral damages can be granted under the facts of the case, exemplary damages cannot also be awarded. (Torres *vs*. Rural Bank of San Juan, Inc., G.R. No. 184520, March 13, 2013) p. 355

DENIAL OF THE ACCUSED

Defense of — Cannot prevail over the positive and categorical testimony and identification of an accused by the complainant; mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crime attributed to him. (Pielago *y* Ros *vs*. People of the Phils., G.R. No. 202020, March 13, 2013) p. 460

DUE PROCESS

Concept — The essence of due process is simply the opportunity to be heard; as applied to administrative proceedings, due process is the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of; a formal or trial-type hearing is not at all times and in all instances essential; the requirement is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand; there is no denial of due process where there is opportunity to be heard, either through oral arguments or pleadings. (Mayor Maliksi *vs*. Commission on Elections, G.R. No. 203302, March 12, 2013) p. 214

Right to due process — The blatant disregard of petitioner's right to be informed of the decision to print the picture images of the ballots and to conduct the recount proceedings during the appellate stage cannot be brushed aside by the invocation of the fact that petitioner was able to file a motion for reconsideration; the motion for reconsideration was directed against the entire resolution of the Division, while the claim of due process violation is directed only against the First Division's recount proceedings; without an order from the Division directing the recount, he was deprived of the chance to seek any reconsideration or even to assail the irregularly-held recount through a seasonable petition for certiorari in this Court. (Mayor Maliksi *vs*. Commission on Elections, G.R. No. 203302, March 12, 2013; *Bersamin, J., dissenting opinion*) p. 214

— The service of orders requiring respondent to make the cash deposits for the printing of the picture images did not make petitioner aware of the First Division's decision to print the picture images; the orders still did not meet the requirement of due process because they did not specifically inform petitioner that the ballots had been found tampered; violation of the principles of fair play,

because the responsibility and the obligation to lay down the factual bases and to inform the party to be potentially prejudiced thereby firmly rested on the shoulders of the First Division. *(Id.)*

— There is an urgent need to speedily resolve the protest because the term of the Mayoralty position involved is about to end; accordingly, the case must be quickly remanded to the COMELEC, instead of to the RTC, for the conduct of the decryption, printing and recount proceedings, with due notice to all the parties and opportunity for them to be present and to participate during such proceedings. *(Id.)*

EASEMENTS

Concept — An easement or servitude is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his or her property, for the benefit of another person or tenement; it is *jus in re aliena*, inseparable from the estate to which it actively or passively belongs, indivisible, perpetual, and a continuing property right, unless extinguished by causes provided by law. (Pilar Devt. Corp. *vs*. Dumadag, G.R. No. 194336, March 11, 2013) p. 93

Governing laws for public or communal use — While Article 630 of the Civil Code provides for the general rule, Article 635 is specific; applicability of DENR A.O. No. 99-21, which superseded DENR A.O. No. 97-05 and prescribed the revised guidelines in the implementation of the pertinent provisions of R.A. No. 1273 and P.D. Nos. 705 and 1067. (Pilar Devt. Corp. *vs*. Dumadag, G.R. No. 194336, March 11, 2013) p. 93

Kinds of — There are two kinds of easement according to source: by law or by will of the owners – the former are called legal and the latter voluntary easement; a legal easement or compulsory easement, or an easement by

necessity constituted by law has for its object either public use or the interest of private persons. (Pilar Devt. Corp. *vs*. Dumadag, G.R. No. 194336, March 11, 2013) p. 93

ELECTIONS

Ballot appreciation — Spurious or substituted ballot are ballots that allegedly do not contain the signature of the Chairperson of the Board of Election Inspectors (BEI) at the designated space or the signature is allegedly different from the BEI Chairperson's signature appearing on other election documents; a ballot is considered valid and genuine when it bears any one of the following authenticating marks: a) the COMELEC watermark or b) the signature or initials or thumbprint of the Chairman of the BEI; and c) in those cases where the COMELEC watermarks are blurred or not readily apparent to the naked eye, the presence of red and blue fibers in the ballots. (Locsin *vs*. House of Representatives Electoral Tribunal, G.R. No. 204123, March 19, 2013) p. 590

— The cardinal objective in ballot appreciation is to discover and give effect to, rather than frustrate, the intention of the voter; ballots with an Ambiguous Vote have a mark that is allegedly neither a definite vote nor a non-vote; Marked Ballots contain a mark intentionally written or placed by the voter for the purpose of identifying the ballot or the voter; the Omnibus Election Code provides explicitly that every ballot shall be presumed valid unless there is clear and good reason to justify its rejection; discussed. *(Id.)*

EMPLOYEES, KINDS OF

Managerial employees — Not entitled to 13th month pay; pursuant to Memorandum Order No. 28, as implemented by the Revised Guidelines on the Implementation of the 13th Month Pay Law, they are exempt from receiving such benefit without prejudice to the granting of other bonuses, upon the employer's discretion. (Torres *vs*. Rural Bank of San Juan, Inc., G.R. No. 184520, March 13, 2013) p. 355

EMPLOYER-EMPLOYEE RELATIONSHIP

Management prerogatives — An employer is free to manage and regulate, according to his own discretion and judgment, all phases of employment, which includes hiring, work assignments, working methods, time, place and manner of work, supervision of workers, working regulations, transfer of employees, lay-off of workers, and the discipline, dismissal and recall of work; these prerogatives must be exercised in good faith and with due regard to the rights of labor; they are not absolute prerogatives but are subject to legal limits, collective bargaining agreements and the general principles of fair play and justice; the power to dismiss an employee is a management prerogative subject to regulation by the State, basically in the exercise of its paramount police power. (Orchard Golf and Country Club *vs*. Francisco, G.R. No. 178125, March 18, 2013) p. 479

EMPLOYMENT, TERMINATION OF

Award of back wages and separation pay in lieu of reinstatement —The award of back wages shall earn legal interest at the rate of six percent (6%) per annum from the date of the petitioner's illegal dismissal until the finality of this decision; thereafter, it shall earn 12% legal interest until fully paid in addition to his back wages, the petitioner is also entitled to separation pay equivalent to one (1) month salary for every year of service, with a fraction of a year of at least six (6) months to be considered as one (1) whole year, awarded in lieu of reinstatement, to be computed from date of his engagement of employer up to the finality of this decision; the award of separation pay is more beneficial to both parties in that it liberates the employee from what could be a highly oppressive work environment in as much as it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust. (Torres *vs*. Rural Bank of San Juan, Inc., G.R. No. 184520, March 13, 2013) p. 355

Constructive dismissal — Occurs when the unwarranted acts of the employer are committed to the end that the employee's continued employment shall become so intolerable; in these difficult times, an employee may be left with no choice but to continue with his employment despite abuses committed against him by the employer, and even during the pendency of a labor dispute between them. (Orchard Golf and Country Club *vs*. Francisco, G.R. No. 178125, March 18, 2013) p. 479

Solidary liability of corporate directors and officers with the corporation — A corporation has its own legal personality separate and distinct from those of its stockholders, directors or officers; absent any evidence that they have exceeded their authority, corporate officers are not personally liable for their official acts; corporate directors and officers may be held solidarily liable with the corporation for the termination of employment only if done with malice or in bad faith; the lack of a valid cause for the dismissal of an employee does not ipso facto mean that the corporate officers acted with malice or bad faith; there must be an independent proof of malice or bad faith. (Torres *vs*. Rural Bank of San Juan, Inc., G.R. No. 184520, March 13, 2013) p. 355

Willfull breach of trust and confidence — An employer has the right to dismiss an employee by reason of willful breach of the trust and confidence reposed in him; to temper the exercise of such prerogative and to reconcile the same with the employee's constitutional guarantee of security of tenure, the law imposes the burden of proof upon the employer to show that the dismissal of the employee is for just cause; proof beyond reasonable doubt is not necessary but the factual basis for the dismissal must be clearly and convincingly established; two requisites must concur: 1) the employee concerned must be holding a position of trust; and 2) the loss of trust must be based on willful breach of trust founded on clearly established facts. (Torres *vs*. Rural Bank of San Juan, Inc., G.R. No. 184520, March 13, 2013) p. 355

— The act that breached the trust must be willful such that it was done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently; loss of trust and confidence as a ground for dismissal has never been intended to afford an occasion for abuse because of its subjective nature; it should not be used as a subterfuge for causes which are illegal, improper and unjustified. *(Id.)*

EVIDENCE

Admissibility of — A notarized document has in its favor the presumption of regularity and carries the evidentiary weight conferred upon it with respect to its due execution; it is admissible in evidence and is entitled to full faith and credit upon its face; a deed is vested with public interest, the sanctity of which deserves to be upheld unless overwhelmed by clear and convincing evidence. (Estanislao *vs*. Sps. Gudito, G.R. No. 173166, March 13, 2013) p. 330

Circumstantial evidence — Under Section 4, Rule 133 of the Rules of Court, circumstantial evidence is sufficient for conviction when the concurrence of the following factors obtain: a) there is more than one circumstance; b) the facts from which the inferences are derived have been proven; and c) the combination of all the circumstances is such as would prove the crime beyond reasonable doubt; these circumstances and facts must be absolutely incompatible with any reasonable hypothesis propounding the innocence of the accused. (People of the Phils. *vs*. Soriano *alias* Pedro, G.R. No. 191271, March 13, 2013) p. 396

Flight of the accused — Flight per se is not synonymous with guilt and must not always be attributed to one's consciousness of guilt; it is not a reliable indicator of guilt without other circumstances, for even in high crime areas there are many innocent reasons for flight, including fear of retribution for speaking to officers, unwillingness to appear as witnesses, and fear of being wrongfully apprehended as a guilty party. (People of the Phils. *vs*. Villareal *y* Lualhati, G.R. No. 201363, March 18, 2013) p. 511

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (ACT NO. 3135)

Right of redemption — Being statutory, this right must be exercised in the manner prescribed by the statute, and within the prescribed time limit, to make it effective; as with other individual rights to contract and to property, it has to give way to police power exercised for public welfare; the concept of police power has been defined as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare;" Section 47 of R.A. No. 8791 being constitutional, petitioner can no longer exercise the right of redemption over its foreclosed properties after the certificate of sale in favor of respondent had been registered. (Goldenway Merchandising Corp. *vs*. Equitable PCI Bank, G.R. No. 195540, March 13, 2013) p. 427

— Constitutional proscription against impairment of the obligation of contract is not violated by the modification of the time to exercise the right of a juridical person to redeem foreclosed properties; Section 47 of R.A. No. 8791 otherwise known as "The General Banking Law of 2000," amended Act No. 3135; under the new law, an exception is made in the case of juridical persons which are allowed to exercise the right of redemption only "until, but not after, the registration of the certificate of foreclosure sale" and in no case more than three (3) months after foreclosure, whichever comes first; there is no retroactive application of the new redemption period because Section 47 exempts from its operation those properties foreclosed prior to its effectivity and whose owners shall retain their redemption rights under Act No. 3135. *(Id.)*

FORCIBLE ENTRY AND UNLAWFUL DETAINER

Nature — Ejectment cases are summary proceedings intended to provide an expeditious means of protecting actual possession or right of possession of property; title is not involved, hence, it is a special civil action with a special procedure; the only issue to be resolved in ejectment

cases is the question of entitlement to the physical or material possession of the premises or possession de facto; any ruling on the question of ownership is only provisional, made solely for the purpose of determining who is entitled to possession de facto. (Guzman *vs*. Guzman, G.R. No. 172588, March 13, 2013) p. 319

HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET)

Authority of — HRET has no authority to review final and executory resolutions or decisions of the COMELEC rendered pursuant to its powers under the Constitution, no matter if such resolutions or decisions are erroneous; the parties cannot by agreement confer such authority on HRET; neither the HRET nor the Court can set aside the COMELEC's final and executory resolutions. (Tagolino *vs*. House of Representatives Electoral Tribunal, G.R. No. 202202, March 19, 2013; *Abad, J., dissenting opinion*) p. 534

Jurisdiction — The Constitution (Article VI, Section 17) provides that it is the sole judge of all contests relating to the election, returns, and qualifications of their members; the Supreme Court's jurisdiction to review HRET's decisions and orders is exercised only upon showing that HRET acted with grave abuse of discretion amounting to lack or excess of jurisdiction, otherwise, it will not interfere with an electoral tribunal's exercise of its discretion or jurisdiction. (Locsin *vs*. House of Representatives Electoral Tribunal, G.R. No. 204123, March 19, 2013) p. 590

— The HRET cannot be tied down by COMELEC resolutions, else its constitutional mandate be circumvented and rendered nugatory; the phrase "election, returns, and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title; the term "qualifications" refers to matters that could be raised in a *quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility, or the inadequacy of his certificate of candidacy; as used in Section 74 of the OEC, the word "eligible" means having

the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for public office. (Tagolino *vs*. House of Representatives Electoral Tribunal, G.R. No. 202202, March 19, 2013) p. 534

— While the HRET has been empowered by the Constitution to be the "sole judge" of all contests relating to the election, returns, and qualifications of the members of the House, the Court maintains jurisdiction over it to check "whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction" on the part of the latter; in this regard, the Court does not endeavor to denigrate nor undermine the HRET's independence but merely fulfills its duty to ensure that the Constitution and the laws are upheld through the exercise of its power of judicial review. *(Id.)*

HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) RULES

Election protest or quo warranto — After the lapse of the reglementary period of ten (10) days from the date of proclamation of the duly elected representative, the proclamation can no longer be assailed by an election protest or a petition for *quo warranto*; the HRET and this Court cannot set aside at will the HRET Rules mandating the timely filing of election contests; rationale. (Tagolino *vs*. House of Representatives Electoral Tribunal, G.R. No. 202202, March 19, 2013; *Leonardo-De Castro, J., dissenting opinion*) p. 534

Petition for quo warranto — Not a proper remedy to assail validity of candidate substitution as candidate to be substituted was qualified; under Rule 17 of the HRET Rules, the grounds for a petition for *quo warranto* are ineligibility to run for a public office or disloyalty to the Republic of the Philippines. (Tagolino *vs*. House of Representatives Electoral Tribunal, G.R. No. 202202, March 19, 2013; *Leonardo-De Castro, J., dissenting opinion*) p. 534

JUDGES

Administrative complaint against — The retirement of a judge effectively barred the Court from pursuing the instant administrative proceeding that was instituted after his tenure in office, and divested the Court, much less the Office of the Court Administrator, of any jurisdiction to still subject him to the rules and regulations of the judiciary and/or to penalize him for the infractions committed while he was still in the service; the absence of promulgated rules on the conduct of judicial audit 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. (OCA *vs*. Grageda, A.M. No. RTJ-10-2235 [Formerly A.M. No. 10-3-94-RTC], March 11, 2013) p. 15

Dismissal from the service — In determining the proper imposable penalty, the Court considered the judge's work history; there are several administrative cases already filed against her which show her inability to properly discharge her judicial duties; her conduct as a repeat offender exhibits her unworthiness to don the judicial robes and merits dismissal from the service. (OCAD *vs*. Hon. Tormis, A.M. No. MTJ-12-1817[Formerly A.M. No. 09-2-30-MTCC], March 12, 2013) p. 113

Errors in the adjudicative functions — Errors committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through available judicial remedies; disciplinary proceedings do not complement, supplement or substitute judicial remedies and, thus, cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by their erroneous orders or judgments; it is only when there is fraud, dishonesty or corruption that the acts of a judge in his judicial capacity are subject to disciplinary action, even though such acts are erroneous. (Valmores-Salinas *vs*. Judge Bitas, A.M. No. RTJ-12-2335 [Formerly OCA IPI No. 12-3829-RTJ], March 18, 2013) p. 472

Evasion of final judgment — The dismissed judge, in filing multiple Motions for Reconsideration in the guise of personal letters to whoever sits as the Chief Magistrate of the Court, is trifling with the judicial processes to evade the final judgment against her; the instant third Motion for Reconsideration is denied with finality. (Edaño *vs*. Judge Gonzales-Asdala, A.M. RTJ-06-1974 [Formerly A.M. OCA IPI No. 05-2226-RTJ] , March 19, 2013) p. 528

Gross ignorance of the law — When the law is sufficiently basic, a judge owes it to his office to simply apply it; and anything less than that would be constitutive of gross ignorance of the law; whenever a criminal case falls under the summary procedure, the general rule is that the court shall not order the arrest of the accused unless he fails to appear whenever required; the accused should first be notified of the charges against him and given the opportunity to file his counter-affidavits and other countervailing evidence. (OCAD *vs*. Hon. Tormis, A.M. No. MTJ-12-1817[Formerly A.M. No. 09-2-30-MTCC], March 12, 2013) p. 113

Gross inefficiency — Section 15 (1), Article VIII of the 1987 Constitution mandates lower court judges to decide a case within the reglementary period of ninety (90) days; delay in deciding a case within said period violates Section 5, Canon 6 of the New Code of Judicial Conduct which mandates judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with promptness; respondent judge is liable for gross inefficiency for failure to decide cases within the reglementary period. (OCAD *vs*. Hon. Tormis, A.M. No. MTJ-12-1817[Formerly A.M. No. 09-2-30-MTCC], March 12, 2013) p. 113

Mismanagement of court — Committed by failure to comply with the duty of providing an efficient court management system in her court which includes the preparation and use of docket inventory and monthly report of cases as

tools thereof; it is the primary responsibility of the judge to make sure that the members of her staff perform their duties. (OCAD *vs*. Hon. Tormis, A.M. No. MTJ-12-1817[Formerly A.M. No. 09-2-30-MTCC], March 12, 2013) p. 113

JUDGMENTS

Immutability of final judgments — A final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest court of the land, rendered it; exceptions: (a) the existence of special or compelling circumstances, (b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (d) a lack of any showing that the review sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby. (Almuete *vs*. People of the Phils., G.R. No. 179611, March 12, 2013) p. 166

Promulgation of decision — The process by which a decision is published, officially announced, made known to the public or delivered to the clerk of court for filing, coupled with notice to the parties or their counsel; the additional requirement imposed by the COMELEC rules of notice in advance of promulgation is not part of the process of promulgation; the failure to serve such notice may be considered a procedural lapse on the part of the trial court which did not prejudice the rights of the parties and did not vitiate the validity of the decision of the trial court nor of the promulgation of said decision. (Baldado *vs*. Atty. Mejica, A.C. No. 9120 [Formerly CBD Case No. 06-1783], March 11, 2013) p. 1

— There was no reason to postpone the promulgation because petitioner's absence was unjustifiable; hence, no abuse of discretion could be attributed to the RTC in promulgating its Decision despite the absence of petitioner; the Decision

of this Court has attained finality as an Entry of Judgment was already made. (Almuete *vs*. People of the Phils., G.R. No. 179611, March 12, 2013) p. 166

JUDGMENTS, PROMULGATION OF

Appearance of convict — Administrative Circular No. 16-93 issued on September 9, 1993 provides that the practice of requiring the convict to appear before the trial court for "promulgation" of the judgment of the appellate court should be immediately discontinued; it is an unauthorized surplusage entailing unnecessary expense and could also create security problems where the convict was already under detention during the pendency of the appeal, and the place of confinement is at some distance from the station of the court. (Almuete *vs*. People of the Phils., G.R. No. 179611, March 12, 2013) p. 166

JUDICIAL CLAIMS

Prescriptive period — Prescriptive period for the filing of judicial claims is within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals; the second paragraph of Section 112 (C) of the 1997 Tax Code is clear. (Mindanao II Geothermal Partnership *vs*. Commissioner of Internal Rev., G.R. No. 193301, March 11, 2013) p. 48

— The Court reiterated that "[f]ollowing the *verba legis* doctrine, Section 112(C) must be applied exactly as worded since it is clear, plain, and unequivocal; the taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period; the CTA will have no jurisdiction because there will be no 'decision' or 'deemed a denial decision' of the Commissioner for the CTA to review." *(Id.)*

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042)

Money claims for illegal dismissal — When the illegally dismissed employee's employment contract has a term of less than one year, he/she shall be entitled to recovery of salaries representing the unexpired portion of his/her employment contract; this includes all corresponding monthly vacation leave pay and tonnage bonuses which are expressly provided and guaranteed in the employment contract as part of the monthly salary and benefit package of the worker. (Tangga-An *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 180636. March 13, 2013) p. 339

MOTION TO DISMISS

Grounds — The requirement that a motion to dismiss should be filed within the time for filing the answer is not absolute; even after an answer has been filed, a defendant can still file a motion to dismiss on these grounds: (1) lack of jurisdiction, (2) *litis pendentia* (3) lack of cause of action, and (4) discovery during trial of evidence that would constitute a ground for dismissal. (Baldado *vs*. Atty. Mejica, A.C. No. 9120 [Formerly CBD Case No. 06-1783], March 11, 2013) p. 1

OBLIGATIONS

Default of debtor — Requisites in order that the debtor may be in default: 1) that the obligation be demandable and already liquidated; 2) that the debtor delays performance; and 3) that the creditor requires the performance judicially and extrajudicially; default generally begins from the moment the creditor demands the performance of the obligation; it could be considered to have been made upon the filing of the complaint, and it is only from this date that the interest should be computed. (Cruz vs. Atty. Delfin Gruspe, G.R. No. 191431, March 13, 2013) p. 406

OMBUDSMAN

Finding of probable cause — The exercise of the wide prerogative by the Office of the Ombudsman was not whimsical, capricious or arbitrary, given the supporting documentary evidence it had appreciated; in the determination of probable cause, absolute certainty of evidence is not required, for opinion and reasonable belief are sufficient; any other defense contesting the finding of probable cause that is highly factual in nature must be threshed out in a full-blown trial, and not in a special civil action for certiorari before this Court. (Tigas *vs*. Office of the Ombudsman, G.R. No. 180681, March 18, 2013) p. 503

OMNIBUS ELECTION CODE (B.P. BLG. 881)

Candidate substitution — A candidate who is disqualified under Section 68 can be validly substituted pursuant to Section 77 because he remains a candidate until disqualified, but a person whose CoC has been denied due course to and/or cancelled under Section 78 cannot be substituted because he is not considered a candidate; distinction explained in the case of *Miranda vs. Abaya*. (Tagolino *vs*. House of Representatives Electoral Tribunal, G.R. No. 202202, March 19, 2013) p. 534

— Proper in case candidate to be substituted was merely disqualified; the substitution falls within the ambit of Section 77 of the OEC, which uses the broad language "disqualification for any cause." (Tagolino *vs*. House of Representatives Electoral Tribunal, G.R. No. 202202, March 19, 2013; *Leonardo-De Castro, J., dissenting opinion*) p. 534

— Section 77 of the OEC provides that if an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, a person belonging to and certified by the same political party may file a CoC to replace the former candidate; Section 79(a) thereof defines the term "candidate" as any person aspiring for or seeking an elective public office who has filed a certificate of candidacy by himself or through an accredited political

party, aggroupment, or coalition of parties; the existence of a valid CoC is a condition sine qua non for a disqualified candidate to be validly substituted. (Tagolino *vs*. House of Representatives Electoral Tribunal, G.R. No. 202202, March 19, 2013) p. 534

Petition to deny due course to/cancel a Certificate of Candidacy (CoC) — Section 78 of the OEC is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office; if the candidate subsequently states a material representation in the CoC that is false, the COMELEC is empowered to deny due course to or cancel such certificate. (Tagolino *vs*. House of Representatives Electoral Tribunal, G.R. No. 202202, March 19, 2013) p. 534

Remedies to assail a candidate's bid for public office — The prohibited acts under Section 68 refer to election offenses under the Omnibus Election Code, and not to violations of other penal laws; particularly: 1) giving money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; 2) committing acts of terrorism to enhance one's candidacy; 3) spending in one's election campaign an amount in excess of that allowed by the OEC; 4) soliciting, receiving or making any contribution prohibited under Sections 89, 95, 96, 97 and 104 of the OEC; and 5) violating Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6 of the OEC. (Tagolino *vs*. House of Representatives Electoral Tribunal, G.R. No. 202202, March 19, 2013) p. 534

— The remedies are: 1) a petition for disqualification under Section 68; and 2) a petition to deny due course to and/or cancel a certificate of candidacy under Section 78; a disqualification case under Section 68 of the OEC is hinged on either: (a) a candidate's possession of a permanent resident status in a foreign country; or (b) his or her commission of certain acts of disqualification. *(Id.)*

ORDINANCES

Requirements for validity — For an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and pass according to the procedure prescribed by law, it must also conform to the following substantive requirements: 1) must not contravene the Constitution or any statute; 2) must not be unfair or oppressive; 3) must not be partial or discriminatory; 4) must not prohibit but may regulate trade; 5) must be general and consistent with public policy; and 6) must not be unreasonable. (Hon. Fernando *vs*. St. Scholastica's College, G.R. No. 161107, March 12, 2013) p. 138

— For an ordinance to pass the rational relationship test, there must be a reasonable relation between the purpose of the police power measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded. *(Id.)*

— Requisites under the rational relationship test are: 1) the interests of the public generally, as distinguished from those of a particular class, require its exercise; and 2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals; lacking a concurrence of these two requisites, the police power measure shall be struck down as an arbitrary intrusion into private rights and a violation of the due process clause. *(Id.)*

— The provision of a parking area for the objectives of prevention of concealment of unlawful acts and "un-neighborliness" has no logical connection to, and is not reasonably necessary for, the accomplishment of the goals; the State may not, under the guise of police power, permanently divest owners of the beneficial use of their property solely to preserve or enhance the aesthetic appearance of the community. *(Id.)*

— Two tests to successfully invoke the exercise of police power as the rationale to enact an ordinance and to free it from the imputation of constitutional infirmity: the rational relationship test and the strict scrutiny test; using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest, and applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest. *(Id.)*

Separability of statutes — The general rule is that where part of a statute is void as repugnant to the Constitution, while another part is valid, the valid portion, if susceptible to being separated from the invalid, may stand and be enforced. (Hon. Fernando *vs*. St. Scholastica's College, G.R. No. 161107, March 12, 2013) p. 138

POSSESSION

Open space — Under the Residential Subdivision's Law (P.D. No. 1216) and the Water Code of the Philippines (P.D. No. 1067), petitioner's right of ownership and possession is limited to the 3-meter strip/zone along the banks of the creek; both petitioner and respondents have no right or title over a public land reserved for public easement purposes; squatters have no possessory rights over the land intruded upon, and the length of time of physical occupation of the land is immaterial. (Pilar Devt. Corp. *vs*. Dumadag, G.R. No. 194336, March 11, 2013) p. 93

Writ of — After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner; the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function, unless it appears that the property is in possession of a third party claiming a right adverse to that of the mortgagor; the foregoing rule contained in Section 33, Rule 39 of the Rules of Court.

(Rural Bank of Sta. Barbara (Iloilo), Inc. *vs*. Centeno, G.R. No. 200667, March 11, 2013) p. 106

— In *China Banking Corporation vs. Lozada*, the phrase "a third party who is actually holding the property adversely to the judgment obligor" contemplates a situation in which a third party possesses the property in his own right, and he is not merely the successor or transferee of the right of possession of another co-owner or the owner of the property. *(Id.)*

PRELIMINARY INJUNCTION

Writ of — The sole object of a preliminary injunction is to preserve the status quo of the parties until the merits of the case can be heard; a writ of preliminary injunction may be issued only upon clear showing by the applicant of the existence of the following: 1) a right in esse or a clear and unmistakable right to be protected; 2) a violation of that right; and 3) an urgent and paramount necessity for the writ to prevent serious damage; in the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. (Novateknika Land Corp. *vs*. PNB, G.R. No. 194104, March 13, 2013) p. 414

PROPERTY

Proper party — Since the property is a public land, the Republic of the Philippines, through the Office of the Solicitor General and the local government are the proper parties entitled to institute a case with respect to the open zone; both may file an action depending on the purpose sought to be achieved; the former shall be responsible in case of action for reversion under C.A. 141, while the latter may bring an action to enforce the relevant provisions of R.A. No. 7279 (otherwise known as the Urban Development and Housing Act of 1992). (Pilar Devt. Corp. *vs*. Dumadag, G.R. No. 194336, March 11, 2013) p. 93

RIGHTS OF THE ACCUSED

Right to be informed of the nature and cause of accusation against him — In all criminal prosecutions, the accused is entitled to be informed of the nature and cause of the accusation against him; the designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly; the factual allegations contained in the information determine the crime charged against the accused and not the designation of the offense as given by the prosecutor which is merely an opinion not binding to the courts. (Pielago *y* Ros *vs*. People of the Phils., G.R. No. 202020, March 13, 2013) p. 460

RULES OF PROCEDURE

Application in labor cases — Technical rules of procedure are not binding in labor cases; their application may be relaxed to serve the demands of substantial justice; it is more in keeping with the objective of rendering substantial justice if we brush aside technical rules rather than strictly apply its literal reading. (Orchard Golf and Country Club *vs*. Francisco, G.R. No. 178125, March 18, 2013) p. 479

SALES

Contract of — Contracts undergo three stages: a) negotiation which begins from the time the prospective contracting parties indicate interest in the contract and ends at the moment of their agreement; b) perfection or birth, which takes place when the parties agree upon all the essential elements of the contract; and c) consummation, which occurs when the parties fulfill or perform the terms agreed upon, culminating in the extinguishment thereof. (Robern Devt. Corp. *vs*. People's Landless Assoc., G.R. No. 173622, March 11, 2013) p. 24

— No perfected contract of sale where the parties did not agree on the price and no consent was given, whether express or implied. *(Id.)*

— Perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price; to be valid, all of the following essential elements must concur: a) consent or meeting of the minds; b) determinate subject matter; and c) price certain in money or its equivalent. *(Id.)*

— When there is merely an offer by one party without acceptance of the other, there is no contract; the decision to accept a bidder's proposal must be communicated to the bidder; however, a binding contract may exist between the parties whose minds have met, although they did not affix their signatures to any written document, as acceptance may be expressed or implied; it can be inferred from the contemporaneous and subsequent acts of the contracting parties; exception is when a formal acceptance is so required. *(Id.)*

STATE, INHERENT POWERS OF

Eminent domain — The implementation of the setback requirement would be tantamount to a taking of respondent's property for public use without just compensation, in contravention of the Constitution; Section 9 of Article III of the 1987 Constitution provides that private property shall not be taken for public use without just compensation; it is a settled rule that neither the acquisition of title nor the total destruction of value is essential to taking; in cases where the title remains with the private owner, inquiry should be made to determine whether the impairment of a property is merely regulated or amounts to a compensable taking. (Hon. Fernando *vs.* St. Scholastica's College, G.R. No. 161107, March 12, 2013) p. 138

Police power — The plenary power vested in the legislature to make statutes and ordinances to promote the health, morals, peace, education, good order or safety and general welfare of the people; the State has delegated the exercise thereof to local government units in Section 16 of the Local Government Code of 1991 (R.A. No. 7160), known as the

General Welfare Clause, which has two branches: the general legislative power and the police power proper. (Hon. Fernando *vs.* St. Scholastica's College, G.R. No. 161107, March 12, 2013) p. 138

STATUTES

Constitutionality of — When confronted with a constitutional question, it is elementary that every court must approach it with grave care and considerable caution bearing in mind that every statute is presumed valid and every reasonable doubt should be resolved in favor of its constitutionality; for a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution; the ground for nullity must be clear and beyond reasonable doubt. (Goldenway Merchandising Corp. *vs.* Equitable PCI Bank, G.R. No. 195540, March 13, 2013) p. 427

Curative statutes — Curative statutes are enacted to cure defects in a prior law or to validate legal proceedings which would otherwise be void for want of conformity with certain legal requirements; they are intended to enable persons to carry into effect that which they have designed or intended, but has failed of expected legal consequence by reason of some statutory disability or irregularity in their own action; by their very essence, they are retroactive. (Hon. Fernando *vs.* St. Scholastica's College, G.R. No. 161107, March 12, 2013) p. 138

TAX REFORM ACT OF 1997 (R.A. NO. 8424)

Required period to appeal — The 120+30-day period is mandatory and jurisdictional, as ruled in *Commissioner of Internal Revenue vs. San Roque Power Corporation*; thus, failure to observe the said period before filing a judicial claim with the CTA would not only make such petition premature, but would also result in the non- acquisition by the CTA of jurisdiction to hear the said case; the issue of whether petitioner complied with the said time frame may be broached at any stage, even on appeal. The Court, however,

took into consideration the issuance by the BIR of Ruling No. DA- 489-03, which expressly stated that the taxpayer need not wait for the lapse of the 120-day period before seeking judicial relief; the exception is to be observed from the issuance of the said ruling on December 10, 2003 up until its reversal by Aichi on October 6, 2010. (Nippon Express [Phil.] Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 196907, March 13, 2013) p. 442

TAXES

Refund or tax credit of input tax — Section 112 (d) (now subparagraph c) of the NIRC provides that the taxpayer may appeal the denial or the inaction of the CIR only within thirty (30) days from receipt of the decision denying the claim or the expiration of the 120-day period given to the CIR to decide the claim; because the law is categorical in its language, there is no need for further interpretation by the courts and non-compliance with the provision cannot be justified. (Nippon Express [Phil.] Corp. vs. Commissioner of Internal Revenue, G.R. No. 196907, March 13, 2013) p. 442

URBAN LAND REFORM ACT, AS AMENDED (P.D. NO. 1517)

Right of first refusal — Under P.D. No. 1517, in relation to P.D. No. 2016, the lessee is given the right of first refusal over the land they have leased and occupied for more than ten years and on which they constructed their houses; but the right of first refusal applies only to a case where the owner of the property intends to sell it to a third party; if the owner of the leased premises does not intend to sell the property in question but seeks to eject the tenant, the tenant cannot invoke the land reform law. (Estanislao *vs*. Sps. Gudito, G.R. No. 173166, March 13, 2013) p. 330

VALUE ADDED-TAX

Prescriptive period — Summary of rules on prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code, enumerated

and explained. (Mindanao II Geothermal Partnership *vs*. Commissioner of Internal Rev., G.R. No. 193301, March 11, 2013) p. 48

Refunds or tax credits of input tax — In determining whether the administrative claims have prescribed, Section 112(A) of the 1997 Tax Code is clear that any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. (Mindanao II Geothermal Partnership *vs*. Commissioner of Internal Rev., G.R. No. 193301, March 11, 2013) p. 48

Transactions in the course of trade — Section 105 of the 1997 Tax Code states that a transaction "in the course of trade or business" includes "transactions incidental thereto"; the incidental transaction made in the course of business which should be liable for VAT. (Mindanao II Geothermal Partnership *vs*. Commissioner of Internal Rev., G.R. No. 193301, March 11, 2013) p. 48

WITNESSES

Credibility of —It is well-settled that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal; testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. (Pielago *y* Ros *vs*. People of the Phils., G.R. No. 202020, March 13, 2013) p. 460

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