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REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

April 3, 2013 TO APRIL 10, 2013

SUPREME COURT
MANILA
2015

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2015

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. P-12-3073. April 3, 2013]

ANTIOCO BONONO, JR. and VICTORIA RAVELO-CAMINGUE, *complainants, vs.* **JAIME DELA PEÑA SUNIT, Sheriff IV, Regional Trial Court, Branch 29, Surigao City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; REQUIRED DECORUM INSIDE AND OUTSIDE THE COURT; DISCOUNTED WHEN DRUNK COURT EMPLOYEE DISPLAYED UNRULY BEHAVIOUR.—** Employees of the judiciary should be very circumspect in how they conduct themselves inside and outside the office. It matters not that his acts were not work-related. Employees of the judiciary should be living examples of uprightness, not only in the performance of official duties, but also in their personal and private dealings with other people, so as to preserve at all times the good name and standing of the courts in the community. Any scandalous behavior or any act that may erode the people's esteem for the judiciary is unbecoming of an employee. Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees. Any transgression or deviation from the established norm of conduct, work related or not, amounts to a misconduct. x x x

In the case at bar, the respondent failed to meet the exacting standards required of employees of the judiciary by his provocative attitude towards the complainants by challenging complainant Bonono, Jr. to a fight and assaulting complainant Camingue. The respondent's unruly attitude is further shown by the fact that when a police officer tried to pacify him, he bragged that he is an officer of the court, brandished his badge as a sheriff, and was only pacified and subdued upon the arrival of a team of heavily armed policemen. The behavior of the respondent is tantamount to an arrogant and disrespectful officer of the court which should not be countenanced.

2. **ID.; ID.; ID.; GRAVE ABUSE OF AUTHORITY; NOT APPRECIATED AS ACTS COMPLAINED OF NOT IN PERFORMANCE OF OFFICIAL DUTY.—** [R]espondent cannot be held liable for grave abuse of authority. Grave abuse of authority has been defined as a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury; it is an act of cruelty, severity, or excessive use of authority. In the present case, the acts complained of against the respondent are not connected to the performance of his duty as a sheriff.

3. **ID.; ID.; ID.; SIMPLE MISCONDUCT; CONDUCT UNBECOMING OF A COURT EMPLOYEE; PENALTY.—** Respondent, can only be held liable for conduct unbecoming of a court employee which amounts to simple misconduct, a less grave offense. Under the Uniform Rules on Administrative Cases in the Civil Service, the penalty for simple misconduct is suspension for one (1) month and one (1) day to six (6) months for the first offense. Hence, the lowest penalty that should be imposed is one (1) month and one (1) day, not one (1) month, as recommended by the OCA.

APPEARANCES OF COUNSEL

Fernando S. Almeda III for respondent.

DECISION

PERALTA, *J.*:

The instant administrative case arose from the complaint separately filed by Antioco Bonono, Jr. and Victoria Ravelo-Camingue, charging respondent Jaime dela Peña Sunit, Sheriff IV of the Regional Trial Court (RTC) of Surigao City, with grave abuse of authority and conduct unbecoming an officer of the court.

The antecedents are as follows:

In the evening of August 15, 2008, complainant Camingue, together with complainant Bonono, Jr. and officemates,[1] were having a few drinks at the Blesseil's Eatery located at Pantalan II, Surigao City, Surigao del Norte, while respondent was with a friend at the same place drinking beer. For unknown reasons, respondent challenged complainant Bonono Jr. to a fight, while complainant Camingue tried to dissuade complainant Bonono Jr. from accepting the challenge. Despite the refusal of complainant Bonono, Jr. to fight, respondent instead kicked complainant Camingue. Thereafter, respondent shouted *"Taga korte ako, Jawa kamo, Sheriff ako"* (*I'm with the Court, you're evil, I'm a sheriff*) and berated others in the eatery and bragged about his connection with the court while waving his badge. A police officer arrived and tried to calm him down, but respondent did not heed the policeman's advice. It was only upon the arrival of a team of heavily armed policemen headed by the Chief of Police that respondent was subdued.

As a result of the incident, complainants filed an administrative case against the respondent.

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[1] Complainants and their officemates are employees of the Provincial Government of Surigao del Norte, *rollo*, p. 3.

In his 1st Indorsement[2] dated December 16, 2008, then Court Administrator Jose P. Perez[3] referred the complaint to respondent for his comment. Instead of giving his side and controverting the allegations against him, respondent simply moved for the dismissal of the case for failure of the complainants to attach a certification or statement of non-forum shopping.

In a Resolution[4] dated January 27, 2010, the Court, upon recommendation of the Office of the Court Administrator (OCA), directed the respondent to (1) show cause why he should not be administratively sanctioned for refusing to submit his comment on the complaint despite the OCA's directive; and (2) submit his comment within ten (10) days from notice, otherwise the case shall be resolved on the basis of the record on file.

In compliance with the above directive, respondent filed his comment and claimed that he neither initiated nor picked a fight with complainant Bonono, Jr., and he was merely having a conversation with a friend at Blesseil's Eatery on the day the incident occurred and could have unintentionally banged his beer on the table to stress a point during said conversation. Respondent claimed that complainant Bonono, Jr. might have misinterpreted the actuations of respondent, so that complainant Bonono, Jr. stood behind respondent and menacingly shouted: *"Ako ba an imo gibundakan ug baso?" (Am I the one to whom you are banging your glass?).* Respondent then told Bonono, Jr. that they should not quarrel, but the latter suddenly kicked him on the leg resulting in a commotion. Insulted and humiliated, respondent retaliated and in the process, could have accidentally kicked complainant Camingue who was trying to pacify them. As he never intended to inflict physical harm on anybody, he apologized to the complainants and their companions.

In a Resolution[5] dated December 6, 2010, the Court referred the case to the Executive Judge of RTC, Surigao City, for

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[2] *Rollo*, p. 21.

[3] Now a member of this Court.

[4] *Rollo*, pp. 39-40.

[5] *Id.* at 71.

investigation, report and recommendation. During the investigation conducted on May 5, 2011, complainant Bonono Jr. manifested that he is no longer pursuing his complaint against respondent as he had already forgiven him after he sincerely asked for forgiveness. Complainant Camingue, on the other hand, manifested her interest to continue with the prosecution of the respondent.

In his Memorandum,[6] respondent argued that he could not be held liable for misconduct and grave abuse of authority, because to constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. The alleged act of inflicting injury on Camingue was not work-related as he was already off-duty and was just spending the night with a friend at Blesseil's Eatery. Respondent further contended that he could not be faulted for the incident because it was complainant Bonono, Jr. who instigated the fight and that he merely acted in self-defense and if ever complainant Camingue was kicked, the same was unintentional. He admitted having uttered the words: "*I'm with the Court, you're evil and I'm a sheriff,*" but the same was merely done out of anger and to inform everyone present that despite being a sheriff, complainant Bonono, Jr. assaulted him.

On the basis of the memorandum filed, Executive Judge Bayana, in her Compliance Report, recommended the dismissal of the complaint for lack of merit and cause of action.

In a Resolution[7] dated September 14, 2011, the Court referred the compliance report to the OCA for evaluation, report and recommendation. After evaluating the case, the OCA recommended that respondent be held liable for Conduct Unbecoming a Court Employee, which amounts to simple misconduct and be suspended for one (1) month without pay

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[6] *Id.* at 193-199.

[7] *Id.* at 234-235.

with a stern warning that a repetition of the same infraction in the future shall be dealt with more severely.[8]

The Court's Ruling

We agree with the findings and recommendations of the OCA, except as to the recommended penalty.

Employees of the judiciary should be very circumspect in how they conduct themselves inside and outside the office.[9] It matters not that his acts were not work-related. Employees of the judiciary should be living examples of uprightness, not only in the performance of official duties, but also in their personal and private dealings with other people, so as to preserve at all times the good name and standing of the courts in the community. Any scandalous behavior or any act that may erode the people's esteem for the judiciary is unbecoming of an employee. Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees.[10] Any transgression or deviation from the established norm of conduct, work related or not, amounts to a misconduct.[11]

The respondent's asseverations that he did not initiate the fight with the complainants deserve scant consideration. Merlita Catay, the proprietor/owner of Blesseil's Eatery, corroborated the complainants' allegations. In her Affidavit,[12] she alleged that prior to the respondent's assault on Camingue, the respondent, while being drunk, already showed his provocative attitude towards the other customers of her establishment by repeatedly

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[8] Evaluation and recommendation submitted by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Raul Bautista Villanueva, dated March 2, 2012.

[9] *Mendez v. Balbuena,* A.M. No. P-11-2931 (Formerly A.M. OCA I.P.I. No. 08-2852-P), June 1, 2011, 650 SCRA 10, 15.

[10] *Id.*

[11] *Re: Disciplinary Action Against Antonio Lamano, Jr. of the Judgment Division, Supreme Court,* A.M. No. 99-10-10-SC, November 29, 1999, 319 SCRA 350, 352; 377 Phil. 364, 367 (1999).

[12] *Rollo*, p. 5.

pounding his table with a bottle of beer. It is settled that where there is no evidence to indicate that the prosecution witnesses were actuated by improper motive, the presumption is that they were not so actuated and that their testimonies are entitled to full faith and credit.[13] In the present case, there is no shred of evidence to indicate that Ms. Catay was impelled by improper motive to falsely testify against the respondent, hence, her statement deserves proper credit.

In the case at bar, the respondent failed to meet the exacting standards required of employees of the judiciary by his provocative attitude towards the complainants by challenging complainant Bonono, Jr. to a fight and assaulting complainant Camingue. The respondent's unruly attitude is further shown by the fact that when a police officer tried to pacify him, he bragged that he is an officer of the court, brandished his badge as a sheriff, and was only pacified and subdued upon the arrival of a team of heavily armed policemen. The behavior of the respondent is tantamount to an arrogant and disrespectful officer of the court which should not be countenanced.

As correctly pointed out by the OCA, however, respondent cannot be held liable for grave abuse of authority. Grave abuse of authority has been defined as a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury; it is an act of cruelty, severity, or excessive use of authority.[14] In the present case, the acts complained of against the respondent are not connected to the performance of his duty as a sheriff.

Respondent, therefore, can only be held liable for conduct unbecoming of a court employee which amounts to simple misconduct, a less grave offense. There is a need, however, to

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[13] *Vidar v. People,* G.R. No. 177361, February 1, 2010, 611 SCRA 216, 226.

[14] *Romero v. Villarosa, Jr.,* A.M. No. P-11-2913 (Formerly OCA I.P.I. No. 08-2810-P), April 12, 2011, 648 SCRA 32, 42.

correct the penalty recommended by the OCA. Under the Uniform Rules on Administrative Cases in the Civil Service,[15] the penalty for simple misconduct is suspension for one (1) month and one (1) day to six (6) months for the first offense.[16] Hence, the lowest penalty that should be imposed is one (1) month and one (1) day, not one (1) month, as recommended by the OCA.

WHEREFORE, respondent Jaime dela Peña Sunit, Sheriff IV, Regional Trial Court, Branch 29 of Surigao City, is found **GUILTY** of Simple Misconduct and is **SUSPENDED** for a period of One (1) Month and One (1) Day without pay, effective immediately upon his receipt of this Decision. He is **STERNLY WARNED** that a repetition of the same or similar act in the future shall be dealt with more severely.

SO ORDERED.

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

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

[16] Sec. 52. *Classification of Offenses*. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x x x x x x

B. The following are less grave offenses with the corresponding penalties:

x x x x x x x x x

2. Simple Misconduct
1st Offense – Suspension 1 mo. 1 day to 6 mos.
2nd Offense – Dismissal

x x x x x x x x x

FIRST DIVISION

[G.R. No. 157445. April 3, 2013]

SEGUNDINA A. GALVEZ, *petitioner, vs.* **HON. COURT OF APPEALS, SPOUSES HONORIO C. MONTANO and SUSANA P. MONTANO and PHILIPPINE NATIONAL BANK,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM RTC TO CA; FAILURE TO ATTACH COPIES OF THE PLEADINGS AND OTHER MATERIAL PORTIONS OF THE RECORD SUPPORTING THE ALLEGATIONS OF THE PETITION FOR REVIEW, NOT NECESSARILY FATAL.— [T]he mere failure to attach copies of the pleadings and other material portions of the record as would support the allegations of the petition for review is not necessarily fatal as to warrant the outright denial of due course when the clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the RTC, and other attachments of the petition sufficiently substantiate the allegations. For the guidance of the CA, therefore, the Court has laid down three guideposts in determining the necessity of attaching the pleadings and portions of the records to the petition in *Air Philippines Corporation v. Zamora*, which involved the dismissal of a petition for *certiorari* assailing an unfavorable decision in a labor dispute for failing to attach copies of all pleadings (like the complaint, answer, position paper) and other material portions of the record as would support the allegations in the petition. x x x The guideposts, which equally apply to a petition for review filed in the CA under Rule 42, reflect that the significant determinant of the sufficiency of the attached documents is whether the accompanying documents support the allegations of the petition.

APPEARANCES OF COUNSEL

Santo Law Office for petitioner.
Benilda V. Abrasia-Tejada for PNB.
Sumayod-Delgado & Associates for Sps. Montano.

D E C I S I O N

BERSAMIN, *J.*:

The mere failure to attach copies of pleadings and other material portions of the record as would support the allegations should not cause the outright dismissal of a petition for review. The allegations of the petition must be examined to determine the sufficiency of the attachments appended thereto.

Antecedents

The petitioner assails the dismissal by the Court of Appeals (CA) of her petition for review through the resolution promulgated on June 25, 2002[1] on the ground of her failure to attach to her petition "copies of pleadings and other material portions of the record as would support the allegations." She prays that the dismissal be set aside, and that the case be remanded to the CA for resolution of her appeal on the merits, unless the Court should find it convenient instead to decide her appeal itself.

The case involves a parcel of land (property) located in Barangay District II, Babatngon, Leyte, which used to be owned by Spouses Eustacio and Segundina Galvez. After their marital relationship turned sour, Eustacio and Segundina separated and cohabited with other partners. On January 6, 1981, Eustacio sold the property to their daughter Jovita without the knowledge or consent of Segundina.[2] After the sale, Jovita constituted a mortgage on the property on March 9, 1981 to secure her loan

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[1] *Rollo,* pp. 32-33; penned by Associate Justice Rebecca De Guia-Salvador, and concurred in by Associate Justice Godardo A. Jacinto (retired) and Associate Justice Eloy R. Bello, Jr. (retired).

[2] Records, pp. 215-216.

from the Philippine National Bank (PNB).[3] Jovita failed to pay her obligation. Hence, PNB had the property extrajudicially foreclosed. In the ensuing foreclosure sale, PNB was the highest bidder. There being no redemption, the property became PNB's acquired asset. On June 10, 1992, respondents Spouses Honorio and Susana Montaño purchased the property from PNB.[4]

Thereafter, the Montaños tried to get the actual possession of the property, but Segundina refused to vacate. Accordingly, the Montaños sued Segundina for recovery of ownership and possession, and damages in the Municipal Trial Court of Babatngon, Leyte (MTC).[5]

Segundina countered that the sale of the property by Eustacio to Jovita was null and void for having been done without her knowledge and consent; that the sale to PNB as well as to the Montaños were consequently void; and that the Montaños were also buyers in bad faith.[6]

On February 4, 2000, the MTC ruled in favor of the Montaños,[7] holding that the sale by Eustacio to Jovita was merely voidable, not null and void; that because Segundina had not brought an action for the annulment of the sale within 10 years from the date of the transaction, as provided in Article 173 of the *Civil Code*, the sale remained valid; that Segundina did not establish that the foreclosure proceedings, auction sale, and the acquisition of the property by the Montaños were void; and that in view of the valid acquisition of the property by PNB during the foreclosure sale, the subsequent sale to the Montaños was also valid.

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[3] *Id.* at 214.

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

[5] *Id.* at 1-4.

[6] *Id.* at 21-27.

[7] *Rollo*, pp. 74-99.

The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered by way of ordering defendant Segundina Galvez; (a) To vacate the property in question and to peacefully turn-over the possession thereof unto the plaintiffs; (b) To pay ₱5,000 as attorney's fees; (c) To pay plaintiffs a reasonable rental in the amount of ₱ 100 per month being the prevailing rental rate in this locality to start from 1993 up to the date when the defendant actually vacate the premises; (d) and to pay the cost.

SO DECIDED.[8]

Segundina appealed to the Regional Trial Court (RTC) in Tacloban City, assigning the following errors, namely:

I. THAT THE TRIAL COURT ERRED IN NOT DECLARING THE SALE OF THE PROPERTY TO JOVITA GALVEZ BY EUSTACIO GALVEZ NULL AND VOID AS IT WAS WITHOUT THE CONSENT AND KNOWLEDGE OF SEGUNDINA GALVEZ.

II. THAT THE TRIAL COURT ERRED IN NOT DECLARING THAT PNB DID NOT ACQUIRE ANY RIGHT TO THE PROPERTY MORTGAGED BY JOVITA GALVEZ AS THE SALE FROM EUSTACIO GALVEZ TO JOVITA GALVEZ WAS IN THE FIRST PLACE NULL AND VOID.

III. THAT THE TRIAL COURT ERRED IN NOT DECLARING THAT SINCE PNB DID NOT ACQUIRE ANY RIGHT BECAUSE OF SUCH FRAUDULENT TRANSACTION PLAINTIFFS DID NOT LIKEWISE ACQUIRE ANY VALID RIGHTS TO SAID PROPERTY;

IV. THAT THE TRIAL COURT GRAVELY ERRED IN NOT DECLARING THE SALE OF THE PROPERTY AT THE PUBLIC BIDDING VOID FOR BEING A VIOLATION OF THE TERMS AND CONDITIONS OF THE DEED OF MORTGAGE AND THE SALE AT PUBLIC AUCTION OF THE PROPERTY IN QUESTION OUTSIDE THE CAPITAL OF THE PROVINCE OF LEYTE WAS A JURISDICTIONAL DEFECT.

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[8] *Id.* at 97.

V. THE TRIAL COURT ERRED IN DECLARING THAT SINCE SEGUNDINA GALVEZ FAILED TO CAUSE THE ANNULMENT OF THE SALE MADE BY HER HUSBAND WHO ABANDONED HER WITHIN TEN YEARS FROM TRANSACTION PRESCRIPTION HAD SET IN.

VI. THAT THE TRIAL COURT ERRED IN DECLARING PLAINTIFFS AS OWNERS AND ENTITLED TO POSSESS THE PROPERTY.

VII. THAT THE TRIAL COURT ERRED IN AWARDING DAMAGES SUCH AS ATTORNEY'S FEES, RENTALS AND COST TO PLAINTIFFS AND AGAINST DEFENDANT SEGUNDINA GALVEZ EVEN WITHOUT EVEN SUFFICIENTLY PRESENTED.[9]

On November 29, 2000, the RTC affirmed the MTC's decision.[10]

Segundina filed a motion for reconsideration against the RTC's decision, but the RTC denied her motion on April 22, 2002.[11]

Ruling of the CA

Thereafter, Segundina appealed to the CA by petition for review, docketed as C.A.-G.R. SP No. 71044 entitled *Segundina A. Galvez v. Spouses Honorio C. Montano and Susana P. Montano and Philippine National Bank.*

On June 25, 2002, the CA promulgated its first assailed resolution,[12] *viz*:

A cursory perusal of the instant *petition for review* shows that no copies of pleadings and other material portions of the record as would support the allegations thereof were attached as annexes in violation of Section 2, Rule 42 of the 1997 Rules of Civil Procedure, which pertinently provides that the petition shall:

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[9] Records, pp. 255-256.

[10] *Rollo*, pp. 66-72.

[11] *Id.* at 73.

[12] *Id.* at 32-33.

> "… be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition."

WHEREFORE, in view of the foregoing, the instant petition for review is hereby *DISMISSED* outright.

SO ORDERED.

Segundina moved for the reconsideration of the resolution,[13] arguing that it was within her judgment as petitioner to decide what documents, pleadings or portions of the records would support her petition; that her exercise of judgment was not a technical error that warranted the outright dismissal of her petition; that the rule requiring all pleadings and material portions of the records to be attached to the petition was an "absurd requirement"; and that attaching the pleadings and other portions of the record was not an indispensable requirement the non-compliance with which would cause the denial of the petition.

On February 6, 2003, the CA denied Segundina's motion for reconsideration,[14] pertinently stating:

The motion is patently devoid of merit.

As a party raising exceptions to the findings of fact and conclusions of law in the February 4, 2000 Decision of the Municipal Trial Court of Babatngon, Leyte and the November 29, 2000 decision of Branch 34 of the Regional Trial Court of Tacloban City, petitioner is hardly in the proper position to adopt the brazen attitude that underlies the motion. She seeks the reversal of the lower court's determination of the parties' rights and yet, by her present stance, would have Us believe that the very decisions embodying the same are sufficient to serve as bases for the allowance of her petition. Needless to say, We find petitioner's impolitic justification of the shortcomings of her petition quite incomprehensible.

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[13] CA *Rollo*, pp. 71-76

[14] *Rollo*, pp. 34-35.

To Our mind, petitioner's obfuscation regarding what is required of her may be traceable to her misconstruction of the terms "pleading" and "material". While the latter term is concededly relative, a simple reference to Rule 6 of the *1997 Rules of Civil Procedure* on "Kinds of Pleadings" would have effectively ruled out her unwarranted misgivings about reproducing the entire record and attaching the same to her petition. Given the cursory manner in which they are recounted in the petition, said attachments would have given Us a clearer and more complete background of the factual and procedural antecedents of the case.

At any rate, the procedural repercussion of petitioner's omission is evidence from Section 3, Rule 43 of Rules, viz:

> "Section 3. *Effect of failure to comply with requirements*. – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of the document which should accompany the petition shall be sufficient ground for the dismissal thereof."

WHEREFORE, petitioner's motion for reconsideration is DENIED for patent lack of merit.

SO ORDERED.

Aggrieved, Segundina has appealed to the Court.

Issues

Segundina submits that the CA refused to examine the merits of her petition because of a technicality.[15] She contends that the CA thus erred, as follows:

1. THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT IMPOSED AN UNREASONABLE REQUIREMENT THAT ALL PLEADINGS FILED BEFORE THE LOWER COURTS SHOULD BE ATTACHED TO THE PETITION.

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[15] *Id.* at 19.

2. THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT DISMISSED THE PETITION FOR REVIEW DESPITE THE ATTACHMENT OF MATERIAL PORTIONS OF THE RECORD AS WOULD SUPPORT THE PETITION.[16]

Segundina amplifies that she attached to her petition for review the certified true copies of the MTC decision dated February 4, 2000, the RTC decision dated November 29, 2000, and the RTC order dated April 22, 2002; that her allegations and the references in her petition for review were directed at the MTC and RTC decisions and order; that the averments contained in the "Statement of Facts" of her petition for review were themselves culled from the MTC and RTC decisions;[17] that, moreover, the grounds of her petition for review all concerned errors of law that, unlike questions of facts, could be resolved without having to examine the evidence of the parties, the pleadings they had submitted, and the portions of the records; that it was within her sound judgment to determine which documents, pleadings or portions of the record would support her petition;[18] that the CA was imposing an "absurd requirement" by ruling that all pleadings and material portions should be attached to the petition for review;[19] that the CA did not even specify which pleadings or material portions of the records should have been attached to her petition for review; and that the CA did not also specify the issue that it would be unable to appreciate and determine because of her supposedly incomplete attachments.[20]

Segundina insists that the failure to attach the complaint, answer and reply to her petition for review did not warrant the outright dismissal of the petition for review; that the MTC decision had already stated the respective claims and defenses of the

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[16] *Id.* at 20.

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

[18] *Id.* at 22.

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

[20] *Id.* at 23.

parties, making the attachment of the complaint, answer and reply to serve no useful purpose, but, instead, only to increase her expenses for photocopying; that attaching all pleadings was not required in the other modes of review;[21] that even if a specific pleading should be needed to decide her petition for review, its absence should only justify the holding that a particular allegation was unsupported, but should not cause the dismissal of the entire petition; and that the CA could even direct the clerk of court of the RTC to elevate the original records and the evidence in the case.[22]

On their part, the Montaños moved for the dismissal of the petition on several grounds, specifically: (*a*) that they were purchasers in good faith and for value when they acquired the property; (*b*) that Segundina could no longer assail the lack of her consent to the sale between Jovita and Eustacio by reason of prescription; and (*c*) that Jovita could not question the validity of the sale by reason of estoppel.[23]

Ruling of the Court

Section 2, Rule 42 of the 1997 *Rules of Civil Procedure*, pertinently provides as follows:

> Section 2. *Form and contents*. – The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number

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

[22] *Id.* at 25.

[23] *Id.* at 112-125.

of plain copies thereof **and of the pleadings and other material portions of the record as would support the allegations of the petition**.

x x x x x x x x x

The dismissal of Segundina's petition for review upon the ground stated in the assailed resolutions was based on Section 3, Rule 42 of the 1997 *Rules of Civil Procedure*, to wit:

Section 3. *Effect of failure to comply with requirements.* – **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and **the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof**.

Considering that Segundina attached the certified true copies of the MTC decision dated February 4, 2000, the RTC decision dated November 29, 2000, and the RTC order dated April 22, 2002, the mandatory nature of the requirement of attaching clearly legible duplicate originals or certified true copies of the judgments or final orders is not in issue here. What is in issue was her failure to attach "the pleadings and other material portions of the record as would support the allegations of the petition."

The petition is meritorious.

In *Atillo v. Bombay*,[24] a case strikingly similar to this one because the petitioner did not annex to her petition copies of the pleadings and other material portions of the record like the complaint, answer and position papers filed in the trial court in violation of the rule, the Court had the occasion to hold that although the phrase "of the pleadings and other material portions of the record as would support the allegations of the petition" contemplated the exercise of discretion by a petitioner in selecting the documents relevant to the petition for review, it was still the CA that would determine if the attached supporting documents

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[24] G.R. No. 136906, February 7, 2001, 351 SCRA 361.

were sufficient to make out a *prima facie* case.[25] In so holding, however, the Court "fairly assumed that the CA took pains in the case at bar to examine the documents attached to the petition so that it could discern whether on the basis of what have been submitted it could already judiciously determine the merits of the petition. The crucial issue to consider then is whether or not the documents accompanying the petition before the CA sufficiently supported the allegations therein."[26]

In *Cusi-Hernandez v. Diaz*,[27] a case where the petitioner did not attach to her petition for review a copy of the contract to sell that was at the center of controversy, the Court nonetheless found that there was a substantial compliance with the rule, considering that the petitioner had appended to the petition for review a certified copy of the decision of the MTC that contained a verbatim reproduction of the omitted contract.

Moreover, it is settled that the petitioner's failure to append the pleadings and pertinent documents to the petition can be rectified by the subsequent filing of a motion for reconsideration to which is attached the omitted pleadings and documents as required by the CA.[28]

The foregoing rulings show that the mere failure to attach copies of the pleadings and other material portions of the record as would support the allegations of the petition for review is not necessarily fatal as to warrant the outright denial of due course when the clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the RTC, and other attachments of the petition sufficiently substantiate the allegations.

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[25] *Id.* at 368-369.

[26] *Id.*

[27] G.R. No. 140436, July 18, 2000, 336 SCRA 113. 114-115.

[28] *Mendoza v. David*, G.R. No. 147575, October 22, 2004, 441 SCRA 172, 180-181.

For the guidance of the CA, therefore, the Court has laid down three guideposts in determining the necessity of attaching the pleadings and portions of the records to the petition in *Air Philippines Corporation v. Zamora*,[29] which involved the dismissal of a petition for *certiorari* assailing an unfavorable decision in a labor dispute for failing to attach copies of all pleadings (like the complaint, answer, position paper) and other material portions of the record as would support the allegations in the petition, to wit:

> *First*, not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.
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> *Second*, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.
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> *Third*, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.[30]

The guideposts, which equally apply to a petition for review filed in the CA under Rule 42,[31] reflect that the significant determinant of the sufficiency of the attached documents is

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[29] G.R. No. 148247, August 7, 2006, 498 SCRA 59.

[30] *Id.* at 69-70.

[31] Section 1, Rule 65, *Rules of Court*, imposes a requirement for the petition for *certiorari* to be accompanied by, among others, a certified true copy of the judgment, order or resolution subject thereof, and **copies of all pleadings and documents relevant and pertinent thereto**, which is similar to the requirement under Section 2, Rule 42.

whether the accompanying documents support the allegations of the petition.

For this case, then, the relevancy of the documents Segundina attached to her petition for review could be appreciated by looking at her allegations, which have been as set forth earlier, and her assignment of errors, which reads thusly:

1. THE HONORABLE REGIONAL TRIAL COURT COMMITTED AN ERROR OF LAW IN NOT DECLARING AS NULL AND VOID THE SALE OF THE SUBJECT PROPERTY BY EUSTACIO GALVEZ TO JOVITA GALVEZ, THE SAME BEING WITHOUT THE CONSENT OF HIS WIFE, PETITIONER SEGUNDINA GALVEZ.
2. THE HONORABLE REGIONAL TRIAL COURT COMMITTED AN ERROR OF LAW IN NOT DECLARING AS NULL AND VOID THE SALE OF THE SUBJECT PROPERTY BY EUSTACIO GALVEZ TO JOVITA GALVEZ, THE SAME BEING WITHOUT CONSIDERATION.
3. THE HONORABLE REGIONAL TRIAL COURT COMMITTED AN ERROR OF LAW IN NOT DECLARING AS NULL AND VOID THE AUCTION SALE OF THE SUBJECT PROPERTY CONDUCTED IN A PLACE OTHER THAN THE PLACE STIPULATED IN THE DEED OF REAL ESTATE MORTGAGE, *I.E.*, THE CAPITOL OF THE PROVINCE OF LEYTE.
4. THE HONORABLE REGIONAL TRIAL COURT COMMITTED AN ERROR OF LAW IN DECLARING RESPONDENT PNB AS A BUYER IN GOOD FAITH OF THE SUBJECT PROPERTY.
5. THE HONORABLE REGIONAL TRIAL COURT COMMITTED AN ERROR OF LAW IN DECLARING RESPONDENT SPOUSES MONTANO AS BUYERS IN GOOD FAITH OF THE SUBJECT PROPERTY.
6. THE HONORABLE REGIONAL TRIAL COURT COMMITTED AN ERROR OF LAW IN AFFIRMING, AND NOT REVERSING THE DECISION OF THE REGIONAL TRIAL COURT (sic) AND IN NOT DISMISSING THE

COMPLAINT AND GRANTING PETITIONER'S COUNTERCLAIMS AND THIRD PARTY CLAIMS.[32]

The Court considers the attachments of Segundina's petition for review (*i.e.*, the certified true copies of the MTC decision dated February 4, 2000, the RTC decision dated November 29, 2000, and the RTC order dated April 22, 2002) already sufficient to enable the CA to pass upon her assigned errors and to resolve her appeal even without the pleadings and other portions of the records. To still deny due course to her petition for not attaching the complaint and the answer despite the MTC decision having substantially summarized their contents was to ignore the spirit and purpose of the requirement to give sufficient information to the CA. The Court reiterates what it has cautioned the CA in *Air Philippines Corporation v. Zamora*[33] not to be overzealous in its enforcement of the rules.

In its resolution denying Segundina's motion for reconsideration, the CA brushed aside her position of not needing to attach other portions of the records of the MTC and the RTC by reminding that she was the party who had raised "exceptions to the findings of fact and conclusions of law" by the MTC and the RTC.[34] The CA's reminder was unfounded, however, considering that her petition focused only on questions of law, like the effects of the lack of her consent to the sale to Jovita, the want of consideration for that sale, and the conduct of the foreclosure sale in a place other than that stipulated in the deed of real estate mortgage. It was plain that she was not assailing the propriety of the findings of fact by the MTC and the RTC, but only the conclusions reached by said lower courts after their appreciation of the facts. In dealing with the questions of law, the CA could simply refer to the attached decisions of the MTC and the RTC.

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[32] CA *rollo*, pp. 10-11.

[33] *Supra* note 29, at 70.

[34] *Rollo*, p. 34.

Besides, even had the CA actually believed that the proper consideration of the petition for review would be requiring another look at the factual issues, it could still resolve such issues by relying on the accepted principle that the factual findings of the lower courts were entitled to great weight. Likewise, were a reference to the records of the trial court be held by the CA to be still necessary to settle any remaining doubt as to the propriety of the factual findings of the lower courts, the CA could have itself called upon Segundina to submit additional documents, or could have itself directed the clerk of court of the RTC to elevate the original records to enable it to make a complete adjudication of the case. Outright denial of due course under the circumstances contravened Segundina's right to be heard on her appeal, and constituted a gross error on the part of the CA.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the assailed resolution promulgated on June 25, 2002 outrightly denying due course to the petition for review in C.A.-G.R. SP No. 71044 entitled *Segundina A. Galvez v. Spouses Honorio C. Montano and Susana P. Montano and Philippine National Bank*, and the resolution promulgated on February 6, 2003 denying petitioner's motion for reconsideration; and **REINSTATES** C.A.-G.R. SP No. 71044, with instructions for the Court of Appeals to process and resolve the appeal with reasonable dispatch.

Respondents are ordered to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 165838. April 3, 2013]

NEMESIO FIRAZA, SR., *petitioner, vs.* **SPOUSES CLAUDIO and EUFRECENA UGAY,** *respondents.*

SYLLABUS

1. **CIVIL LAW; LAND TITLES; PROPERTY REGISTRATION DECREE (PD 1529); COLLATERAL ATTACK TO A CERTIFICATE OF TITLE IS PROSCRIBED; DISTINGUISHED FROM DIRECT ATTACK WHICH INCLUDES COUNTERCLAIM WHERE CERTIFICATE OF TITLE IS ASSAILED AS VOID.—** Section 48 of Presidential Decree No. 1529 or the Property Registration Decree proscribes a collateral attack to a certificate of title and allows only a direct attack thereof. x x x In *Arangote v. Maglunob*, the Court, after distinguishing between direct and collateral attack, classified a counterclaim under former, *viz*: The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. Conversely, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. **Such action to attack a certificate of title may be an original action or a counterclaim, in which a certificate of title is assailed as void.** In the recent case of *Sampaco v. Lantud*, the Court applied the foregoing distinction and held that a counterclaim, specifically one for annulment of title and reconveyance based on fraud, is a direct attack on the Torrens title upon which the complaint for quieting of title is premised. x x x The above pronouncements were based on the well-settled principle that a counterclaim is essentially a complaint filed by the defendant against the plaintiff and stands on the same footing as an independent action.

2. **ID.; ID.; ID.; ID.; ID.; PLAINTIFF IN HIS OWN COUNTERCLAIM IS EQUALLY ENTITLED TO THE OPPORTUNITY TO ESTABLISH HIS CAUSE OF ACTION AND TO PROVE THE RIGHTS HE ASSERTS.—** [T]he petitioner's counterclaim

is a permissible direct attack to the validity of respondents' torrens title. As such counterclaim, it involves a cause of action separate from that alleged in the complaint; it has for its purpose the vindication of a right in as much as the complaint similarly seeks the redress of one. As the plaintiff in his own counterclaim, the petitioner is equally entitled to the opportunity granted the plaintiff in the original complaint, to establish his cause of action and to prove the right he asserts. The courts *a quo* deprived the petitioner of such opportunity when they barred him from propounding questions relating to the validity of the respondents' title; they unjustifiably precluded him from presenting evidence of fraud and misrepresentation upon which his counterclaim is grounded. The courts *a quo*, the RTC especially, should have instead dealt with such issues and allowed the presentation of the facts and evidence necessary for a complete determination of the controversy.

APPEARANCES OF COUNSEL

Randy E. Alvizo for petitioner.
Sansaet Masendo Cadiz Bañosia Sansaet Law Offices for respondents.

R E S O L U T I O N

REYES, *J.*:

Assailed in this petition[1] for review on *certiorari* under Rule 45 of the Rules of Court is the Decision[2] dated January 30, 2004 of the Court of Appeals (CA) in C.A. G.R. SP No. 73495, affirming the Orders dated August 20, 2001[3] and July 2, 2002[4] of the Regional Trial Court (RTC) of Bayugan, Agusan del Sur,

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[1] *Rollo*, pp. 25-49.

[2] Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Amelita F. Tolentino and Arturo D. Brion (now a member of this Court), concurring; *id.* at 60-65.

[3] *Id.* at 58.

[4] *Id.* at 59.

Branch 7, which disallowed petitioner Nemesio Firaza, Sr. (petitioner) from propounding questions attacking the validity of Spouses Claudio and Eufrecena Ugay's (respondents) land title during the trial in Civil Case No. 442.

Likewise assailed is the CA Resolution[5] dated September 24, 2004 denying reconsideration.

The Antecedents

Civil Case No. 442 was commenced by a complaint for *Quieting of Title* filed by the respondents who alleged that they are the registered owners of Lot No. 2887-A as evidenced by Original Certificate of Title (OCT) No. P-16080. The complaint prayed for the annulment of Tax Declaration No. C-22-0857 dated February 18, 1993 issued in the name of the petitioner on the ground that it creates a cloud upon the respondents' title.[6]

In his answer,[7] the petitioner set up the affirmative defense that the respondents obtained their title through fraud and misrepresentation perpetrated during the processing of their Free Patent Application before the Office of the Community Environment and Natural Resources Officer of Bayugan, Agusan del Sur. The respondents purportedly connived with Land Management Officer Lourdes Tadem (Tadem) who favorably recommended their application despite the petitioner's prior claim and continuous possession of the subject lot.

On the basis of the said affirmative defense, the petitioner also filed a counterclaim praying for the: (1) nullification of OCT No. P-16080; (2) reconveyance to him of the ownership of the subject lot; and (3) payment of moral and exemplary damages, and attorney's fees.[8]

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[5] *Id.* at 66.

[6] *Id.* at 60.

[7] *Id.* at 50-56.

[8] *Id.*

The RTC thereafter set the affirmative defense for preliminary hearing as if a motion to dismiss had been filed pursuant to Section 6, Rule 16 of the Rules of Court.[9] The RTC likewise ordered the parties to submit their respective memorandum to which the respondents duly complied. Instead of similarly complying, however, the petitioner filed a Motion to Dispense with the Filing of [the Petitioner's] Memorandum reasoning that his affirmative defense cannot be proven adequately through a written pleading.[10]

On October 2, 1998, the RTC issued an Order[11] denying the petitioner's affirmative defense on the ground that the same can be better ventilated along with the allegations of the complaint and answer in a full-blown trial.

Thus, trial on the merits ensued during which Land Management Officer Tadem was presented as a hostile witness for the respondents. While on direct examination, the petitioner's counsel propounded questions pertaining to the circumstances attending the issuance by Tadem of a recommendation for the respondents' Free Patent Application. Counsel for the respondents objected to the questioning on the ground that the same constitutes a collateral attack to the respondents' land title. In response, the petitioner argued that the questions are necessary for him to establish his defenses of fraud and misrepresentation and to substantiate his counterclaim for reconveyance. To fully thresh out the issue, the RTC required the parties to file, as they did so file, their respective position papers on whether the petitioner's counterclaim constitutes a direct or a collateral attack to the validity of the respondents' title.[12]

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[9] Sec. 6. *Pleading grounds as affirmative defenses.* – If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

[10] *Rollo*, p. 61.

[11] *Id.* at 57.

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

On August 20, 2001, the RTC issued an Order[13] disallowing any issue pertaining to the petitioner's counterclaim which in turn was adjudged as a direct attack to the validity of the respondents' title, hence, prohibited, *viz*:

After an in-depth reading of the facts extant from the records, the Court is of the opinion and so holds that the Counterclaim is a direct attack on the validity of the title.

Proverbial it is that actions to nullity [sic] Free Patents should be at the behest of the Director of Lands (*Kayaban vs. Republic*[,] 52 SCRA 357).

Along this plain, since the counterclaim is a direct attack on the validity of the title and the proper agencies, like the Land Management Bureau of the DENR were not included, any issue presented to prove the illegality of the title, shall not be allowed.

SO ORDERED.[14]

When his motion for reconsideration was denied by the RTC in an Order[15] dated July 2, 2002, the petitioner sought recourse with the CA *via* a special civil action for *certiorari.*

In its herein assailed Decision[16] dated January 30, 2004, the CA affirmed the RTC's judgment albeit premised on the different finding that the petitioner's counterclaim was a collateral attack to the validity of the respondent's title. The CA stated: "[the] petitioner's attempt to introduce evidence on the alleged fraud committed by [the respondents] in securing their title to [the] subject land constitutes a collateral attack on the title which is not allowed by law."[17]

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[13] *Id.* at 58.

[14] *Id.*

[15] *Id.* at 59.

[16] *Id.* at 60-65.

[17] *Id.* at 64.

The petitioner moved for reconsideration but his motion was denied in the CA Resolution[18] dated September 24, 2004 hence, the present appeal moored on this legal question:

Whether the petitioner's counterclaim constitutes a collateral attack of the respondents' land title and thus bars the former from introducing evidence thereon in the latter's civil action for quieting of title?

The Court's Ruling

The appeal is impressed with merit.

Section 48 of Presidential Decree No. 1529[19] or the Property Registration Decree proscribes a collateral attack to a certificate of title and allows only a direct attack thereof, *viz*:

Sec. 48. *Certificate not subject to collateral attack.* A certificate of title shall not be subject to collateral attack. It cannot be altered, modified or cancelled except in a direct proceedings in accordance with law.

In *Arangote v. Maglunob*,[20] the Court, after distinguishing between direct and collateral attack, classified a counterclaim under former, *viz:*

The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. Conversely, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. **Such action to attack a certificate of title may be an original action or a counterclaim, in which a certificate of title is assailed as void**.[21] (Citation omitted and emphasis supplied)

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[18] *Id.* at 66.

[19] AN ACT AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES.

[20] G.R. No. 178906, February 18, 2009, 579 SCRA 620.

[21] *Id.* at 640.

In the recent case of *Sampaco v. Lantud*,[22] the Court applied the foregoing distinction and held that a counterclaim, specifically one for annulment of title and reconveyance based on fraud, is a direct attack on the Torrens title upon which the complaint for quieting of title is premised.[23] Earlier in, *Development Bank of the Philippines v. CA*,[24] the Court ruled similarly and explained thus:

> Nor is there any obstacle to the determination of the validity of TCT No. 10101. It is true that the indefeasibility of torrens title cannot be collaterally attacked. In the instant case, the original complaint is for recovery of possession filed by petitioner against private respondent, not an original action filed by the latter to question the validity of TCT No. 10101 on which petitioner bases its right. To rule on the issue of validity in a case for recovery of possession is tantamount to a collateral attack. However, it should not [b]e overlooked that private respondent filed a counterclaim against petitioner, claiming ownership over the land and seeking damages. Hence, we could rule on the question of the validity of TCT No. 10101 for the counterclaim can be considered a direct attack on the same. x x x.[25]

The above pronouncements were based on the well-settled principle that a counterclaim is essentially a complaint filed by the defendant against the plaintiff and stands on the same footing as an independent action.[26]

From the foregoing, it is immediately apparent that the courts *a quo* erred in their conclusions. The CA erroneously classified the herein counterclaim as a collateral attack. On the other hand, the RTC correctly adjudged the same as a direct attack to the respondents' land title but mistakenly declared it as a prohibited action.

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[22] G.R. No. 163551, July 18, 2011, 654 SCRA 36.

[23] *Id.* at 54.

[24] 387 Phil. 283 (2000).

[25] *Id.* at 300.

[26] *Supra* note 21, note 23, and note 25.

As clearly pronounced in the above-cited jurisprudence, the petitioner's counterclaim is a permissible direct attack to the validity of respondents' torrens title. As such counterclaim, it involves a cause of action separate from that alleged in the complaint; it has for its purpose the vindication of a right in as much as the complaint similarly seeks the redress of one.[27] As the plaintiff in his own counterclaim, the petitioner is equally entitled to the opportunity granted the plaintiff in the original complaint, to establish his cause of action and to prove the right he asserts.

The courts *a quo* deprived the petitioner of such opportunity when they barred him from propounding questions relating to the validity of the respondents' title; they unjustifiably precluded him from presenting evidence of fraud and misrepresentation upon which his counterclaim is grounded. The courts *a quo,* the RTC especially, should have instead dealt with such issues and allowed the presentation of the facts and evidence necessary for a complete determination of the controversy.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated January 30, 2004 of the Court of Appeals in C.A. G.R. SP No. 73495 and the Orders dated August 20, 2001 and July 2, 2002 of the Regional Trial Court of Bayugan, Agusan del Sur, Branch 7, in Civil Case No. 442 are hereby **REVERSED** and **SET ASIDE**. The trial court is **ORDERED** to proceed with the trial of Civil Case No. 442 and to allow petitioner Nemesio Firaza, Sr. to propound questions pertaining to the validity of Original Certificate of Title No. P-16080 and present such other evidence, testimonial or documentary, substantiating his counterclaim.

SO ORDERED.

Sereno, C.J. (Chairperson), Velasco, Jr.,[*] *Bersamin,* and *Villarama, Jr., JJ.,* concur.

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[27] See *Pinga v. Heirs of German Santiago*, 526 Phil. 868, 892-893 (2006).

[*] Additional member per Raffle dated April 1, 2013.

SECOND DIVISION

[G.R. No. 173121. April 3, 2013]

FRANKLIN ALEJANDRO, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN FACT-FINDING AND INTELLIGENCE BUREAU, represented by Atty. Maria Olivia Elena A. Roxas,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; NO NEED TO APPEAL DECISION OF THE DEPUTY OMBUDSMAN TO THE OFFICE OF THE OMBUDSMAN UNDER SEC. 7, RULE III OF A.O. NO. 7 AS THE FORMER WAS ACTING FOR AND IN BEHALF OF THE LATTER. —** Section 7, Rule III of Administrative Order No. 07, dated April 10, 1990 x x x did not provide for another appeal from the decision of the Deputy Ombudsman to the Ombudsman. It simply requires that a motion for reconsideration or a petition for *certiorari* may be filed in all other cases where the penalty imposed is not one involving public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1) month salary. This post-judgment remedy is merely an opportunity for the Office of the Deputy Ombudsman, or the Office of the Ombudsman, to correct itself in certain cases. To our mind, the petitioner has fully exhausted all administrative remedies when he filed his motion for reconsideration on the decision of the Deputy Ombudsman. There is no further need to review the case at the administrative level since the Deputy Ombudsman has already acted on the case and **he was acting for and in behalf of the Office of the Ombudsman**.

2. **ID.; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; JURISDICTION; CONCURRENT JURISDICTION OVER ADMINISTRATIVE CASES WHICH ARE WITHIN THE JURISDICTION OF THE REGULAR COURTS OR ADMINISTRATIVE AGENCIES.—** The Office of the Ombudsman was created by no less than the Constitution. It is tasked to exercise disciplinary authority over ***all*** elective and

appointive officials, save only for impeachable officers. While Section 21 of The Ombudsman Act and the Local Government Code both provide for the procedure to discipline elective officials, the seeming conflicts between the two laws have been resolved in cases decided by this Court. In *Hagad v. Gozo-Dadole*, we pointed out that "there is nothing in the Local Government Code to indicate that it has repealed, whether expressly or impliedly, the pertinent provisions of the Ombudsman Act. The two statutes on the specific matter in question are not so inconsistent x x x as to compel us to only uphold one and strike down the other." The two laws may be reconciled by understanding the ***primary*** jurisdiction and ***concurrent*** jurisdiction of the Office of the Ombudsman. The Ombudsman has ***primary*** jurisdiction to investigate any act or omission of a public officer or employee who is under the jurisdiction of the Sandiganbayan. x x x The Sandiganbayan's jurisdiction extends only to public officials occupying positions corresponding to salary grade 27 and higher. Consequently, as we held in *Office of the Ombudsman v. Rodriguez*, any act or omission of a public officer or employee occupying a salary grade lower than 27 is within the ***concurrent*** jurisdiction of the Ombudsman and of the regular courts or other investigative agencies. In administrative cases involving the ***concurrent*** jurisdiction of two or more disciplining authorities, the body where the complaint is filed first, and which opts to take cognizance of the case, acquires jurisdiction to the exclusion of other tribunals exercising ***concurrent*** jurisdiction. In this case, the petitioner is a *Barangay* Chairman, occupying a position corresponding to salary grade 14. Under RA 7160, the *sangguniang panlungsod* or *sangguniang bayan* has disciplinary authority over any elective *barangay* official. x x x Since the complaint against the petitioner was ***initially filed*** with the Office of the Ombudsman, the Ombudsman's exercise of jurisdiction is to the exclusion of the *sangguniang bayan* whose exercise of jurisdiction is **concurrent**.

3. **ID.; ID.; ID.; ID.; POWER TO IMPOSE ADMINISTRATIVE SANCTIONS.—** Section 15 of RA 6770 reveals the manifest intent of the lawmakers to give the Office of the Ombudsman full ***administrative disciplinary*** authority. This provision covers the entire range of administrative activities attendant to administrative adjudication, including, among others, the authority to receive complaints, conduct investigations, hold

hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the corresponding penalty. These powers unmistakably grant the Office of the Ombudsman the power to directly impose administrative sanctions; its power is not merely recommendatory. We held in *Office of the Ombudsman v. Apolonio* that: x x x **'It was given disciplinary authority over all elective and appointive officials of the government and its subdivisions, instrumentalities and agencies.'**

4. **ID.; ID.; ID.; GRAVE MISCONDUCT COMMITTED BY BARANGAY CHAIRMAN WHEN IT INTERFERED WITH POLICE OPERATIONS.—** At the time when the police officers were hauling the confiscated equipment, they were creating a commotion. As Barangay Chairman, the petitioner was clearly in the performance of his official duty when he interfered. Under Section 389(b)(3) of RA 7160, the law provides that a *punong barangay* must "[m]aintain public order in the *barangay* and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions[.]" The PNP- CIDG's anti-water pilferage operation against the car-wash boys was affecting the peace and order of the community and he was duty-bound to investigate and try to maintain public order. After the petitioner introduced himself and inquired about the operation, the police officers immediately showed their identifications and explained to him that they were conducting an anti-water pilferage operation. However, instead of assisting the PNP-CIDG, he actually ordered several bystanders to defy the PNP-CIDG's whole operation. The petitioner's act stirred further commotion that unfortunately led to the escape of the apprehended car-wash boys. x x x [T]he maintenance of peace and order carries both general and specific functions on the part of the police. Section 24 of RA 6975 (otherwise known as "the Department of the Interior and Local Government Act of 1990"), as amended, enumerates the powers and functions of the police. In addition to the maintenance of peace and order, the police has the authority to "[i]nvestigate and prevent crimes,

effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution[,]" and are charged with the enforcement of "laws and ordinances relative to the protection of lives and properties." Examined side by side, police authority is superior to the *punong barangay's* authority in a situation where the maintenance of peace and order has metamorphosed into crime prevention and the arrest of criminal offenders. In this case, a criminal act was actually taking place and the situation was already beyond the general maintenance of peace and order. The police was, at that point, under the obligation to prevent the commission of a crime and to effect the arrest, as it actually did, of criminal offenders. From another perspective, the peace and order function of the *punong barangay* must also be related to his function of assisting local executive officials (*i.e.*, the city mayor), under Section 389(b), Chapter III of the Local Government Code. Local executive officials have the power to employ and deploy police for the maintenance of peace and order, the prevention of crimes and the arrest of criminal offenders. Accordingly, in the maintenance of peace and order, the petitioner is bound, at the very least, to respect the PNP-CIDG's authority even if he is not in the direct position to give aid. By interfering with a legitimate police operation, he effectively interfered with this hierarchy of authority. Thus, we are left with no other conclusion other than to rule that Alejandro is liable for misconduct in the performance of his duties.

5. ID.; ID.; ID.; ID.; PROPER PENALTY IS DISMISSAL FROM THE SERVICE.— Misconduct is considered grave if accompanied by corruption, a clear intent to violate the law, or a flagrant disregard of established rules, which must all be supported by substantial evidence. If the misconduct does not involve any of the additional elements to qualify the misconduct as grave, the person charged may only be held liable for simple misconduct. "Grave misconduct necessarily includes the lesser offense of simple misconduct.'' x x x [W]e can conclusively confirm that the petitioner violated the law by directly interfering with a legitimate police activity where his own son appeared to be involved. This act qualifies the misconduct as grave. Section 52(A)(3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that the penalty for grave misconduct is dismissal from the service.

APPEARANCES OF COUNSEL

Law Firm of Palaran & Partners 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 Franklin Alejandro *(petitioner)*, assailing the February 21, 2006 decision[2] and the June 15, 2006 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 88544. The CA dismissed for prematurity the petitioner's appeal on the August 20, 2004 decision[4] of the Office of the Deputy Ombudsman in OMB-C-A-03-0310-I finding him administratively liable for grave misconduct.

The Factual Antecedents

On May 4, 2000, the Head of the Non-Revenue Water Reduction Department of the Manila Water Services, Inc. *(MWSI)* received a report from an Inspectorate and Special Projects team that the Mico Car Wash *(MICO)*, owned by Alfredo Rap Alejandro, has been illegally opening an MWSI fire hydrant and using it to operate its car-wash business in Binondo, Manila.[5]

On May 10, 2000, the MWSI, in coordination with the Philippine National Police Criminal Investigation and Detection Group *(PNP-CIDG)*, conducted an anti-water pilferage operation against MICO.[6]

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[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 9-25.

[2] Penned by Associate Justice Eliezer R. de los Santos, and concurred in by Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag; *id.* at 168-172.

[3] *Id.* at 189-190.

[4] *Id.* at 98-108.

[5] *Id.* at 98.

[6] *Id.* at 169.

During the anti-water pilferage operation, the PNP-CIDG discovered that MICO's car-wash boys indeed had been illegally getting water from an MWSI fire hydrant. The PNP-CIDG arrested the car-wash boys and confiscated the containers used in getting water. At this point, the petitioner, Alfredo's father and the Barangay Chairman or *punong barangay* of Barangay 293, Zone 28, Binondo, Manila, interfered with the PNP-CIDG's operation by ordering several men to unload the confiscated containers. This intervention caused further commotion and created an opportunity for the apprehended car-wash boys to escape.[7]

On August 5, 2003, the respondent Office of the Ombudsman Fact-Finding and Intelligence Bureau, after conducting its initial investigation, filed with the Office of the Overall Deputy Ombudsman an administrative complaint against the petitioner for his blatant refusal to recognize a joint legitimate police activity, and for his unwarranted intervention.[8]

In its decision[9] dated August 20, 2004, the Office of the Deputy Ombudsman found the petitioner guilty of grave misconduct and ordered his dismissal from the service. The Deputy Ombudsman ruled that the petitioner cannot overextend his authority as Barangay Chairman and induce other people to disrespect proper authorities. The Deputy Ombudsman also added that the petitioner had tolerated the illegal acts of MICO's car-wash boys.[10] The petitioner filed a motion for reconsideration which the Office of the Deputy Ombudsman denied in its order[11] of November 2, 2004.

The petitioner appealed to the CA *via* a petition for review under Rule 43 of the Rules of Court. In its decision[12] dated

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[7] *Ibid.*

[8] *Id.* at 42.

[9] *Supra* note 4.

[10] *Id.* at 106.

[11] *Rollo*, pp. 114-117.

[12] *Supra* note 2.

February 21, 2006, the CA dismissed the petition for premature filing. The CA ruled that the petitioner failed to exhaust proper administrative remedies because he did not appeal the Deputy Ombudsman's decision to the Ombudsman.

The petitioner moved for the reconsideration of the CA ruling. On June 15, 2006, the CA denied the motion.[13]

The Petition

The petitioner posits that the CA erred in dismissing his petition outright without considering Rule 43 of the Rules of Court and Administrative Order No. 07 (otherwise known as the Rules of Procedure of the Office of the Ombudsman),[14] on the belief that the filing of a motion for reconsideration of the decision of the Office of the Overall Deputy Ombudsman can already be considered as an exhaustion of administrative remedies. The petitioner further argues that the Office of the Ombudsman has no jurisdiction to order his dismissal from the service since under Republic Act No. (*RA*) 7160 (otherwise known as the Local Government Code of 1991), an elective local official may be removed from office only by the order of a proper court. Finally, he posits that the penalty of dismissal from the service is not warranted under the available facts.

The Office of the Deputy Ombudsman, through the Office of the Solicitor General, pointed out in its Comment[15] that the petitioner failed to exhaust administrative remedies since he did not appeal the decision of the Deputy Ombudsman to the Ombudsman. The Office of the Deputy Ombudsman maintained that under RA 6770[16] (The Ombudsman Act of 1989), the Office of the Ombudsman has disciplinary authority over all elective and appointive officials. It also asserted that sufficient evidence exists to justify the petitioner's dismissal from the service.

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[13] *Supra* note 3.

[14] Dated October 15, 1991.

[15] *Rollo*, pp. 220-246.

[16] Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes.

As framed by the parties, the case poses the following issues:

I.

WHETHER THE PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRES A REQUEST FOR RECONSIDERATION FROM THE OFFICE OF THE DEPUTY OMBUDSMAN TO THE OMBUDSMAN FOR THE PURPOSE OF A RULE 43 REVIEW.

II.

WHETHER THE OFFICE OF THE OMBUDSMAN HAS JURISDICTION OVER ELECTIVE OFFICIALS AND HAS THE POWER TO ORDER THEIR DISMISSAL FROM THE SERVICE.

III.

WHETHER PETITIONER'S ACT CONSTITUTES GRAVE MISCONDUCT TO WARRANT HIS DISMISSAL.

The Court's Ruling

We deny the petition for lack of merit.

Preliminary Issues

The CA committed no reversible error in affirming the findings and conclusions of the Deputy Ombudsman.

No further need exists to exhaust administrative remedies from the decision of the Deputy Ombudsman because he was acting in behalf of the Ombudsman

We disagree with the CA's application of the doctrine of exhaustion of administrative remedies which states that when there is "a procedure for administrative review, x x x appeal, or reconsideration, the courts x x x will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum."[17]

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[17] *Hon. Carale v. Hon. Abarintos*, 336 Phil. 126, 135-136 (1997).

Section 7, Rule III of Administrative Order No. 07, dated April 10, 1990, provides that:

> Section 7. *FINALITY OF DECISION*. — Where the respondent is absolved of the charge and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1) month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, **unless a motion for reconsideration or petition for *certiorari* shall have been filed by him as prescribed in Section 27 of RA 6770.** [italics supplied; emphasis and underscore ours]

Administrative Order No. 07 did not provide for another appeal from the decision of the Deputy Ombudsman to the Ombudsman. It simply requires that a motion for reconsideration or a petition for *certiorari* may be filed in all other cases where the penalty imposed is not one involving public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1) month salary. This post-judgment remedy is merely an opportunity for the Office of the Deputy Ombudsman, or the Office of the Ombudsman, to correct itself in certain cases. To our mind, the petitioner has fully exhausted all administrative remedies when he filed his motion for reconsideration on the decision of the Deputy Ombudsman. There is no further need to review the case at the administrative level since the Deputy Ombudsman has already acted on the case and ***he was acting for and in behalf of the Office of the Ombudsman***.

The Ombudsman has concurrent jurisdiction over administrative cases which are within the jurisdiction of the regular courts or administrative agencies

The Office of the Ombudsman was created by no less than the Constitution.[18] It is tasked to exercise disciplinary authority over ***all*** elective and appointive officials, save only for impeachable

[18] CONSTITUTION, Article XI, Section 5.

officers. While Section 21 of The Ombudsman Act[19] and the Local Government Code both provide for the procedure to discipline elective officials, the seeming conflicts between the two laws have been resolved in cases decided by this Court.[20]

In *Hagad v. Gozo-Dadole,*[21] we pointed out that "there is nothing in the Local Government Code to indicate that it has repealed, whether expressly or impliedly, the pertinent provisions of the Ombudsman Act. The two statutes on the specific matter in question are not so inconsistent x x x as to compel us to only uphold one and strike down the other." The two laws may be reconciled by understanding the ***primary*** jurisdiction and ***concurrent*** jurisdiction of the Office of the Ombudsman.

The Ombudsman has ***primary*** jurisdiction to investigate any act or omission of a public officer or employee who is under the jurisdiction of the *Sandiganbayan.* RA 6770 provides:

> Section 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:
>
> (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. **It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction,** it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases[.] [italics supplied; emphasis and underscore ours]

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

[20] *Office of the Ombudsman v. Rodriguez*, G.R. No. 172700, July 23, 2010, 625 SCRA 299.

[21] G.R. No. 108072, December 12, 1995, 251 SCRA 242, 251.

The *Sandiganbayan's* jurisdiction extends only to public officials occupying positions corresponding to salary grade 27 and higher.[22] Consequently, as we held in *Office of the Ombudsman v. Rodriguez,*[23] any act or omission of a public officer or employee occupying a salary grade lower than 27 is within the ***concurrent*** jurisdiction of the Ombudsman and of the regular courts or other investigative agencies.[24]

In administrative cases involving the ***concurrent*** jurisdiction of two or more disciplining authorities, the body where the complaint is filed first, and which opts to take cognizance of the case, acquires jurisdiction to the exclusion of other tribunals exercising ***concurrent*** jurisdiction.[25] In this case, the petitioner is a Barangay Chairman, occupying a position corresponding to salary grade 14.[26] Under RA 7160, the *sangguniang panlungsod* or *sangguniang bayan* has disciplinary authority over any elective *barangay* official, as follows:

> Section 61. *Form and Filing of Administrative Complaints*. – A verified complaint against any erring local elective official shall be prepared as follows:
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> x x x x x x x x x
>
> (c) A complaint against any elective *barangay* official shall be filed before the *sangguniang panlungsod* or *sangguniang bayan* concerned whose decision shall be final and executory. [italics supplied]

Since the complaint against the petitioner was ***initially filed*** with the Office of the Ombudsman, the Ombudsman's exercise of jurisdiction is to the exclusion of the *sangguniang bayan* whose exercise of jurisdiction is ***concurrent***.

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[22] RA 8249, "An Act Further Defining the Jurisdiction of the Sandiganbayan."

[23] *Supra* note 20.

[24] *Uy v. Sandiganbayan,* 407 Phil. 154 (2001).

[25] *Civil Service Commission v. Alfonso*, G.R. No. 179452, June 11, 2009, 589 SCRA 88.

[26] RA 6758, "Compensation and Position Classification Act of 1989."

The Ombudsman has the power to impose administrative sanctions

Section 15 of RA 6770[27] reveals the manifest intent of the lawmakers to give the Office of the Ombudsman full

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[27] 15. *Powers, Functions and Duties*. — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

(2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglect[s] to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: provided, that the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

(6) Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: provided, that the Ombudsman under its rules and regulations may determine what cases may not be made public: provided, further, that any publicity issued by the Ombudsman shall be balanced, fair and true;

administrative disciplinary authority. This provision covers the entire range of administrative activities attendant to administrative adjudication, including, among others, the authority to receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the corresponding penalty.[28]

These powers unmistakably grant the Office of the Ombudsman the power to directly impose administrative sanctions; its power is not merely recommendatory. We held in *Office of the Ombudsman v. Apolonio*[29] that*:*

> It is likewise apparent that under RA 6770, the lawmakers intended to provide the Office of the Ombudsman with sufficient muscle to ensure that it can effectively carry out its mandate as protector of the people against inept and corrupt government officers and employees. The Office was granted the power to punish for contempt in accordance with the Rules of Court. **It was given disciplinary authority over *all* elective and appointive officials of the government and its subdivisions, instrumentalities and agencies** (with the exception only of impeachable officers, members of Congress and the Judiciary). Also, it can preventively suspend any officer under its authority pending an investigation when the case so warrants.[30] (italics supplied; emphasis and underscore ours)

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(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency[.] [italics supplied]

[28] *Cabalit v. Commission on Audit-Region VII,* G.R. Nos. 180236, 180341 and 180342, January 17, 2012, 633 SCRA 133.

[29] G.R. No. 165132, March 7, 2012, 667 SCRA 583.

[30] *Id.* at 596.

Substantive Issue

The petitioner is liable for grave misconduct

At the outset, we point out that the maintenance of peace and order is a function of both the police and the Barangay Chairman, but crime prevention is largely a police matter.

At the time when the police officers were hauling the confiscated equipment, they were creating a commotion. As Barangay Chairman, the petitioner was clearly in the performance of his official duty when he interfered. Under Section 389(b)(3) of RA 7160, the law provides that a *punong barangay* must "[m]aintain public order in the *barangay* and, in pursuance thereof, assist the city or municipal mayor and the *sanggunian* members in the performance of their duties and functions[.]" The PNP-CIDG's anti-water pilferage operation against the car-wash boys was affecting the peace and order of the community and he was duty-bound to investigate and try to maintain public order.[31]

After the petitioner introduced himself and inquired about the operation, the police officers immediately showed their identifications and explained to him that they were conducting an anti-water pilferage operation. However, instead of assisting the PNP-CIDG, he actually ordered several bystanders to defy the PNP-CIDG's whole operation. The petitioner's act stirred further commotion that unfortunately led to the escape of the apprehended car-wash boys.[32]

The petitioner, as Barangay Chairman, is tasked to enforce all laws and ordinances which are applicable within the *barangay,* in the same manner that the police is bound to maintain peace and order within the community. While the petitioner has general charge of the affairs in the *barangay*, the maintenance of peace and order is largely a police matter, with police authority being predominant[33] especially when the police has began to act on

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[31] *Rollo,* p. 15.

[32] *Id.* at 99.

[33] On the basis and predominance of the police's authority.

an enforcement matter.[34] The maintenance of peace and order in the community is a general function undertaken by the *punong barangay*. It is a task expressly conferred to the *punong barangay* under Section 389(b)(3) of RA 7160.[35] On the other hand, the maintenance of peace and order carries both general and specific functions on the part of the police. Section 24 of RA 6975 (otherwise known as "the Department of the Interior and Local Government Act of 1990"),[36] as amended,[37] enumerates the powers and functions of the police. In addition to the maintenance of peace and order, the police has the authority to "[i]nvestigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution[,]" and are charged with the enforcement of "laws and ordinances relative to the protection of lives and properties."[38] Examined side by side, police authority is superior to the *punong barangay's* authority in a situation where the maintenance of peace and order has metamorphosed into crime prevention and the arrest of criminal offenders.

In this case, a criminal act was actually taking place and the situation was already beyond the general maintenance of peace and order. The police was, at that point, under the obligation to prevent the commission of a crime and to effect the arrest, as it actually did, of criminal offenders.

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[34] RA 7160, Section 389(b)(1).

[35] (3) Maintain public order in the *barangay* and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions[.]

[36] Section 1.

[37] RA 8551 or the "Philippine National Police Reform and Reorganization Act of 1998" and Republic Act No. 9708 or "An Act Extending for Five (5) Years the Reglementary Period for Complying with the Minimum Educational Qualification for Appointment to the Philippine National Police (PNP) and Adjusting the Promotion System Thereof, Amending for the Purpose Pertinent Provisions of Republic Act No. 6975 and Republic Act No. 8551 and for Other Purposes."

[38] RA 6975, Section 24(a), (b) and (c), as amended.

From another perspective, the peace and order function of the *punong barangay* must also be related to his function of assisting local executive officials (*i.e.*, the city mayor), under Section 389(b), Chapter III of the Local Government Code.[39] Local executive officials have the power to employ and deploy police for the maintenance of peace and order, the prevention of crimes and the arrest of criminal offenders.[40] Accordingly, in the maintenance of peace and order, the petitioner is bound, at the very least, to respect the PNP-CIDG's authority even if he is not in the direct position to give aid. By interfering with a legitimate police operation, he effectively interfered with this hierarchy of authority. Thus, we are left with no other conclusion other than to rule that Alejandro is liable for misconduct in the performance of his duties.

Misconduct is considered grave if accompanied by corruption, a clear intent to violate the law, or a flagrant disregard of established rules, which must all be supported by substantial evidence.[41] If

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[39] (b) For efficient, effective and economical governance, the purpose of which is the general welfare of the *barangay* and its inhabitants pursuant to Section 16 of this Code, the punong *barangay* shall:

(1) Enforce all laws and ordinances which are applicable within the *barangay*;
(2) Negotiate, enter into, and sign contracts for and in behalf of the *barangay*, upon authorization of the *sangguniang barangay*;
(3) Maintain public order in the *barangay* and, in pursuance thereof, assist the city or municipal mayor and the *sanggunian* members in the performance of their duties and functions[.]

[40] Section 62, Title VIII of RA 8551 (*Participation of Local Government Executives in the Administration of the PNP)* provides:

It shall also include the power to direct the employment and deployment of units or elements of the PNP, through the station commander, to ensure public safety and effective maintenance of peace and order within the locality. For this purpose, the terms "employment" and "deployment" shall mean as follows:

"Employment" refers to the utilization of units or elements of the PNP for purposes of protection of lives and properties, enforcement of laws, maintenance of peace and order, prevention of crimes, arrest of criminal offenders and bringing the offenders to justice, and ensuring public safety, particularly in the suppression of disorders, riots, lawlessness, violence, rebellious and seditious conspiracy, insurgency, subversion or other related activities.

[41] *Imperial, Jr. v. Government Service Insurance System,* G.R. No. 191224, October 4, 2011, 658 SCRA 497, 506, citing *Vertudes v. Buenaflor*, G.R. No. 153166, December 16, 2005, 478 SCRA 210, 233.

the misconduct does not involve any of the additional elements to qualify the misconduct as grave, the person charged may only be held liable for simple misconduct. "Grave misconduct necessarily includes the lesser offense of simple misconduct."[42]

Sufficient records exist to justify the imposition of a higher penalty against the petitioner. His open interference in a legitimate police activity and defiance of the police's authority only show his clear intent to violate the law; in fact, he reneged on his first obligation as the grassroot official tasked at the first level with the enforcement of the law. The photographs, taken together with the investigation report of the Police Superintendent and the testimonies of the witnesses, even lead to conclusions beyond interference and defiance; the petitioner himself could have been involved in corrupt activities, although we cannot make this conclusive finding at this point.[43] We make this observation though as his son owns MICO whose car-wash boys were engaged in water pilferage. What we can conclusively confirm is that the petitioner violated the law by directly interfering with a legitimate police activity where his own son appeared to be involved. This act qualifies the misconduct as grave. Section 52(A)(3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that the penalty for grave misconduct is dismissal from the service.

WHEREFORE, in view of the foregoing, we hereby **DENY** petition for lack of merit, and **AFFIRM** the decision of the Court of Appeals in CA-G.R. SP No. 88544.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *del Castillo,* and *Perez, JJ.,* concur.

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[42] *Santos v. Rasalan*, G.R. No. 155749, February 8, 2007, 515 SCRA 97, 104.

[43] *Rollo*, pp. 41-82.

[*] Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1437 dated March 25, 2013.

FIRST DIVISION

[G.R. No. 175327. April 3, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDMUNDO VITERO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; QUALIFIED RAPE; ELEMENTS OF THE CRIME; ESTABLISHED IN CASE AT BAR.—** Accused-appellant was charged with qualified rape, defined and punishable under the following provisions of the Revised Penal Code, as amended by Republic Act No. 8353. x x x The elements of the crime charged against accused-appellant are: (a) the victim is a female over 12 years but under 18 years of age; (b) the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and (c) the offender has carnal knowledge of the victim either through force, threat, or intimidation. There is no dispute that the first two elements exist in this case. Documentary and testimonial evidence, including accused-appellant's own admission, establish that AAA is the daughter of accused-appellant and BBB and she was born on April 30, 1985. This means that AAA was almost or already 13 years old when she was raped in April 1998. As to the third element of the crime, both the RTC and the Court of Appeals ruled that it was duly proven as well, giving weight and credence to AAA's testimony. AAA was able to describe in detail how accused-appellant mounted her, undressed her, and successfully penetrated her against her will, one night in April 1998. The RTC described AAA's testimony to be "frank, probable, logical and conclusive," while the Court of Appeals declared it to be "forthright and credible" and "impressively clear, definite, and convincing."

2. **ID.; ID.; ID.; ID.; IN INCESTUOUS RAPE CASES, THE FATHER'S ABUSE OF THE MORAL ASCENDANCY AND INFLUENCE OVER HIS DAUGHTER CAN SUBJUGATE THE LATTER'S WILL THEREBY FORCING HER TO DO WHATEVER HE WANTS.—** We have also previously

pronounced that in incestuous rape cases, the father's abuse of the moral ascendancy and influence over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants. Otherwise stated, the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. Even so, it is notable in this case that accused-appellant did not only use his moral ascendancy and influence over AAA as her father, he employed actual force and intimidation upon her. AAA recounted on the stand that accused-appellant "boxed" her on her right shoulder, near her armpit. When AAA tried to push accused-appellant away from her and to turn her body away from him, accused-appellant pulled her back. Additionally, accused-appellant had a 20-inch knife close by as he was sexually molesting AAA.

3. **ID.; ID.; ID.; ID.; DELAY IN REPORTING THE RAPE IS UNDERSTANDABLE IN CASE AT BAR.—** AAA 's delay in reporting the rape is understandable. As we declared in *People v. Sinoro:* At the outset, we note that the initial reluctance of a rape victim to publicly reveal the assault on her virtue is neither unknown nor uncommon. It is quite understandable for a young girl to be hesitant or disinclined to come out in public and relate a painful and horrible experience of sexual violation. x x x. Indeed, the vacillation of a rape victim in making a criminal accusation does not necessarily impair her credibility as a witness. Delay in reporting the crime neither diminishes her credibility nor undermines her charges, particularly when the delay can be attributed to a pattern of fear instilled by the threats of one who exercises moral ascendancy over her. As for AAA, not only was her rapist her own father, but she was also living amongst her father's relatives. AAA was even brought far away from her hometown in Albay and made to stay with accused-appellant's sister in Batangas, isolating her from people and places she had known all her life. It was only when BBB finally found AAA in 2000 and took AAA with her did AAA felt safe enough to narrate to BBB what accused-appellant did to her two years ago.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FINDINGS OF THE TRIAL COURT, ITS CALIBRATION OF THE TESTIMONIES OF THE WITNESSES, AND ITS ASSESSMENT OF THE PROBATIVE**

WEIGHT THEREOF, AS WELL AS ITS CONCLUSIONS ANCHORED ON SAID FINDINGS ARE ACCORDED RESPECT IF NOT CONCLUSIVE EFFECT.— We reiterate that the rule is that the findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect. This is truer if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, as in the case at bar, said findings are generally binding upon us. We find no reason to depart from the general rule.

5. **ID.; ID.; ID.; THERE IS NO STANDARD FORM OF HUMAN BEHAVIORAL RESPONSE WHEN ONE IS CONFRONTED WITH A FRIGHTFUL EXPERIENCE.—** Accused-appellant's attempts at damaging AAA's credibility are unpersuasive. AAA's account that accused-appellant was able to have carnal knowledge of her in April 1998 was corroborated by the results of Dr. Remonte's physical examination of AAA, showing hymenal laceration at 5 o'clock position, indicating sexual intercourse. That AAA did not shout for help should not be taken against her. In *People v. Sale*, we rejected a similar argument raised by the accused-appellant therein. x x x Again, the argument of accused-appellant deserves scant consideration. **Different people react differently to different situations and there is no standard form of human behavioral response when one is confronted with a frightful experience.** While the reaction of some women, when faced with the possibility of rape, is to struggle or shout for help, still others become virtually catatonic because of the mental shock they experience. In the instant case, it is not inconceivable or improbable that [private complainant], being of tender age, would be intimidated into silence by the threats and actions of her father.

6. **ID.; ID.; DEFENSES OF ALIBI AND DENIAL; REJECTED.—** Accused-appellant's defenses, consisting of mere denial and alibi, fail to persuade us. As we explained in *People v. Ogarte*: This Court has uniformly held, time and again, that both "denial and alibi are among the weakest, if not the weakest, defenses in criminal prosecution." It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-

> serving assertion that deserves no weight in law. x x x Accused-appellant's alibi is that he was continuously living and working in Metro Manila from 1996 to 2000. Even when accused-appellant presented two corroborating witnesses, we are not convinced. Vilma could only testify on giving accused-appellant the money which he used to go to Metro Manila in 1996. Ireneo admitted that accused-appellant did not live permanently at his house in Metro Manila, and accused-appellant would usually visit only during weekends. x x x Hence, even if it were true that accused-appellant had been living and working in Metro Manila from 1996 to 2000, it does not exclude the possibility that he went home for visits to his grandparent's house in Ligao City, Albay, in the course of the four years. What is needed is clear and convincing proof that in April 1998, when AAA was raped, accused-appellant was actually in Metro Manila. However, accused-appellant presented no such evidence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before Us is the appeal from the Decision[1] dated July 18, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00070, affirming the Decision dated October 9, 2003[2] of the Regional Trial Court (RTC), Branch 13, Ligao City,[3] in Criminal Case Nos. 4242-47, which found accused-appellant Edmundo Vitero guilty beyond reasonable doubt of the crime qualified rape as

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[1] *Rollo,* pp. 3-30; penned by Associate Justice Enrico A. Lanzanas with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Regalado E. Maambong, concurring.

[2] CA *rollo,* pp. 17-27; penned by Judge Pedro R. Soriao.

[3] The Municipality of Ligao, Province of Albay, became the City of Ligao by virtue of Republic Act No. 9008 enacted on February 21, 2001. Depending on the time frame, Ligao is referred to herein as a municipality or a city.

defined by Article 266-A, paragraph 1(a),[4] in relation to Article 266-B, paragraph 5(1)[5] of the Revised Penal Code, as amended by Republic Act No. 8353. In lieu of the death penalty originally imposed by the RTC, the Court of Appeals sentenced accused-appellant to suffer the penalty of *reclusion perpetua*, pursuant to Republic Act No. 9346.[6]

Accused-appellant was charged with six counts of rape in six Informations filed before the RTC on March 21, 2001, which uniformly read:

> That sometime in the month of April, 1998, at around 7:00 o'clock in the evening, more or less, at Barangay [XXX], Municipality of Ligao, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge [of] his own daughter, 13-year-old [AAA[7]], against her will and consent, to her damage and prejudice.[8]

When arraigned on June 14, 2001, accused-appellant pleaded not guilty to all six rape charges.

The six rape cases against accused-appellant were jointly tried.

The prosecution presented as witnesses AAA, the victim herself; BBB, the mother of AAA; and Doctor Lea Remonte (Dr. Remonte), Ligao Municipal Health Officer. It also submitted as documentary evidence the Marriage Certificate of accused-appellant and BBB, the Birth Certificate of AAA, and the Medico-Legal Report of Dr. Remonte.

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[4] *Infra.*

[5] *Infra.*

[6] An Act Prohibiting the Imposition of Death Penalty, which took effect on June 24, 2006.

[7] The real name of the victim is withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC. *See* our ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006).

[8] Records, p. 20.

The defense, for its part, called to the witness stand accused-appellant himself; Ireneo Vitero (Ireneo), accused-appellant's uncle;[9] and Vilma Prelligera (Vilma), accused-appellant's sister.

The RTC rendered a Decision on October 9, 2003. According more weight and credibility to the testimonies of the prosecution witnesses as compared to those of the defense, the trial court found accused-appellant guilty beyond reasonable doubt of raping his minor daughter, AAA. However, the RTC held that the prosecution was only able to prove one of the six counts of rape against accused-appellant. Thus, the RTC decreed:

> WHEREFORE, Premises Considered, judgment is rendered finding the accused EDMUNDO VITERO GUILTY beyond reasonable doubt of committing the crime of RAPE for one (1) count as such crime is defined and punished by Article 266-A, paragraph 1, sub-paragraph a, in relation to Article 266-B, fifth paragraph, sub-paragraph 1, The Revised Penal Code, As Amended by Republic Act No. 8353, and this Court hereby imposes on him the supreme penalty of DEATH. As his civil liability, he shall pay the victim [AAA] the amount of 75,000 pesos as civil indemnity, the amount of 50,000 pesos as moral damages, and the amount of 25,000 pesos as exemplary damages. He shall pay the costs of suit.
>
> For the other remaining five (5) counts of rape, finding reasonable doubt, this Court finds the [accused-appellant] EDMUNDO VITERO NOT GUILTY, and hereby ACQUITS him of such criminal charges.
>
> Elevate the entire record[s] of the six (6) above-entitled cases to the Honorable Supreme Court for automatic review and judgment by such Court en banc pursuant to Article 47 of The Revised Penal Code, As Amended by Section 22 of Republic Act No. 7659.[10]

The entire records of the cases were brought before us, but we transferred the same to the Court of Appeals in a Resolution[11] dated August 24, 2004, pursuant to our ruling in *People v. Mateo*.[12]

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[9] TSN, October 29, 2002, pp. 3-4.

[10] CA *rollo*, p. 27.

[11] *Id.* at 39A.

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

The Court of Appeals summarized the evidence of the prosecution, to wit:

Edmundo Vitero, accused, and [BBB] were married on April 5, 1984. Out of the marriage, they begot six (6) children, four (4) girls ([AAA], the eldest, [CCC], [DDD] and [EEE]) and two (2) boys ([FFF] and [GGG]). In September 1996, accused and BBB separated. She left the conjugal home bringing with her [CCC], [EEE], and [GGG] and established her own residence at Barangay [XXX], Polangui, Albay.

[AAA], [DDD] and [FFF] were left to the custody of the accused. They transferred to the house of the parents of the accused at Barangay [XXX], Ligao City, Albay. The said house, a one-storey structure has two (2) rooms. One room was occupied by the parents of the accused while the other was occupied by accused and his three children.

Sometime in the month of April 19[9]8, at around 7 o'clock in the evening, [AAA], then already thirteen (13) years old, having been born on April 30, 1985, was sleeping in their room with the accused, her sister [DDD], and her brother [FFF]. [AAA] slept in the extreme right portion of the room, immediately beside the wall separating their room from that [of] her grandparents. To her left was the accused followed by [DDD] and [FFF].

[AAA] was roused from her sleep when she felt somebody on top of her. When she opened her eyes, she saw her own father mounting her. After stripping [AAA] naked, accused brought out his penis and inserted it into [AAA's] vagina and made a pumping motion. At the same time, he was kissing her lips and neck and fondling her breasts. [AAA] felt searing pain and her vagina bled. She started to cry, but he was unmoved and warned her not to make any noise. She tried to resist his lewd desires, but her efforts were in vain. She did not shout for help because she feared accused who [had] a 20-inch knife beside him might kill her. After ravishing [AAA], accused dressed himself and went back to sleep. Because of the harrowing experience she suffered from the hands of her own father, [AAA] was not able to sleep anymore. [AAA] did not report her ordeal to her grandparents for fear they would only scold her.

Sometime in 1998, between the months of May and September, appellant brought [AAA] to the house of his sister Salvacion at Lian, Batangas.

Meantime, [HHH], [AAA's] maternal grandfather, visited his daughter [BBB], and showed to her an anonymous letter stating that [AAA] had been raped by [her] father. Thereafter, [BBB] went to see Salvacion, her sister-in-law in her house at Lian, Batangas to look for [AAA], but she did not find her. She, however, got word that [AAA] had already gone home. Frustrated and weary, [BBB] went back to Bicol and looked for [AAA] in her [grandparents'] house at Barangay [XXX], Ligao City, Albay, but the house was empty. [BBB] learned that [AAA] had been brought back to Lian, Batangas.

She finally found [AAA] in the house of her employer in Lian, Batangas in November 2000. [BBB] asked [AAA] if she was indeed raped by her father. [AAA] disclosed that accused ravished her six (6) times while they were still living in her [grandparents'] house. He usually raped [AAA] at night when she and her siblings were already sleeping in their room. Upon learning of her suffering, she brought [AAA] with her to Guinobatan, Albay. They reported the incident to the Ligao Police Station and with the help of the [Department of Social Welfare and Development (DSWD)], they went to see a doctor for [AAA's] medical examination.

On November 17, 2000, Dr. Lea F. Remonte, the City Health Officer of Ligao City, examined [AAA]. Her Medico-Legal Certificate revealed the following findings:

Genitalia: Normal external genitalia, nulliparous introitus, scanty pubic hair over mons pubis.

- Labia minora protruding beyond labia majora.
- Hymen not intact, presence of healed laceration at 5:00 o'clock position.
- Vagina admits examining finger with ease.
- No discharge nor blood noted upon withdrawal of the examining finger.
- Patient was on her 5th day of menstruation when the examination was done (Exhibit "C", p. 7, Records)

Dr. Remonte testified that sexual intercourse is the number one cause of hymenal laceration.[13]

The evidence for the defense, on the other hand, was recapitulated as follows:

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

Accused Edmundo vigorously denied the allegations against him. He testified that from 1996 to 2000, he was employed as a construction worker in Manila. However, upon his return to Albay, he learned that he was criminally charged with raping his own daughter [AAA]. He further stated that such charge was fabricated by his wife. According to him, [AAA] was not working as house help in Batangas. She just stayed where his sister resides.

For his part, Ireneo Vitero corroborated the testimonies of the accused. He testified that in 1996, while working in Manila, accused stayed in his house for two (2) weeks. In fact, it was he who recommended the accused to his friend who was a construction foreman. It was only in 2000, when he returned to Albay.

His sister Virginia attested that in 1996, accused left Albay as she was the one who financed his fare in going to Manila.[14]

In its Decision dated July 18, 2006, the Court of Appeals affirmed the judgment of conviction of the RTC. However, the penalty was modified because of Republic Act No. 9346. Accused-appellant was sentenced to suffer the penalty of *reclusion perpetua* in lieu of death. The dispositive portion of the appellate court's Decision is quoted hereunder:

WHEREFORE, the appealed Decision dated October 9, 2003 of the [RTC], Branch 13, Ligao City, finding appellant Edmundo Vitero guilty of the crime of **qualified rape** is hereby **AFFIRMED** *in toto*. In lieu of the death penalty imposed by the trial court, appellant is hereby sentenced to suffer the penalty of ***RECLUSION PERPETUA***, pursuant to Republic Act No. 9346. As his civil liability, he shall pay the victim AAA the amount of 75,000 pesos as civil indemnity, the amount of 50,000 pesos as moral damages and the amount of 25,000 pesos as exemplary damages. He shall pay the cost of suit.

Costs *de oficio*.[15]

Undeterred, accused-appellant filed his Notice of Appeal[16] and brought his case before us.

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[14] *Id.* at 10.

[15] *Id.* at 29-30.

[16] CA *rollo*, pp. 175-177.

Both plaintiff-appellee[17] and accused-appellant[18] filed their respective Manifestations stating that they were no longer filing supplemental briefs and were adopting the briefs they submitted to the Court of Appeals.

Accused-appellant seeks his acquittal on the sole ground that:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT

Accused-appellant essentially argues that AAA's testimony was "highly incredible and illogical"[19] as she had ample opportunity to ask for help. According to AAA herself, at the time of the alleged rape, her siblings were sleeping right beside her and accused-appellant in the room, while her grandparents were right in the next room.[20] Accused-appellant also highlights AAA's delay in reporting the purported rape and instituting a criminal case against him, and further implies that AAA might have some sinister or ulterior motive in falsely charging him with rape. Moreover, accused-appellant's alibi that he was living and working in Manila from 1996 to 2000 was corroborated by two witnesses.[21]

There is no merit in the instant appeal. We find no reason to disturb the findings of the trial and the appellate courts.

Accused-appellant was charged with qualified rape, defined and punishable under the following provisions of the Revised Penal Code, as amended by Republic Act No. 8353:

Article 266-A. *Rape, When and How Committed.* – Rape is committed –

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[17] *Rollo*, pp. 36-38.

[18] *Id.* at 32-34.

[19] CA *rollo,* p. 47.

[20] *Id.* at 50.

[21] *Id.* at 53.

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

x x x x x x x x x

Article 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

The elements of the crime charged against accused-appellant are: (a) the victim is a female over 12 years but under 18 years of age; (b) the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and (c) the offender has carnal knowledge of the victim either through force, threat, or intimidation.[22]

There is no dispute that the first two elements exist in this case. Documentary and testimonial evidence, including accused-appellant's own admission, establish that AAA is the daughter of accused-appellant and BBB and she was born on April 30, 1985. This means that AAA was almost or already 13 years old when she was raped in April 1998.

As to the third element of the crime, both the RTC and the Court of Appeals ruled that it was duly proven as well, giving weight and credence to AAA's testimony. AAA was able to describe in detail how accused-appellant mounted her, undressed her, and successfully penetrated her against her will, one night

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[22] *People v. Arcillas*, G.R. No. 181491, July 30, 2012, 677 SCRA 624, 634.

in April 1998. The RTC described AAA's testimony to be "frank, probable, logical and conclusive,"[23] while the Court of Appeals declared it to be "forthright and credible"[24] and "impressively clear, definite, and convincing."[25] Relevant herein is our pronouncements in *People v. Manjares*[26] that:

> In a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things, as in this case. There is a plethora of cases which tend to disfavor the accused in a rape case by holding that when a woman declares that she has been raped, she says in effect all that is necessary to show that rape has been committed and, where her testimony passes the test of credibility, the accused can be convicted on the basis thereof. Furthermore, the Court has repeatedly declared that it takes a certain amount of psychological depravity for a young woman to concoct a story which would put her own father to jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame. For this reason, courts are inclined to give credit to the straightforward and consistent testimony of a minor victim in criminal prosecutions for rape.
>
> x x x [W]hen the issue focuses on the credibility of the witnesses or the lack of it, the assessment of the trial court is controlling because of its unique opportunity to observe the witness and the latter's demeanor, conduct, and attitude especially during the cross-examination unless cogent reasons dictate otherwise. Moreover, it is an established rule that findings of fact of the trial court will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted which would otherwise materially affect the disposition of the case. x x x. (Citations omitted.)

We reiterate that the rule is that the findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its

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[23] CA *rollo*, p. 22.

[24] *Rollo*, p. 14.

[25] *Id.* at 22.

[26] G.R. No. 185844, November 23, 2011, 661 SCRA 227, 243-244.

conclusions anchored on said findings are accorded respect if not conclusive effect. This is truer if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, as in the case at bar, said findings are generally binding upon us. We find no reason to depart from the general rule.

Accused-appellant's attempts at damaging AAA's credibility are unpersuasive. AAA's account that accused-appellant was able to have carnal knowledge of her in April 1998 was corroborated by the results of Dr. Remonte's physical examination of AAA, showing hymenal laceration at 5 o'clock position, indicating sexual intercourse.

That AAA did not shout for help should not be taken against her. In *People v. Sale*,[27] we rejected a similar argument raised by the accused-appellant therein, thus:

> *Third.* Accused-appellant likewise found it suspicious why the private complainant did not shout for help while she was being raped considering that the bunkhouse where the alleged rapes occurred is quite near several offices and buildings where people also stay during the night. According to accused-appellant, the act of complainant in not shouting for help while she was being molested is not consistent with common experience as she should have shouted for help as she knew fully well that there were people nearby.
>
> Again, the argument of accused-appellant deserves scant consideration. **Different people react differently to different situations and there is no standard form of human behavioral response when one is confronted with a frightful experience.** While the reaction of some women, when faced with the possibility of rape, is to struggle or shout for help, still others become virtually catatonic because of the mental shock they experience. In the instant case, it is not inconceivable or improbable that [private complainant], being of tender age, would be intimidated into silence by the threats and actions of her father. (Emphasis supplied; citations omitted.)

We have also previously pronounced that in incestuous rape cases, the father's abuse of the moral ascendancy and influence

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[27] 399 Phil. 219, 240 (2000).

over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants. Otherwise stated, the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.[28] Even so, it is notable in this case that accused-appellant did not only use his moral ascendancy and influence over AAA as her father, he employed actual force and intimidation upon her. AAA recounted on the stand that accused-appellant "boxed" her on her right shoulder, near her armpit. When AAA tried to push accused-appellant away from her and to turn her body away from him, accused-appellant pulled her back. Additionally, accused-appellant had a 20-inch knife close by as he was sexually molesting AAA.

AAA's delay in reporting the rape is understandable. As we declared in *People v. Sinoro*:[29]

> At the outset, we note that the initial reluctance of a rape victim to publicly reveal the assault on her virtue is neither unknown nor uncommon. It is quite understandable for a young girl to be hesitant or disinclined to come out in public and relate a painful and horrible experience of sexual violation. x x x.
>
> Indeed, the vacillation of a rape victim in making a criminal accusation does not necessarily impair her credibility as a witness. Delay in reporting the crime neither diminishes her credibility nor undermines her charges, particularly when the delay can be attributed to a pattern of fear instilled by the threats of one who exercises moral ascendancy over her. (Citations omitted.)

As for AAA, not only was her rapist her own father, but she was also living amongst her father's relatives. AAA was even brought far away from her hometown in Albay and made to stay with accused-appellant's sister in Batangas, isolating her from people and places she had known all her life. It was only when BBB finally found AAA in 2000 and took AAA with her did AAA felt safe enough to narrate to BBB what accused-appellant did to her two years ago.

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[28] *People v. Dominguez, Jr.,* G.R. No. 180914, November 24, 2010, 636 SCRA 134, 159.

[29] 449 Phil. 370, 381 (2003).

In contrast, accused-appellant's defenses, consisting of mere denial and alibi, fail to persuade us. As we explained in *People v. Ogarte*:[30]

This Court has uniformly held, time and again, that both "denial and alibi are among the weakest, if not the weakest, defenses in criminal prosecution." It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law.

In *People v. Palomar*, we explained why alibi is a weak and unreliable defense:

> Alibi is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut. It cannot prevail over the positive identification of the accused by eyewitnesses who had no improper motive to testify falsely. x x x.

We have also declared that in case of alibi, the accused must show that he had strictly complied with the requirements of time and place:

> In the case of alibi, it is elementary case law that the requirements of time and place be strictly complied with by the defense, meaning that the accused must not only show that he was somewhere else but that it was also physically impossible for him to have been at the scene of the crime at the time it was committed. x x x. (Citations omitted.)

Accused-appellant's alibi is that he was continuously living and working in Metro Manila from 1996 to 2000. Even when accused-appellant presented two corroborating witnesses, we are not convinced. Vilma could only testify on giving accused-appellant the money which he used to go to Metro Manila in 1996. Ireneo admitted that accused-appellant did not live permanently at his house in Metro Manila, and accused-appellant would usually visit only during weekends. Moreover, the RTC observed that:

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[30] G.R. No. 182690, May 30, 2011, 649 SCRA 395, 413-414.

The defense witnesses could not identify the names of the construction companies that hired the accused Edmundo Vitero, their exact addresses, much less identified the names of his co-workers. As can be seen of record, nobody among his working companions testified in court to vouch for his physical presence at any time at any of the construction working sites in Metro Manila. The whereabouts of the accused Edmundo Vitero while working as a construction worker in Metro Manila was not catalogued with certainty. Whatever period of time he might have spent in Metro Manila as a construction worker is unclear.

The accused Edmundo Vitero admitted that he worked in Metro Manila as a construction laborer – an employment that was irregular. As a laborer whose work was irregular, he had gaps in his employment. He could leave his irregular employment that was obviously temporary at any time he wanted to proceed elsewhere including to his grandfather's house in barangay [XXX], Ligao City.[31]

Hence, even if it were true that accused-appellant had been living and working in Metro Manila from 1996 to 2000, it does not exclude the possibility that he went home for visits to his grandparent's house in Ligao City, Albay, in the course of the four years. What is needed is clear and convincing proof that in April 1998, when AAA was raped, accused-appellant was actually in Metro Manila. However, accused-appellant presented no such evidence.

After affirming that accused-appellant is guilty beyond reasonable doubt of qualified rape, we move on to determining the proper penalties to be imposed.

While we agree with the Court of Appeals that pursuant to Republic Act No. 9346, accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* in lieu of death, we specify that accused-appellant will not be eligible for parole. Section 3 of Republic Act No. 9346 explicitly provides:

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[31] CA *rollo*, p. 21.

Section 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences be reduced to *reclusion perpetua*, reason of Act, **shall not be eligible for parole** under Act No. 4103, known the Indeterminate Sentence Law, as amended. (Emphasis ours.)

We also modify the amount of damages awarded to conform with recent jurisprudence. Accused-appellant is ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.[32] The amounts of damages thus awarded are subject further to interest of 6% per annum from the date of finality of this judgment until they are fully paid.[33]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated July 18, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00070 is **AFFIRMED WITH MODIFICATIONS**. Accused-appellant Edmundo Vitero is **GUILTY** of qualified rape and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole and is ordered pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages. The amounts of damages awarded are subject further to interest of 6% per annum from the date of finality of this judgment until they are fully paid.

No pronouncements as to costs.

SO ORDERED.

Sereno, C.J., Bersamin, Villarama, Jr., and *Perez,*[*] *JJ.,* concur.

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[32] *People v. Ogarte*, *supra* note 30 at 415.

[33] *Id*.

[*] Per Raffle dated March 13, 2013.

FIRST DIVISION

[G.R. No. 175939. April 3, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHAD MANANSALA *Y* LAGMAN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 1972 (R.A. 6425); ILLEGAL SALE OF *MARIJUANA* ABSORBS THE ILLEGAL POSSESSION OF *MARIJUANA*.—** To properly resolve the appeal, therefore, it is necessary to determine whether the conviction of Manansala for a violation of Section 8, which the information did not allege, instead of for a violation of Section 4, which the information alleged, was not in violation of his constitutional right to be informed of the nature and cause of the accusation brought against him. For sure, there have been many occasions in which the Court has found an accused charged with the illegal sale of *marijuana* in violation of Section 4 guilty instead of the illegal possession of *marijuana* in violation of Section 8. In the oft-cited case of *People v. Lacerna,* the Court held as prevailing the doctrine that the illegal sale of *marijuana* absorbs the illegal possession of *marijuana,* except if the seller was also apprehended in the illegal possession of another quantity of *marijuana* not covered by or not included in the illegal sale, and the other quantity of *marijuana* was probably intended for some future dealings or use by the accused. The premise used in *Lacerna* was that the illegal possession, being an element of the illegal sale, was necessarily included in the illegal sale.

2. **ID.; ID.; ID.; IN ALL CONVICTIONS PREMISED ON THE SITUATION DESCRIBED IN *PEOPLE VS. LACERNA*, THE INVOLVEMENT OF A SINGLE OBJECT IN BOTH THE ILLEGAL SALE AS THE CRIME CHARGED AND THE ILLEGAL POSSSESSION AS THE CRIME PROVED IS INDISPENSABLE; ANY OTHER ILLEGAL SUBSTANCE FOUND IN THE POSSESSION OF THE ACCUSED THAT IS NOT PART OF THE SUBJECT OF THE ILLEGAL SALE SHOULD BE SEPARATELY PROSECUTED CHARGING**

ILLEGAL POSSESSION.— In all the convictions premised on the situation described in Lacerna, however, the involvement of a single object in both the illegal sale as the crime charged and the illegal possession as the crime proved is indispensable, such that only the prohibited drugs alleged in the information to be the subject of the illegal sale is considered competent evidence to support the conviction of the accused for the illegal possession. As such, the illegal possession is either deemed absorbed by or is considered a necessary element of the illegal sale. On the other hand, any other illegal substance found in the possession of the accused that is not part of the subject of the illegal sale should be prosecuted under a distinct and separate information charging illegal possession; otherwise, the fundamental right of the accused to be informed of the nature and cause of the accusation against him would be flagrantly violated.

3. ID.; ID.; ID.; THE ILLEGAL POSSESSION OF *MARIJUANA* WAS A CRIME THAT IS NECESSARILY INCLUDED IN THE CRIME OF DRUG PUSHING OR DEALING, FOR WHICH THE ACCUSED HAVE BEEN CHARGED WITH; APPELLANT'S RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION WAS NOT VIOLATED BECAUSE THE INFORMATION FILED SUFFICIENTLY ALLEGED THAT HE WAS ALSO TO BE HELD ACCOUNTABLE FOR POSSESSING MORE OR LESS 750 GRAMS OF DRIED *MARIJUANA* LEAVES.— The CA correctly declared that the illegal possession of *marijuana* was "a crime that is necessarily included in the crime of drug pushing or dealing, for which the accused have been charged with." The right of Manansala to be informed of the nature and cause of the accusation against him enunciated in Section 14(2), Article III of the 1987 Constitution was not violated simply because the information had precisely charged him with selling, delivering, giving away and distributing more or less 750 grams of dried *marijuana* leaves. Thereby, he was being sufficiently given notice that he was also to be held to account for possessing more or less 750 grams of dried *marijuana* leaves. As *Lacerna* and similar rulings have explained, the crime of illegal sale of *marijuana* defined and punished under Section 4 of Republic Act No. 6425, as amended, implied the prior possession of the *marijuana*. As such, the

crime of illegal sale included or absorbed the crime of illegal possession. The rule is that when there is a variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged. According to Section 5, Rule 120, *Rules of Court* (1985), the rule then applicable, an offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

The due recognition of the constitutional right of an accused to be informed of the nature and cause of the accusation through the criminal complaint or information is decisive of whether his prosecution for a crime stands or not. The right is not transgressed if the information sufficiently alleges facts and omissions constituting an offense that includes the offense established to have been committed by the accused.

The Case

Chad Manansala *y* Lagman seeks to reverse the decision promulgated on July 26, 2006, whereby the Court of Appeals (CA)[1] affirmed with modification his conviction for the illegal possession and control of 750 grams of dried *marijuana* leaves in violation of Section 8 of Republic Act No. 6425 (*Dangerous Drugs Act of 1972*) that the Regional Trial Court (RTC), Branch 74,

[1] *Rollo*, pp. 3-14; penned by Associate Justice Josefina Guevara-Salonga (retired), with Associate Justice Aurora Santiago-Lagman (retired) and Associate Justice Normandie B. Pizarro concurring.

Olongapo City had handed down through its decision dated February 1, 2000,[2] sentencing him to suffer the penalties of "*reclusion perpetua* maximum or imprisonment from thirty (30) years and one (1) day to forty (40) years and to pay the fine of Seven Hundred Fifty (₱750,000.00) Thousand Pesos, with subsidiary imprisonment."

Antecedents

The information filed on October 20, 1994 alleged:

> That on or about the nineteenth (19th) day of October, 1994, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized did then and there willfully, unlawfully and knowingly engage in selling, delivering, giving away to another and distributing more or less 750 grams or ¾ kilo of marijuana dried leaves placed in a small wooden box inside the cabinet, which are prohibited drugs, found in his possession and control.
>
> CONTRARY TO LAW.[3]

To substantiate the charge, the Prosecution showed the following.

On October 18, 1994 the Philippine National Police in Olongapo City (PNP) conducted a test-buy operation against Manansala, a suspected dealer of *marijuana*. On the same date, following the test-buy, the PNP applied for and obtained a search warrant from the RTC, Branch 72, Olongapo City (Search Warrant No. 8-94) to authorize the search for and seizure of prohibited drugs in Manansala's residence located at No. 55 Johnson Extension, *Barangay* East Bajac Bajac, Olongapo City.[4] SPO4 Felipe P. Bolina and other elements of the PNP, accompanied by *Barangay* Chairman Reynaldo Manalang of *Barangay* East Bajac Bajac, conducted the search of Manansala's house at around 5:30 a.m. on October 19,

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[2] Records, pp. 239-243.

[3] *Id.* at 1.

[4] *Id.* at 154.

1994. The search yielded the 750 grams of dried *marijuana* leaves subject of the information, which the search team recovered from a wooden box placed inside a cabinet. Also seized was the amount of ₱655.00 that included the two marked ₱50.00 bills bearing serial numbers SNKJ812018 and SNMN426747 used during the test buy.[5]

All the seized articles were inventoried, and Manansala himself signed the certification to that effect, along with his father, Jose Manansala, and *Barangay* Captain Manalang.[6] The certification listed the following seized articles, to wit: (*a*) one kilo, more or less, of suspected dried *marijuana* leaves; (*b*) rolling paper; and (*c*) money amounting to ₱655.00.

SPO4 Bolina and his team brought Manansala to Camp Cabal in Olongapo City, where they turned over the seized articles to the evidence custodian, SPO2 Marcelino R. Sapad. At around 8:20 a.m. of October 20, 1994, the seized articles were submitted to the PNP Crime Laboratory in Camp Olivas, San Fernando, Pampanga for qualitative examination.

The PNP Crime Laboratory later issued Technical Report No. D-396-94,[7] to wit:

SPECIMEN SUBMITTED:

Spmn "A" – One (1) big transparent plastic bag containing two (2) rectangular bricks of dried suspected MARIJUANA fruiting tops having a total weight of seven hundred fifty five (755) grams.

Spmn "B" – One (1) medium size plastic bag containing dried suspected MARIJUANA fruiting tops weighing 9.045 grams. x x x.

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of any prohibited and/or regulated drug in the above-stated specimen. x x x.

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[5] *Id.* at 155.

[6] *Id.* at 8.

[7] *Id.* at 251-252.

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result for MARIJUANA, a prohibited drug. x x x.

CONCLUSION:

Spmns "A" and "B" – contain MARIJUANA, a prohibited drug.[8]

Manansala pleaded *not guilty* on November 22, 1994.[9]

On January 4, 1995, First Asst. City Prosecutor Mario F. Manalansan filed a motion for the admission of an amended information, ostensibly to modify the offense charged from illegal sale of prohibited drugs under Section 4 of Republic Act No. 6425 to illegal possession of prohibited drugs under Section 8 of the same law.[10] But the RTC did not act on the motion.

Nonetheless, the trial proceeded, with the Prosecution establishing the matters earlier summarized.

In his turn, Manansala denied the charge, alleging that he had been the victim of a frame-up. His version follows.

On October 19, 1994, military men clad in civilian attire arrived at his house and arrested him without any warrant, and brought him to an office he referred to simply as S2, then to a club located on Magsaysay Street in Olongapo City known as *Dorris 2*. His captors mugged and then detained him when he refused to admit the sale and possession of *marijuana*. They turned down his request to be brought to a hospital for the treatment of the injuries he thereby sustained. As of the time of his testimony, he conceded that he could not identify his captors and whoever had maltreated him, except SPO4 Bolina whom he recognized in court when the latter testified at the trial.[11]

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[8] *Id.* at 251.

[9] *Id.* at 14.

[10] *Id.* at 21-22.

[11] *Rollo*, p. 6.

Decision of the RTC

As stated, the RTC convicted Manansala for illegal possession of *marijuana* in violation of Section 8 of Republic Act No. 6425, holding thus:

The Information to which accused pleaded "not guilty" charges that accused willfully, unlawfully and knowingly x x x engage in selling, delivering, giving away to another and distributing x x x falling under the more embracing term known as "drug pushing". The alleged act of allegedly knowingly selling or pushing prohibited drugs by the accused was however, not sufficiently proven. The member of the team who is alleged to have acted as a poseur-buyer of the illegal stuff from the accused was not presented as a witness, hence, the testimony of SPO4 Felipe Bolina, to the effect that during the surveillance conducted prior to the application of the search warrant, a member of the team acting as poseur buyer was able to buy *marijuana* from the accused, cannot be given weight, being hearsay.

However, the fact that the enforcing team where witness Bolina is a member, was able to find *marijuana* leaves in the custody, possession and control of the accused, in the course of the enforcement of the search warrant and has been established by the prosecution beyond reasonable doubt, without controversion but the denial of the accused, which like alibi, is the weakest defense, this Court is convinced that accused is guilty instead of violating Section 8, Article II of the Dangerous Drugs Act as amended, a crime that is necessarily included in the crime of drug pushing or dealing, for which the accused have been charged with. In light of these circumstances, this Court has no option that to find accused guilty and liable for the crime proved. Since the date of the commission of the crime as proved is October 19, 1994, the provisions of Republic Act No. 7659, in so far as the imposable penalty is concerned, will find application.

WHEREFORE**,** finding accused Chad Manansala *y* Lagman, GUILTY of Violation of Section 8, Article II of Republic Act No. 6425 as amended by Republic Act No. 7659, he is hereby sentenced to suffer the penalty of *reclusion perpetua* maximum or imprisonment from thirty (30) years and one (1) day to forty (40) years and to pay the fine of Seven Hundred Fifty (₱750,000.00) Thousand Pesos, with subsidiary imprisonment.

Costs *de oficio*.

SO ORDERED.[12]

Ruling of the CA

On intermediate appeal, the CA reviewed the conviction upon the following issues, namely:

1. That the conviction, being anchored on evidence procured by virtue of an invalid warrant, was erroneous;

2. That the RTC erred in convicting the accused for illegal possession of prohibited drug on the misplaced and inaccurate theory that the offense in violation of Section 8 of Republic Act No. 6425 was necessarily included in the offense in violation of Section 4 of Republic Act No. 6425; and

3. That the RTC overlooked, misinterpreted, misapplied and misrepresented facts and evidences of substance and importance that, if weighed, assayed and considered were enough to acquit the accused.[13]

On July 26, 2006, the CA promulgated its assailed decision, affirming the conviction subject to modification, *viz*:

WHEREFORE, the foregoing considered, the appeal is hereby DISMISSED and the assailed Decision AFFIRMED with MODIFICATION that the accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* and to pay a fine of seven hundred fifty thousand pesos (₱750,000.00) with subsidiary imprisonment.

Accordingly, the prohibited drugs confiscated from the appellant are hereby ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) through the Dangerous Drugs Board for proper disposition. Without pronouncement as to costs.

SO ORDERED.[14]

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[12] Records, pp. 242-243.

[13] CA *rollo*, p. 43.

[14] *Id.* at 142-143.

Hence, this appeal, in which Manansala reiterates the errors he already assigned before the CA.

Ruling

The appeal lacks merit.

The information alleged that "on or about the nineteenth (19th) day of October, 1994, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized did then and there willfully, unlawfully and knowingly engage in selling, delivering, giving away to another and distributing more or less 750 grams or ¾ kilo of *marijuana* dried leaves placed in a small wooden box inside the cabinet, which are prohibited drugs, found in his possession and control."

The crime thereby charged was a violation of Section 4 of Republic Act No. 6425, as amended by Republic Act No. 7659,[15] which provides:

> Section 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs*. - The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any such transactions.

Arraigned under such information, Manansala pleaded *not guilty* to it. But instead of finding him guilty of the crime charged after trial, the RTC convicted him for a violation of Section 8, of Republic Act No. 6425, as amended by Republic Act No. 7659, which states:

> Section 8. *Possession or Use of Prohibited Drugs*. - The penalty of *reclusion perpetua* to death and a fine ranging from five hundred

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[15] Republic Act No. 7659, entitled *An Act To Impose The Death Penalty On Certain Heinous Crimes, Amending For That Purpose The Revised Penal Code, As Amended, Other Special Penal Laws, And For Other Purposes*, took effect on December 31, 1993.

thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug subject to the provisions of Section 20 hereof.

On appeal, Manansala assigned as one of the reversible errors committed by the RTC that the trial court had erred in convicting him for illegal possession of prohibited drugs on the misplaced and inaccurate theory that the offense of illegal possession of *marijuana* in violation of Section 8 was necessarily included in the offense of illegal sale of *marijuana* in violation of Section 4.

The CA disagreed with Manansala, however, and held that his conviction for the illegal possession of *marijuana* in violation of Section 8 under the information that had alleged the illegal sale of *marijuana* under Section 4 was proper, giving its reasons as follows:

x x x x x x x x x

Indispensable in every prosecution for the illegal sale of *marijuana*, a prohibited drug, is the submission of proof that the sale of the illicit drug took place between the poseur-buyer and the seller thereof, coupled with the presentation in court of the *corpus delicti* as evidence. The element of sale must be unequivocally established in order to sustain a conviction. In the case before Us, the trial court correctly held that the prosecution failed to establish, much less adduce proof, that accused-appellant was indeed guilty of the offense of illegal sale of *marijuana*. But it is beyond doubt that he was found in possession of the same.

While no conviction for the unlawful sale of prohibited drugs may be had under the present circumstances, the established principle is that possession of *marijuana* is absorbed in the sale thereof, except where the seller is further apprehended in possession of another quantity of the prohibited drugs not covered by or included in the sale and which are probably intended for some future dealings or use by the seller. In the case before Us, it has been satisfactorily ascertained that the bricks of *marijuana* confiscated from accused-appellant were the same prohibited drugs subject of the original Information. In this light, We find that the court *a quo* committed no reversible error in convicting the accused-appellant of illegal possession

of dangerous drugs under Section 8, Article II of the Dangerous Drugs Act of 1972, as amended.

Again, it should be stressed that the crime of unlawful sale of *marijuana* penalized under Section 4 of RA 6425 necessarily includes the crime of unlawful possession thereof. As borne by the records, it has been sufficiently proven beyond any doubt that the lawful search conducted at the house of the accused yielded a total of 764.045 grams *marijuana* dried leaves as verified by the PNP Forensic Chemist. Thus, on the face of the positive testimony of the prosecution witness and the presentation of the *corpus delicti*, it is indubitable that a crime had in fact been committed and that accused-appellant was the author of the same.[16]

x x x x x x x x x

To properly resolve the appeal, therefore, it is necessary to determine whether the conviction of Manansala for a violation of Section 8, which the information did not allege, instead of for a violation of Section 4, which the information alleged, was not in violation of his constitutional right to be informed of the nature and cause of the accusation brought against him.

For sure, there have been many occasions in which the Court has found an accused charged with the illegal sale of *marijuana* in violation of Section 4 guilty instead of the illegal possession of *marijuana* in violation of Section 8. In the oft-cited case of *People v. Lacerna*,[17] the Court held as prevailing the doctrine that the illegal sale of *marijuana* absorbs the illegal possession of *marijuana*, except if the seller was also apprehended in the illegal possession of another quantity of *marijuana* not covered by or not included in the illegal sale, and the other quantity of *marijuana* was probably intended for some future dealings or use by the accused. The premise used in *Lacerna* was that the illegal possession, being an element of the illegal sale, was necessarily included in the illegal sale. The Court observed thusly:

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[16] *Supra* note 1, at 10-11 (bold emphasis supplied).

[17] G.R. No. 109250, September 05, 1997, 278 SCRA 561.

In *People vs. Manzano,* the Court identified the elements of illegal sale of prohibited drugs, as follows: (1) the accused sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug. Although it did not expressly state it, the Court stressed *delivery*, which implies prior possession of the prohibited drugs. Sale of a prohibited drug can never be proven without seizure and identification of the prohibited drug, affirming that possession is a condition *sine qua non.*

It being established that illegal possession is an element of and is necessarily included in the illegal sale of prohibited drugs, the Court will thus determine appellant's culpability under Section 8.

From the penal provision under consideration and from the cases adjudicated, the elements of illegal possession of prohibited drugs are as follows: (a) the accused is in possession of an item or object which is identified to be a prohibited drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the prohibited drug.[18]

In all the convictions premised on the situation described in *Lacerna*, however, the involvement of a single object in both the illegal sale as the crime charged and the illegal possession as the crime proved is indispensable, such that only the prohibited drugs alleged in the information to be the subject of the illegal sale is considered competent evidence to support the conviction of the accused for the illegal possession. As such, the illegal possession is either deemed absorbed by or is considered a necessary element of the illegal sale. On the other hand, any other illegal substance found in the possession of the accused that is not part of the subject of the illegal sale should be prosecuted under a distinct and separate information charging illegal possession; otherwise, the fundamental right of the accused to be informed of the nature and cause of the accusation against him would be flagrantly violated.

It is true that there was an error in the information's statement of the facts essential to properly describe the offense being charged against Manansala as that of illegal possession of *marijuana*; and that the error became known to the Prosecution,

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[18] *Id.* at 579.

leading Prosecutor Manalansan to himself file the motion for the admission of the amended information dated January 3, 1995.[19] In the motion, Prosecutor Manalansan manifested that the information as filed charged a violation of Section 4; and that during the preliminary investigation, he had concluded that Manansala should have been charged with a violation of Section 8 instead of a violation of Section 4 as far as the 750 grams of dried *marijuana* leaves seized from his possession during the implementation of Search Warrant No. 8-94 was concerned. The distinct and separate nature of the 750 grams of *marijuana* leaves from the quantity of *marijuana* worth ₱100.00 that was the object of the test buy became all the more evident in Prosecutor Manalansan's letter dated December 28, 1994 addressed to City Prosecutor Prudencio B. Jalandoni.[20] There, Prosecutor Manalansan stated that the 750 grams of *marijuana* dried leaves had been seized from the possession Manansala on October 19, 1994 by virtue of the search warrant, while the attributed illegal sale of *marijuana* had happened on October 18, 1994 during the test buy conducted to support the application of the search warrant. The letter specifically stated:

x x x x x x x x x

3. The two incidents, the sale on 18 October 1994 and the seizure on 19 October 1994 are separate incidents giving rise to two distinct offenses;

4. We cannot assume that the accused was engaged in the "sale of prohibited drugs" on 19 October 1994 because he was engaged in it before. There is no evidence to show that the accused was engaged in the sale, administration, delivery, distribution and transportation of drugs as provided under Section 4;

5. The two (2) ₱50.00 bills are not enough to prove that the accused was engaged in selling the 750 grams of marijuana leaves. They can prove the sale on 18 October 1994 but cannot qualify his possession of the 750 grams of the drugs.

x x x x x x x x x

[19] Records, pp. 21-22.

[20] Records, p. 25.

Nonetheless, the conviction of Manansala stands.

The CA correctly declared that the illegal possession of *marijuana* was "a crime that is necessarily included in the crime of drug pushing or dealing, for which the accused have been charged with." The right of Manansala to be informed of the nature and cause of the accusation against him enunciated in Section 14(2), Article III of the 1987 Constitution[21] was not violated simply because the information had precisely charged him with selling, delivering, giving away and distributing more or less 750 grams of dried *marijuana* leaves. Thereby, he was being sufficiently given notice that he was also to be held to account for possessing more or less 750 grams of dried *marijuana* leaves. As *Lacerna* and similar rulings have explained, the crime of illegal sale of *marijuana* defined and punished under Section 4 of Republic Act No. 6425, as amended, implied the prior possession of the *marijuana*. As such, the crime of illegal sale included or absorbed the crime of illegal possession. The rule is that when there is a variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged.[22] According to Section 5, Rule 120, *Rules of Court* (1985), the rule then applicable, an offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter.

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[21] Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable

[22] Section 4, Rule 120, *Rules of Court* (1988).

WHEREFORE, the Court **AFFIRMS** the decision promulgated on July 26, 2006; and **ORDERS** accused **CHAD MANANSALA *y* LAGMAN** to pay the costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178758. April 3, 2013]

MARCELINO and VITALIANA DALANGIN, *petitioners, vs.* **CLEMENTE PEREZ, CECILIA GONZALES, SPOUSES JOSE BASIT and FELICIDAD PEREZ, SPOUSES MELECIO MANALO and LETICIA DE GUZMAN, and THE PROVINCIAL SHERIFF OF BATANGAS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; THE APPLICABLE RULE AT THE TIME OF THE EXECUTION SALE ON MARCH 15, 1972 IS RULE 39, SECTION 18 OF THE 1964 RULES OF COURT; THE RULE DOES NOT REQUIRE PERSONAL WRITTEN NOTICE TO THE JUDGMENT DEBTOR.—** At the time of the execution sale on March 15, 1972, the applicable rule is Rule 39, Section 18 of the 1964 Rules of Court. x x x The foregoing rule does not require written notice to the judgment obligor. Respondents are thus correct in their argument that at the time of the execution sale on March 15, 1972, personal notice to the petitioners was not required under Rule 39, Section 18 of the 1964 Rules of Court. Indeed, notice to the

judgment obligor under the 1964 Rules of Court was not required, or was merely optional; publication and posting sufficed. It was only in 1987 that the Court required that written notice of the execution sale be given to the judgment debtor, via Circular No. 8 amending Rule 39, Section 18 of the Rules of Court on notice of sale of property on execution. Thus, the alleged failure on the part of the respondents to furnish petitioners with a written notice of the execution sale did not nullify the execution sale because it was not then a requirement for its validity.

2. **ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY OF THE EXECUTION SALE AND THE SHERIFF'S PERFORMANCE OF HIS OFFICIAL FUNCTIONS PREVAIL IN THE ABSENCE OF EVIDENCE TO THE CONTRARY AND IN LIGHT OF THE SELF-SERVING ALLEGATIONS AND BARE DENIALS OF PETITIONERS TO THE EFFECT THAT THEY WERE NOT SERVED WITH NOTICE OF THE SHERIFF'S SALE.—** In *Reyes v. Tang Soat Ing*, the Court was confronted with similar circumstances which the herein parties now find themselves in. In said case, the judgment obligors claimed – long after their property was subjected to execution sale and consolidation proceedings – that the rules requiring prior notice of the execution sale were not strictly complied with. The Court did not agree, and it held – x x x We cannot subscribe to respondent's belated posturing. The disputable presumption that official duty has been regularly performed was not overcome by respondents. The documents on record lead us to the inevitable conclusion that respondents had constructive, if not, actual, notice of the execution proceedings from the issuance of the Writ of Execution, the levy on the subject property, its subjection to execution sale, up to and until the proceedings in the RTC realting to the issuance of a new certificate of title over the subject property. Certainly, respondents are precluded from feigning ignorance of MFR (substituted by Reyes) staking a claim thereon. x x x Applying *Reyes* to this case, the Court affirms the view that petitioners may no longer question the conduct of the execution proceedings below. As correctly held by the CA, the presumption of regularity of the execution sale and the sheriff's performance of his official functions prevail in the

absence of evidence to the contrary and in light of the self-serving allegations and bare denials of petitioners to the effect that they were not served with notice of the sheriff's sale, and given that the entire record covering the sale could no longer be located.

3. **ID.; ID.; ID.; CASE AT BAR IS A CLEAR CASE OF AFTERTHOUGHT, A RISK PETITIONERS TOOK KNOWING THEY STOOD TO LOSE NOTHING MORE, BUT GAIN BACK THEIR PROPERTIES IN THE EVENT OF A VICTORY THAT IS FARFETCHED.—** After 12 years and after being dispossessed of their properties and title thereto for such a long time, petitioners instituted Civil Case No. 2700 in an attempt to reverse the effects of the final and executory judgment in Civil Case No. 1386. This is a clear case of afterthought, a risk petitioners took knowing that they stood to lose nothing more, but gain back their properties in the event of a victory that is farfetched.

APPEARANCES OF COUNSEL

Eliseo G. Lontok for petitioners.

Eugenio E. Mendoza for Sps. Melecio Manalo & Leticia de Guzman.

Gerville Abanilla Reyes-Luistro for Sps. Jose Basit and Felicidad Perez.

D E C I S I O N

DEL CASTILLO, *J.*:

Under the 1964 Rules of Court, notice of the execution sale to the judgment obligor was not required, or was merely optional; publication and posting sufficed. It was only in 1987 that the Court, via Circular No. 8 amending Rule 39, Section 18 of the Rules of Court, required that written notice be given to the judgment debtor.

This Petition for Review on *Certiorari*[1] assails the June 29, 2007 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 82429 which dismissed the appeal of petitioners and affirmed the Amended Decision of the Regional Trial Court (RTC) of Batangas City, Branch 8, in Civil Case No. 2700.

Factual Antecedents

Sometime in 1967, respondents Clemente Perez and Cecilia Gonzales (Perez spouses) sold to petitioners Marcelino and Vitaliana Dalangin (Dalangin spouses) a 2.3855[3]-hectare parcel of land. The latter, however, failed to pay in full despite demand, leaving an unpaid balance of ₱3,230.00. Thus, on April 6, 1971, the Perez spouses filed a Complaint[4] against the petitioners for recovery of a sum of money, which was docketed as Civil Case No. 1386 and raffled to Branch 2 of the City Court of Batangas.

Petitioners failed to file their Answer hence, they were declared in default and the Perez spouses were allowed to present their evidence *ex parte*.[5]

On June 15, 1971, the City Court of Batangas City, Branch 2, rendered its Decision[6] ordering petitioners to pay jointly and severally the Perez spouses ₱3,230.00 with legal interest from the filing of the Complaint until fully paid, plus ₱150.00 attorney's fees, and costs of suit. No appeal having been taken, the Decision became final and executory. Pursuant to this, a Writ of Execution[7] was issued.

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[1] *Rollo*, pp. 11-24.

[2] *Id.* at 25-46; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

[3] This figure is interchangeably indicated as 2.7855 and 2.7655 hectares in some parts of the records.

[4] Records of Civil Case No. 1386, pp. 1-3.

[5] *Id.* at 17.

[6] *Id.* at 23; penned by Judge Filemon H. Mendoza.

[7] *Id.* at 29-30.

The Provincial Sheriff of Batangas then levied upon and sold the petitioners' properties at auction. The execution sale was conducted on March 15, 1972, and on even date, a Certificate of Sale[8] was issued in favor of the Perez spouses covering the following properties, to wit:

1. A parcel of riceland with Tax Declaration No. (TD) 6104 located in Dagatan, Taysan, Batangas with an area of 2.3855 hectares;

2. A parcel of riceland with TD 29 located in Bacao, Taysan, Batangas with an area of 5.031 hectares;

3. A parcel of riceland with TD 8693 located in Apar, Lobo, Batangas with an area of 22.5 hectares; and

4. A parcel of riceland with TD 9634 located in Apar, Lobo, Batangas with an area of 22.9161 hectares.

For failure to redeem, the sheriff executed a Final Deed of Conveyance[9] over said properties, and a Writ of Possession[10] was issued by the City Court on April 30, 1974. The Writ of Possession was received by Emmanuel Dalangin, petitioners' son. The Perez spouses thus came into possession of the 2.3855-hectare riceland and one-half of the 5.031-hectare property.

Twelve years after the City Court's issuance of the Writ of Possession, or on February 24, 1986, petitioners filed a case for annulment of the sheriff's sale in Civil Case No. 1386 which was docketed as Civil Case No. 2700 and raffled to Branch 8 of the RTC of Batangas City. In their Complaint,[11] petitioners prayed that the sheriff's sale, Certificate of Sale and the Final Deed of Conveyance be nullified and voided for lack of publication and notice of the sheriff's sale, and for inadequacy of the purchase price of the subject properties in the amount of ₱4,187.00.

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[8] *Id.* at 34.

[9] *Id.* at 39-40.

[10] *Id.* at 56-58.

[11] Records of Civil Case No. 2700, pp. 1-4.

Petitioners likewise claimed that respondents illegally colluded and cooperated with each other to deprive them of their lands and unduly enrich the Perez spouses at their expense.

The Perez spouses filed a Motion to Dismiss[12] but the RTC deferred its resolution until after trial.[13] The Perez spouses thus filed their Answer[14] arguing that all proceedings covering the sheriff's sale are valid and binding, and reiterating the arguments in their Motion to Dismiss.

On August 22, 2003, the RTC rendered its Decision[15] upholding the validity of the sheriff's sale. It ruled that while it appears that there was no notice of sheriff's sale, petitioners nevertheless received copies of the Writ of Execution and the subsequent Writ of Possession, which should serve as adequate warning of the continued action on the case and the impending loss of their properties. The trial court concluded that the existence of other official documents on record covering the whole execution process, coupled with the presumption of regularity in the performance by the sheriff of his official duties, outweigh petitioners' argument of lack of notice. It added that petitioners' taking action only after 12 years from the service of the Writ of Possession upon them raises serious doubts as to their claimed ignorance of the sheriff's sale.

On December 16, 2003, the trial court issued an Amended Decision,[16] decreeing as follows:

WHEREFORE, the plaintiffs' complaint is hereby DISMISSED with respect to the two properties which were actually placed in the defendants' possession by virtue of the Writ of Possession issued by the City Court, in connection with Civil Case No. 1386, to wit:

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[12] *Id.* at 18-21.

[13] See Order dated October 13, 1986, *id.* at 66-67.

[14] *Id.* at 83-84.

[15] *Id.* at 388-400; penned by Judge Liberato C. Cortes.

[16] *Id.* at 411-423. The trial court merely rectified a minor mistake in the original award, in that its original decretal portion covered a portion of the property which was not intended by the parties in their sale agreement.

(1) 'A parcel of riceland with TD No. 6104 located at Dagatan, Taysan, Batangas, bounded on the N – Canuto Ampuro, on the E – Creek; on the S – Valeriana Gonzales and W – Cecilia Gonzales with an area of 27,855 square meters, more or less and with an assessed value of Php1,910'; and

(2) The Northeastern one-half portion of the following lot:

'A parcel of riceland with TD No. 29 located at Bacao, Taysan, Batangas, bounded on the N – Mrs. Felicidad Magtibay; E – Fausto Manalo; S- Raymundo Bacao; W – Batalan River with an area of 50[,]410 square meters, more or less with an assessed value of Php1,510.00';

Of the other lots mentioned in said Writ of Possession, the Municipal Assessors of Taysan, Batangas and Lobo, Batangas are hereby ordered to cancel whatever tax declarations relative to the following properties that may be in the names of the herein defendants as a consequence of said Civil Case No. 1386, but the actual possession of which have not been delivered to or taken by them, and to issue new ones in the names of the herein plaintiffs Marcelino Dalangin and Vitaliana Dalangin, to wit:

(1) 'A parcel of land (riceland) caingin, located at Apar, Lobo, Batangas, with TD No. 8693, bounded on the N – Miguel Bagsic' psc-172200; S – Nicolas Buisan, E – Vitaliano Manalo, W – Mahabang Parang River and with an area of 225[,]000 square meters more or less, with an assessed value of Php6,750.00';

(2) 'A parcel of land (riceland) caingin, with TD No. 9634 located at Apar, Lobo, Batangas, bounded on the N – Nicolas Buisan; on the S – Nicolas Buisan, E – Nicolas Buisan; and W – Aurora Manalo and Sps. Marcelino Dalangin and Vitaliana Dalangin with an area of 229[,]161 square meters, more or less, with an assessed value of ₱4,100'.

(3) The Southeastern one-half portion of the following lot:

'A parcel of riceland with TD No. 29 located at Bacao, Taysan, Batangas, bounded on the N – Mrs. Felicidad Magtibay; E – Fausto Manalo; S – Raymundo Bacao; W – Batalan River with an area of 50[,]140 square meters, more or less with an assessed value of Php1,510.00';

No pronouncement as to costs.

SO ORDERED.[17]

Ruling of the Court of Appeals

Petitioners appealed to the CA insisting on the irregularity of the sheriff's sale and subsequent delivery of possession to the Perez spouses of the parcel of land covered by TD 6104 and the northeastern one-half portion of the land covered by TD 29, for lack of notice.

On June 29, 2007, the CA rendered the assailed Decision, the decretal portion of which reads:

> **WHEREFORE**, the appeal is ***DISMISSED***. The assailed ***Amended Decision***, dated December 16, 2003, of the Regional Trial Court of Batangas City, Fourth Judicial Region, Br. 8, in Civil Case No. 2700, is hereby ***AFFIRMED*** *in toto*. No special pronouncement as to costs.
>
> **SO ORDERED.**[18]

Reiterating the trial court's pronouncements, the CA held that the presumption of regularity of the proceedings covering the execution sale and the sheriff's performance of his official functions outweigh and prevail over the self-serving allegations and bare denials of petitioners that they were not served with notice of the sheriff's sale. In this regard, the CA found that petitioners failed to prove their allegation that they were not served with the notice of sheriff's sale. Also, it ruled that the fact that the entire record of the sheriff's proceedings on the sale could no longer be located given the lapse of 12 years should not be taken against the respondents.

The CA added that since petitioners received copies of the adverse Decision, as well as the subsequent Writs of Execution and Possession, they are thus considered to have been sufficiently

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[17] *Rollo*, pp. 37-38.

[18] *Id.* at 46. Emphases in the original.

warned of the forthcoming consequences. But, instead of acting upon the case, petitioners failed and refused to follow up on the same, even after they were dispossessed of the Dagatan, and half of the Bacao, properties after the same were placed in the possession of the Perez spouses. Petitioners chose to stay silent, and it was only after 12 years did they come to court, via Civil Case No. 2700, to question the sheriff's proceedings and complain of their dispossession. The CA thus declared petitioners barred by estoppel and laches.

Petitioners thus filed the present Petition.

Issue

In this Petition, petitioners submit the following lone issue for the Court's resolution:

DID THE HONORABLE COURT OF APPEALS CORRECTLY APPLY THE PROVISIONS OF RULE 39, SECTION 15 OF THE RULES OF COURT?[19]

Petitioners' Arguments

In seeking a reversal of the assailed Decision, petitioners contend that under Rule 39, Section 15 of the 1997 Rules of Civil Procedure, a written notice of sale on execution should have been given to them. The lack of this notice effectively converted the auction proceedings into a private sale which is prohibited under the law. They argue that they did not waive this requirement, and the absence thereof rendered the proceedings taken thereon as null and void.

Petitioners argue that their receipt of the corresponding Writs of Execution and Possession cannot overcome the requirement of notice. They insist that the lack of notice of the sheriff's sale renders the same of no effect.

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[19] *Id.* at 135.

Respondents' Arguments

Apart from echoing the CA pronouncement, respondents,[20] in their respective Comments,[21] argue that petitioners should not be permitted to take advantage of the unavailability of records covering the sheriff's sale. They point to the fact that during trial, then Batangas Provincial Sheriff Atty. Abratigue's testimony regarding the circumstances of the sheriff's sale was stricken off the record on the initiative of the petitioners. For this reason, the issue covering the issuance of notice to them could not be resolved by the trial court. To the respondents, this constitutes willful suppression of evidence which is adverse to petitioners' cause.

Moreover, respondents claim that under the 1964 Rules then applicable to the sheriff's sale which was held on March 15, 1972, particularly Rule 39, Section 18, notice to the judgment obligor was not required. Respondents argue that the present Rule under the 1997 Rules of Civil Procedure,[22] requiring that written notice of the sale be given to the judgment obligor three days before the sale, should not retroactively apply to this case.

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[20] The Perez spouses have since passed away and have been substituted by their heirs. Respondent Felicidad Perez also passed away and is substituted by her co-respondent spouse Jose Basit and their children. Felicidad is the Perez spouses' daughter. Respondents Jose Basit and his deceased spouse Felicidad, and respondent spouses Melecio Manalo and Leticia de Guzman, are impleaded as transferees of portions of the property in litigation.

[21] *Rollo*, pp. 82-94, 96-109.

[22] Section 15 of Rule 39 reads in part:

x x x x x x x x x

(d) In all cases, written notice of the sale shall be given to the judgment obligor at least three (3) days before the sale, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, in the same manner as personal service of pleadings and other papers as provided by Section 6 of Rule 13.

x x x x x x x x x

Our Ruling

The Court affirms.

The applicable rule at the time of the execution sale on March 15, 1972 is Rule 39, Section 18 of the 1964 Rules of Court. This rule does not require personal written notice to the judgment debtor.

At the time of the execution sale on March 15, 1972, the applicable rule is Rule 39, Section 18 of the 1964 Rules of Court. It states:

> Sec. 18. Notice of sale of property on execution. – Before the sale of property on execution, notice thereof must be given as follows:
>
> (a) In case of perishable property, by posting written notice of the time and place of the sale in three public places in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;
>
> (b) In case of other personal property, by posting a similar notice in three public places in the municipality or city where the sale is to take place, for not less than five (5) nor more than ten (10) days;
>
> (c) In case of real property, by posting a similar notice particularly describing the property for twenty (20) days in three public places in the municipality or city where the property is situated, and also where the property is to be sold, and, if the assessed value of the property exceeds four hundred pesos (₱400), by publishing a copy of the notice once a week, for the same period, in [a] newspaper published or having general circulation in the province, if there be one. If there are newspapers published in the Province in both the English and Spanish languages, then a like publication for a like period shall be made in one newspaper published in the English language, and in one published in the Spanish language.

The foregoing rule does not require written notice to the judgment obligor. Respondents are thus correct in their argument that at the time of the execution sale on March 15, 1972, personal notice to the petitioners was not required under

Rule 39, Section 18 of the 1964 Rules of Court. Indeed, notice to the judgment obligor under the 1964 Rules of Court was not required, or was merely optional; publication and posting sufficed.

It was only in 1987 that the Court required that written notice of the execution sale be given to the judgment debtor, via Circular No. 8[23] amending Rule 39, Section 18 of the Rules of Court on notice of sale of property on execution. Thus, the alleged failure on the part of the respondents to furnish petitioners with a written notice of the execution sale did not nullify the execution sale because it was not then a requirement for its validity.

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[23] Dated May 15, 1987.

CIRCULAR NO. 8 May 15, 1987

TO: COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A DISTRICT COURTS, SHARI'A CIRCUIT COURTS, INTEGRATED BAR OF THE PHILIPPINES AND MAJOR VOLUNTARY BAR ASSOCIATIONS.

SUBJECT: AMENDMENT OF RULE 39, SECTION 18 OF THE RULES OF COURT ON NOTICE OF SALE OF PROPERTY ON EXECUTION

For the information and guidance of all concerned, quoted hereunder is the resolution of the Court *En Banc*, dated April 7, 1987 in "Re: Amendment of Rule 39, Section 18 of the Rules of Court on Notice of Sale of Property on Execution."

Re: Amendment of Rule 39, Section 18 of the Rules of Court on Notice of Sale of Property on Execution. – The Court Resolved to APPROVE the following amendments of Rule 39, Section 18(c) of the Rules of Court on Notice of Sale of Property on Execution which consists of (1) publication, in addition to posting, is required where the assessed value of the real property subject of sale of execution exceeds ₱50,000.00 (increased from ₱400.00 under the present provision); (2) such publication of the notice of sale shall be made once a week for two (2) consecutive weeks (instead of for twenty [20] days), in some newspaper published or having general circulation in the province; (3) in places where newspapers are published in English and/or Filipino, publication shall be made in one such newspaper (instead of publishing said notice in both the English and Spanish newspapers as presently provided in the Rules); **<u>as well as the addition of paragraph (d) in said Section 18, imposing the requirement that in all cases, written notice of the sale must be given to the judgment debtor</u>**. The text of the amendments follows:

The presumption of regularity of the execution sale and the sheriff's performance of his official functions prevail in the absence of evidence to the contrary and in light of the self-serving allegations and bare denials of petitioners to the effect that they were not served with notice of the sheriff's sale.

In *Reyes v. Tang Soat Ing*,[24] the Court was confronted with similar circumstances which the herein parties now find themselves in. In said case, the judgment obligors claimed – long after their property was subjected to execution sale and consolidation proceedings – that the rules requiring prior notice of the execution sale were not strictly complied with. The Court did not agree, and it held –

RULE 39

EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS

Sec. 18. *Notice of sale of property on execution*. — Before the sale of property on execution, notice thereof must be given as follows:

(a) x x x

(b) x x x

(c) In case of real property, by posting for twenty (20) days in three (3) public places in the municipality or city where the property is situated, a similar notice particularly describing the property and stating where the property is to be sold, and if the assessed value of the property exceeds FIFTY THOUSAND PESOS (₱50,000.00), by publishing a copy of the notice once a week for two (2) consecutive weeks in some newspaper published or having general circulation in the province, if there be one. If there are newspapers published in the province in English and/or Filipino, then the publication shall be made in one such newspaper.

(d) In all cases, written notice of the sale shall be given to the judgment debtor.

Let copies hereof be circulated among all Courts, the Integrated Bar of the Philippines and major voluntary bar associations.

Please be guided accordingly.

May 15, 1987. (Emphasis supplied)

[24] G.R. No. 185620, December 14, 2011, 662 SCRA 553.

Contrary to the Court of Appeals' holding, the burden of evidence to prove lack of compliance with Section 15, Rule 39 of the Rules of Court rests on the party claiming lack thereof *i.e.*, respondents.

> In *Venzon v. Spouses Juan*, we declared that the judgment debtor, as herein respondents, alleging lack of compliance with the posting and publication requirements of the auction sale in accordance with the rules, is behooved to prove such allegation. We held, thus:
>
> x x x. Whoever asserts a right dependent for its existence upon a negative, must establish the truth of the negative by a preponderance of the evidence. This must be the rule, or it must follow that rights, of which a negative forms an essential element, may be enforced without proof. Thus, whenever the [party's] right depends upon the truth of a negative, upon him is cast the *onus probandi*, except in cases where the matter is peculiarly within the knowledge of the adverse party.
>
> It was error, therefore, for the trial court to hold that:
>
> Defendants did not present evidence to rebut the "no notice" allegation of the plaintiff. Although in the defendant spouses' pre-trial brief, there is that general allegation that the auction sale was made in accordance with law, however, there is no showing in the record that the requirements with respect to publication/posting of notices were complied with by the defendants.
>
> Deliberating on the absence of notice, the fact that the plaintiff did not come to know that Lot 12 was being subjected to an auction sale proves two things: one, that no notice was posted in the place where the property is located [and, two, that] there was no auction sale that took place on March 30, 1992. . . .
>
> Further, the defendants, particularly defendant sheriff, who is the most competent person to testify that a written notice of sale was made and posted in accordance with law, was not presented to the witness stand. Neither was a document presented like Sheriff's Certificate of Posting to attest to the fact that a written notice of sale was posted before the property was allegedly sold at public auction. In fact, the record is silent as (to) where the auction sale was conducted.

By ruling in the foregoing manner, the trial court incorrectly shifted the plaintiff's burden of proof to the defendants. It is true that the fact of posting and publication of the notices is a matter "peculiarly within the knowledge" of the Deputy Sheriff. However, the trial court did not acquire jurisdiction over him, as he was not served with summons. At the time of the filing of the complaint, he was "no longer connected" with the Caloocan RTC, Branch 126, which issued the writ of execution. Hence, he could not testify in his own behalf.

> x x x [T]he duty imposed by Section [18] (c) is reposed upon the sheriff, who is charged with the enforcement of the writ. Respondent spouses had a right to presume that he had regularly performed his duty. It was not incumbent upon them to present him as a witness for, in the absence of the sheriff, the burden to prove lack of posting and publication remained with petitioner.

Respondents made no attempt to meet this burden of evidence, simply maintaining lack of notice of the entire proceedings (execution and issuance of a new title over the subject property) before the trial court.

We cannot subscribe to respondents' belated posturing. The disputable presumption that official duty has been regularly performed was not overcome by respondents. The documents on record lead us to the inevitable conclusion that respondents had constructive, if not actual, notice of the execution proceedings from the issuance of the Writ of Execution, the levy on the subject property, its subjection to execution sale, up to and until the proceedings in the RTC relating to the issuance of a new certificate of title over the subject property. Certainly, respondents are precluded from feigning ignorance of MFR (substituted by Reyes) staking a claim thereon.

There was substantial compliance with Section 15, Rule 39 of the Rules of Court: the documents in support thereof, *i.e.*, the Certificate of Posting issued by Sheriff Legaspi and the Affidavit of Publication executed by the publisher of The Times Newsweekly, appear to be in order. In this case, the purpose of giving notice through posting and publication under Section 15(c) of the same rule—to let the public know of the sale to the end that the best price or a better bid may be made possible to minimize prejudice to the judgment debtor—was realized.[25]

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[25] *Id.* at 563-565.

Applying *Reyes* to this case, the Court affirms the view that petitioners may no longer question the conduct of the execution proceedings below. As correctly held by the CA, the presumption of regularity of the execution sale and the sheriff's performance of his official functions prevail in the absence of evidence to the contrary and in light of the self-serving allegations and bare denials of petitioners to the effect that they were not served with notice of the sheriff's sale, and given that the entire record covering the sale could no longer be located.

After 12 years and after being dispossessed of their properties and title thereto for such a long time, petitioners instituted Civil Case No. 2700 in an attempt to reverse the effects of the final and executory judgment in Civil Case No. 1386. This is a clear case of afterthought, a risk petitioners took knowing that they stood to lose nothing more, but gain back their properties in the event of a victory that is farfetched.

WHEREFORE, the Petition is **DENIED**. The June 29, 2007 Decision of the Court of Appeals in CA-G.R. CV No. 82429 is hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Brion,* and *Perez, JJ.,* concur.

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[*] Per Special Order No. 1437 dated March 25, 2013.

FIRST DIVISION

[G.R. No. 179665. April 3, 2013]

SOLID BUILDERS, INC. and MEDINA FOODS INDUSTRIES, INC., *petitioners, vs.* **CHINA BANKING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; GENERAL PRINCIPLES IN THE ISSUANCE A WRIT OF PRELIMINARY INJUNCTION.— This Court has recently reiterated the general principles in issuing a writ of preliminary injunction in *Palm Tree Estates, Inc. v. Philippine National Bank*: A preliminary injunction is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action. A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise, the outcome of a litigation would be useless as far as the party applying for the writ is concerned. At times referred to as the "Strong Arm of Equity," we have consistently ruled that there is no power the exercise of which is more delicate and which calls for greater circumspection than the issuance of an injunction. It should only be extended in cases of great injury where courts of law cannot afford an adequate or commensurate remedy in damages; "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one, and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation."

2. **ID.; ID.; ID.; TWO IMPORTANT CONDITIONS THAT MUST BE SHOWN BEFORE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION.—** A writ of preliminary injunction is an extraordinary event which must be granted only in the face of actual and existing substantial rights. The duty of the court taking cognizance of a prayer for a writ of preliminary injunction is to determine whether the requisites necessary for the grant of an injunction are present in the case before it. In this connection, a writ of preliminary injunction is issued to preserve the *status quo ante*, upon the applicant's showing of two important requisite conditions, namely: (1) the right to be protected exists *prima facie*, and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented would cause an irreparable injury.

3. **ID.; ID.; ID.; THE BASIS OF THE RIGHT CLAIMED BY PETITIONERS REMAINS TO BE CONTROVERSIAL OR DISPUTABLE; IN THE ABSENCE OF A CLEAR LEGAL RIGHT, THE ISSUANCE OF THE INJUNCTIVE WRIT IS NOT PROPER AND CONSTITUTES GRAVE ABUSE OF DISCRETION.—** SBI and MFII basically claim a right to have their mortgaged properties shielded from foreclosure by CBC on the ground that the interest rate and penalty charges imposed by CBC on the loans availed of by SBI are iniquitous and unconscionable. x x x As debtor-mortgagors, however, SBI and MFII do not have a right to prevent the creditor-mortgagee CBC from foreclosing on the mortgaged properties simply on the basis of alleged "usurious, exorbitant and confiscatory rate of interest." First, assuming that the interest rate agreed upon by the parties is usurious, the nullity of the stipulation of usurious interest does not affect the lender's right to recover the principal loan, nor affect the other terms thereof. Thus, **in a usurious loan with mortgage, the right to foreclose the mortgage subsists, and this right can be exercised by the creditor upon failure by the debtor to pay the debt due.** Second, even the Order dated December 14, 2000 of the trial court, which granted the application for the issuance of a writ of preliminary injunction, recognizes that the parties still have to be heard on the alleged lack of "fairness of the increase in interests and penalties" during the trial on the merits. Thus,

the basis of the right claimed by SBI and MFII remains to be controversial or disputable as there is still a need to determine whether or not, upon consideration of the various circumstances surrounding the agreement of the parties, the interest rates and penalty charges are unconscionable. Therefore, such claimed right cannot be considered clear, actual and subsisting. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. The Order dated December 10, 2001 also shows the reasoning of the trial court which betrays that its grant of the application of SBI and MFII for the issuance of a writ of preliminary injunction was not based on a clear legal right. Said the trial court: It was likewise shown that plaintiffs [SBI and MFII] had the clear right and urgency to ask for injunction **because of the issue of validity of the increase in the amount of the loan obligation**. At most, the above finding of the trial court that the validity of the increase in the amount of the loan obligation is in issue simply amounted to a finding that the rights of SBI and MFII *vis-à-vis* that of CBC are disputed and debatable. In such a case where the complainant-movant's right is doubtful or disputed, the issuance of an injunctive writ is not proper.

4. **ID.; ID.; ID.; PETITIONER SOLID BUILDERS INC.'S DEFAULT OR FAILURE TO SETTLE ITS OBLIGATION IS A BREACH OF CONTRACTUAL OBLIGATION WHICH TAINTED ITS HANDS AND DISQUALIFIED IT FROM AVAILING OF THE EQUITABLE REMEDY OF PRELIMINARY INJUNCTION.—** Even assuming that SBI and MFII are correct in claiming their supposed right, it nonetheless disintegrates in the face of the ten promissory notes in the total amount of ₱218,540,648.00, exclusive of interest and penalties, issued by SBI in favor of CBC on March 1, 1999 which until now remain unpaid despite the maturity of the said notes on March 1, 2004 and CBC's repeated demands for payment. Foreclosure is but a necessary consequence of nonpayment of mortgage indebtedness. As this Court held in *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*: Where the parties stipulated in their credit agreements, mortgage contracts and promissory notes that the mortgagee is authorized to foreclose the mortgaged properties in case of default by the mortgagors, the mortgagee has a clear right to foreclosure

in case of default, making the issuance of a Writ of Preliminary Injunction improper. x x x. In addition, the default of SBI and MFII to pay the mortgage indebtedness disqualifies them from availing of the equitable relief that is the injunctive writ. In particular, SBI and MFII have stated in their Complaint that they have made various requests to CBC for restructuring of the loan. The trial court's Order dated December 14, 2000 also found that SBI wrote several letters to CBC "requesting, among others, for a reduction of interests and penalties and restructuring of the loan." A debtor's various and constant requests for deferment of payment and restructuring of loan, without actually paying the amount due, are clear indications that said debtor was unable to settle his obligation. SBI's default or failure to settle its obligation is a breach of contractual obligation which tainted its hands and disqualified it from availing of the equitable remedy of preliminary injunction. As SBI is not entitled to the issuance of a writ of preliminary injunction, so is MFII. The accessory follows the principal. The accessory obligation of MFII as accommodation mortgagor and surety is tied to SBI's principal obligation to CBC and arises only in the event of SBI's default. Thus, MFII's interest in the issuance of the writ of preliminary injunction is necessarily prejudiced by SBI's wrongful conduct and breach of contract.

5. **ID.; ID.; ID.; NEITHER HAS THERE BEEN A SHOWING OF IRREPARABLE INJURY IN CASE AT BAR; FORECLOSURE OF MORTGAGE IS NOT AN IRREPARABLE DAMAGE THAT WILL MERIT FOR THE DEBTOR-MORTGAGOR THE EXTRAORDINARY PROVISIONAL REMEDY OF PRELIMINARY INJUNCTION.—** As no clear right that warrants the extraordinary protection of an injunctive writ has been shown by SBI and MFII to exist in their favor, the first requirement for the grant of a preliminary injunction has not been satisfied. In the absence of any requisite, and where facts are shown to be wanting in bringing the matter within the conditions for its issuance, the ancillary writ of injunction must be struck down for having been rendered in grave abuse of discretion. Thus, the Court of Appeals did not err when it granted the petition for *certiorari* of CBC and ordered the dissolution of the writ of preliminary injunction issued by the

trial court. Neither has there been a showing of irreparable injury. An injury is considered irreparable if it is of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation. The provisional remedy of preliminary injunction may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard of compensation. In the first place, any injury that SBI and MFII may suffer in case of foreclosure of the mortgaged properties will be purely monetary and compensable by an appropriate judgment in a proper case against CBC. Moreover, where there is a valid cause to foreclose on the mortgages, it cannot be correctly claimed that the irreparable damage sought to be prevented by the application for preliminary injunction is the loss of the mortgaged properties to auction sale. The alleged entitlement of SBI and MFII to the "protection of their properties put up as collateral for the loans" they procured from CBC is not the kind of irreparable injury contemplated by law. Foreclosure of mortgaged property is not an irreparable damage that will merit for the debtor-mortgagor the extraordinary provisional remedy of preliminary injunction.

6. ID.; ID.; ID.; TO REVERSE THE DECISION OF THE COURT OF APPEALS AND REINSTATE THE WRIT OF PRELIMINARY INJUNCTION ISSUED BY THE TRIAL COURT WILL ALLOW PETITIONERS TO CIRCUMVENT THE GUIDELINES AND CONDITIONS PROVIDED BY THE *EN BANC* RESOLUTION IN A.M. NO. 99-10-05-0 DATED FEBRUARY 20, 2007 AND PREVENT RESPONDENT FROM FORECLOSING ON THE MORTGAGED PROPERTIES BASED SIMPLY ON THE ALLEGATION THAT THE INTEREST ON THE LOAN IS UNCONSCIONABLE.— The *En Banc* Resolution in A.M. No. 99-10-05-0, *Re: Procedure in Extrajudicial or Judicial Foreclosure of Real Estate Mortgages*, further stacks the odds against SBI and MFII. Issued on February 20, 2007, or some two months before the Court of Appeals promulgated its decision in this case, the resolution embodies the additional guidelines intended to aid courts in foreclosure proceedings,

specifically limiting the instances, and citing the conditions, when a writ against foreclosure of a mortgage may be issued. x x x The guidelines speak of strict exceptions and conditions. To reverse the decision of the Court of Appeals and reinstate the writ of preliminary injunction issued by the trial court will be to allow SBI and MFII to circumvent the guidelines and conditions provided by the *En Banc* Resolution in A.M. No. 99-10-05-0 dated February 20, 2007 and prevent CBC from foreclosing on the mortgaged properties based simply on the allegation that the interest on the loan is unconscionable. This Court will not permit such a situation. What cannot be done directly cannot be done indirectly.

7. **CIVIL LAW; CIVIL CODE; OBLIGATIONS WITH A PENAL CLAUSE; PETITIONER'S INVOCATION OF ARTICLE 1229 OF THE CIVIL CODE IS PREMATURE AS THE TRIAL COURT HAS NOT YET MADE A RULING THAT THE PENALTY AGREED UPON IS UNCONSCIONABLE.—** Even Article 1229 of the Civil Code, which SBI and MFII invoke, works against them. Under that provision, the equitable reduction of the penalty stipulated by the parties in their contract will be based on a finding by the court that such penalty is iniquitous or unconscionable. Here, the trial court has not yet made a ruling as to whether the penalty agreed upon by CBC with SBI and MFII is unconscionable. Such finding will be made by the trial court only after it has heard both parties and weighed their respective evidence in light of all relevant circumstances. Hence, for SBI and MFII to claim any right or benefit under that provision at this point is premature.

APPEARANCES OF COUNSEL

Melanio L. Zoreta for petitioners.

Lim Vigilia Alcalla Dumlao Alameda & Casiding for respondent.

DECISION

LEONARDO-DE CASTRO, *J.*:

This petition for review on *certiorari*[1] assails the Decision[2] dated April 16, 2007 and the Resolution[3] dated September 18, 2007 of the Court of Appeals in CA-G.R. SP No. 81968.

During the period from September 4, 1992 to March 27, 1996, China Banking Corporation (CBC) granted several loans to Solid Builders, Inc. (SBI), which amounted to ₱139,999,234.34, exclusive of interests and other charges. To secure the loans, Medina Foods Industries, Inc. (MFII) executed in CBC's favor several surety agreements and contracts of real estate mortgage over parcels of land in the Loyola Grand Villas in Quezon City and New Cubao Central in Cainta, Rizal.[4]

Subsequently, SBI proposed to CBC a scheme through which SBI would sell the mortgaged properties and share the proceeds with CBC on a 50-50 basis until such time that the whole obligation would be fully paid. SBI also proposed that there be partial releases of the certificates of title of the mortgaged properties without the burden of updating interests on all loans.[5]

In a letter dated March 20, 2000 addressed to CBC, SBI requested the restructuring of its loans, a reduction of interests and penalties and the implementation of a *dacion en pago* of the New Cubao Central property.[6] The letter reads:

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 31-40; penned by Justice Rodrigo V. Cosico with Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo, concurring.

[3] *Id.* at 42-43.

[4] *Id.* at 32-33.

[5] *Id.* at 33.

[6] *Id.*

March 20, 2000

CHINA BANKING CORPORATION
Dasmarinas cor. Juan Luna Sts.
Binondo, Manila

Attn: Mr. George Yap
Account Officer

Dear Mr. Yap,

This is to refer to our meeting held at your office last March 10, 2000.

In this regard[,] please allow us to call your attention on the following important matters we have discussed:

1. With respect to the penalties, we are requesting for a reduction in the rates as we find it onerous considering the big amount of our loan (₱218,540,648.00). The interest together with the penalties that you are imposing is similar to the ones being charged by private lending institutions, *i.e.*, 4.5%/month total.

2. As I had discussed with you regarding *Dacion en Pago*, which you categorically stated that it could be a possibility, we are considering putting our New Cubao Central (NCC) on Dacion and restructuring our loan with regards to our Loyola Grand Villas.

Considering that you had stated that our restructuring had not been finalized, we find it timely to raise these urgent matters and possibly agree on a realistic and workable scheme that we can incorporate on our final agreement.

Thank you and we strongly hope for your prompt consideration on our request.

Very truly yours,

V. BENITO R. SOLIVEN (Sgd.)
President[7]

In response, CBC sent SBI a letter dated April 17, 2000 stating that the loans had been completely restructured effective March 1, 1999 in the amount of ₱218,540,646.00. On the

[7] CA *rollo*, p. 101.

aspect of interests and charges, CBC suggested the updating of the obligation to avoid paying interests and charges.[8] The relevant portion of the letter dated April 17, 2000 reads:

> First of all, to clarify, the loan's restructuring has been finalized and completed on ***3/01/99*** with the booking of the Restructured loan of ***₱218,540,646***. Only two Amendments of Real Estate Mortgages remain to be registered to date. Certain documents that we requested from your company since last year, that could facilitate this amendment have not yet been forwarded to us until now. Nevertheless, this does not change the fact that the restructuring of the loan has been done with and finalized.
>
> This in turn is with regards to statement[s] nos. 1 & 2 of your letter, referring to the interest rates and penalties. As per our records, the rates are actually the prevailing bank interest rates. In addition, penalty charges are imposed in the event of non-payment. To avoid experiencing having to pay more due to the penalty charges, updating of obligations is necessary. Thus[,] we advise updating of your obligations to avoid penalty charges. However, should you be able to update both interest and penalty through a "one-time" payment, we shall present your request to Senior Management for possible reduction in penalty charges.
>
> Concerning statement no. 3 containing your request for the possible *Dacion en Pago* of your NCC properties, as was discussed already in the meeting, it is a concern that has to be discussed with Senior Management and approved by the Executive Committee before we can commit to you on the matter. We suggest that your company, Solid Builders, exhaust all possibilities to sell the NCC properties yourselves because, being a real estate company, Solid has better ways and means of selling the properties.[9]

This was followed by another communication from CBC to SBI reiterating, among others, that the loan has been restructured effective March 1, 1999 upon issuance by SBI of promissory notes in favor of CBC. The relevant portion of that letter dated May 19, 2000 reads:

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[8] *Rollo*, p. 33.

[9] CA *rollo*, pp. 104-105.

Again, in response to your query with regards the issue of the loans restructuring, to reiterate, the loan restructuring has been finalized and completed on ***3/01/99*** with the ***booking*** of the Restructured loan of ***₱231,716,646***. The Restructured Loan was effective ever since the new Promissory Note was signed on the said date.

The interest rates for the loans are actually rates booked since the new Promissory Notes were effective. Any move of changing it or "re-pricing" the interest is only possible every 90 days from the booking date, which represents the interest amortization payment dates. No change or "re-pricing" in interest rates is possible since interest payment/obligations have not yet been paid.

With regards to the possible *Dacion en Pago* of your NCC properties, as was discussed already in the meeting, it is a concern that has to be discussed with Senior Management and approved by the Executive Committee before we can commit to you on the matter. We suggest that your company, Solid Builders, exhaust all possibilities to sell the NCC properties yourselves because, being a real estate company, Solid has better ways and means of selling the properties.[10]

Subsequently, in a letter dated September 18, 2000, CBC demanded SBI to settle its outstanding account within ten days from receipt thereof. The letter dated September 18, 2000 reads:

September 18, 2000

SOLID BUILDERS, INC.
V.V. Soliven Bldg., I
EDSA, San Juan, Metro Manila

PN NUMBER	O/S BALANCE	DUE DATE	INTEREST PAID UP TO
PN-MK-TS-342924	PHP 89,700,000.00	03/01/2004	04/13/1999
PN-MK-TS-342931	19,350,000.00	03/01/2004	08/05/1999
PN-MK-TS-342948	35,888,000.00	03/01/2004	————
PN-MK-TS-342955	6,870,000.00	03/01/2004	————
PN-MK-TS-342962	5,533,646.00	03/01/2004	07/26/1999
PN-MK-TS-342979	21,950,000.00	03/01/2004	————
PN-MK-TS-342986	3,505,000.00	03/01/2004	08/09/1999
PN-MK-TS-342993	19,455,000.00	03/01/2004	————
PN-MK-TS-343002	4,168,000.00	03/01/2004	————
PN-MK-TS-343026	12,121,000.00	03/01/2004	————
	PHP218,540,646.00		

[10] *Id.* at 106.

Greetings!

We refer again to the balances of the abovementioned Promissory Notes amounting to PHP218,540,646.00 excluding interest, penalties and other charges signed by you jointly and severally in our favor, which remains unpaid up to this date despite repeated demands for payment.

In view of the strict regulations of Bangko Sentral ng Pilipinas on past due accounts, we regret that we cannot hold these accounts further in abeyance. Accordingly, we are reiterating our request that arrangements to have these accounts settled within ten (10) days from receipt hereof, otherwise, we shall be constrained to refer the matter to our lawyers for collection.

We enclose a Statement of Account as of September 30, 2000 for your reference and guidance.

Very truly yours,

MERCEDES E. GERMAN (Sgd.)
Manager
Loans & Discounts Department – H.O.[11]

On October 5, 2000, claiming that the interests, penalties and charges imposed by CBC were iniquitous and unconscionable and to enjoin CBC from initiating foreclosure proceedings, SBI and MFII filed a Complaint "To Compel Execution of Contract and for Performance and Damages, With Prayer for Writ of Preliminary Injunction and *Ex-Parte* Temporary Restraining Order" in the Regional Trial Court (RTC) of Pasig City. The case was docketed as Civil Case No. 68105 and assigned to Branch 264.[12]

In support of their application for the issuance of writ of preliminary injunction, SBI and MFII alleged:

IV. APPLICATION FOR PRELIMINARY INJUNCTION WITH *EX PARTE* TEMPORARY RESTRAINING ORDER

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[11] *Id.* at 113.

[12] *Rollo*, p. 34.

A. GROUND[S] FOR PRELIMINARY INJUNCTION

1. That [SBI and MFII] are entitled to the reliefs demanded, among which is enjoining/restraining the commission of the acts complained of, the continuance of which will work injustice to the plaintiffs; that such acts are in violation of the rights of plaintiffs and, if not enjoined/restrained, will render the judgment sought herein ineffectual.

2. That under the circumstances, it is necessary to require, through preliminary injunction, [CBC] to refrain from immediately enforcing its letters dated April 17, 2000 and May 19, 2000 and September 18, 2000 during the pendency of this complaint, and

3. That [SBI and MFII] submit that they are exempt from filing of a bond considering that the letters dated April 17, 2000, May 19, 2000 and September 18, 2000 are a patent nullity, and in the event [they are] not, they are willing to post such bond this Honorable Court may determine and under the conditions required by Section 4, Rule 58.[13]

In its Answer and Opposition to the issuance of the writ of preliminary injunction, CBC alleged that to implement the agreed restructuring of the loan, SBI executed ten promissory notes stipulating that the interest rate shall be at 18.5% per annum. For its part, MFII executed third party real estate mortgage over its properties in favor of CBC to secure the payment of SBI's restructured loan. As SBI was delinquent in the payment of the principal as well as the interest thereon, CBC demanded settlement of SBI's account.[14]

After hearing the parties, the trial court issued an Order dated December 14, 2000 granting the application of SBI and MFII for the issuance of a writ of preliminary injunction. The trial court held that SBI and MFII were able to sufficiently comply with the requisites for the issuance of an injunctive writ:

It is well-settled that to be entitled to an injunctive writ, a party must show that: (1) the invasion of right sought to be protected is material and substantial; (2) the right of complainant is clear and

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[13] CA *rollo*, pp. 48-49.

[14] *Rollo*, pp. 34-35.

unmistakable; and, (3) there is an urgent and paramount necessity for the writ to prevent serious damage.

The Court opines that the above-mentioned requisites have been sufficiently shown by plaintiffs in this case, accordingly, a writ of preliminary injunction is in order.

The three subject letters, particularly the letter dated September 18, 2000[,] indicate that the promissory notes executed by Benito Soliven as President of plaintiff SBI amounted to ₱218,540,646.00[,] excluding interest, penalties and other charges remained unpaid, and demand that the account be settled within ten days[,] else defendant bank shall refer the latter to its lawyers for collection.

The message in the letter is clear: If the account is not settled within the grace period, defendant bank will resort to foreclosure of mortgage on the subject properties.

The actual or imminent damage to plaintiffs is likewise clear. Considering the number of parcels of land and area involved, if these are foreclosed by defendant bank, plaintiffs' properties and source of income will be effectively diminished, possibly to the point of closure.

The only issue remaining is whether or not plaintiffs have the right to ask for an injunctive writ in order to prevent defendant bank from taking over their properties.

Plaintiff[s] argued that the interest and penalties charged them in the subject letters and attached statements of account increased during a seven-month period to an amount they described as "onerous", "usurious" and "greedy".

They likewise asserted that there were on-going talks between officers of the corporations involved to treat or restructure the contracts to a *dacion en pago*, as there was a proposed plan of action by representatives of plaintiffs during the meetings.

Defendant, on the other hand, sought to explain the increase in the interest as contained in the promissory notes which were voluntarily and willingly signed by Soliven, therefore, binding on plaintiffs and that the proposed plan of action is merely an oral contract still in the negotiation stage and not binding.

The condition on the interest payments as contained in the promissory notes are as follows:

"Interest for the first quarter shall be @ 18.5% P.A. Thereafter, it shall be payable quarterly in arrears based on three months average rate."

In its Memorandum, defendant bank tried to show that the questioned increase in the interests was merely in compliance with the above condition. To this Court, the explanation is insufficient. A more detailed rationalization is required to convince the court of the fairness of the increase in interests and penalties.

However, the coming explanation may probably be heard only during trial on the merits, and by then this pending incident or the entire case, may already be moot and academic if the injunctive writ is not issued.[15]

The dispositive portion of the trial court's Order dated December 14, 2000 reads:

WHEREFORE, premises considered, the application for issuance of writ of preliminary injunction is **GRANTED**.

Defendant CHINA BANKING CORPORATION, its representatives, agents and all persons working in its behalf are hereby enjoined from enforcing the contents of its letters to plaintiffs dated April 17, 2000, May 19, 2000 and September 18, 2000, particularly the bank's legal department or other counsel commencing collection proceedings against plaintiffs in the amount stated in the letters and statements of account.

The Writ of Preliminary Injunction shall be issued upon plaintiffs' posting of a bond executed to defendant in the amount of Two Million Pesos (₱2,000,000.00) to the effect [that] the plaintiff[s] will pay defendant all damages which the latter may sustain b[y] reason of the injunction if it be ultimately decided that the injunction [is] unwarranted.[16]

CBC sought reconsideration but the trial court denied it in an Order[17] dated December 10, 2001.

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[15] *Rollo*, pp. 33-34.

[16] *Id.* at 34.

[17] *Id.* at 185.

Subsequently, CBC filed a "Motion to Dissolve Injunction Order" but this was denied in an Order[18] dated November 10, 2003. The trial court ruled that the motion was in the nature of a mere belated second motion for reconsideration of the Order dated December 14, 2000. It also declared that CBC failed to substantiate its prayer for the dissolution of the injunctive writ.

Aggrieved, CBC filed a Petition for *Certiorari* docketed as CA-G.R. SP No. 81968 in the Court of Appeals where it claimed that the Orders dated December 14, 2000 (granting the application of petitioners SBI and MFII for the issuance of writ of preliminary injunction), December 10, 2001 (denying reconsideration of the order dated December 14, 2000), and November 10, 2003 (denying the CBC's motion to dissolve injunction order) were all issued with grave abuse of discretion amounting to lack of jurisdiction.[19]

In a Decision dated April 16, 2007, the Court of Appeals found that, on its face, the trial court's Order dated December 14, 2000 granting the application of SBI and MFII for the issuance of a writ of preliminary injunction had no basis as there were no findings of fact or law which would indicate the existence of any of the requisites for the grant of an injunctive writ. It appeared to the Court of Appeals that, in ordering the issuance of a writ of injunction, the trial court simply relied on the imposition by CBC of the interest rates to the loans obtained by SBI and MFII. According to the Court of Appeals, however, the records do not reveal a clear and unmistakable right on the part of SBI and MFII that would entitle them to the protection of a writ of preliminary injunction. Thus, the Court of Appeals granted the petition of CBC, set aside the Orders dated December 14, 2000, December 10, 2001, and November 10, 2003 and dissolved the injunctive writ issued by the RTC of Pasig City.[20]

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[18] *Id.* at 27-31.

[19] *Rollo*, p. 37.

[20] *Id.* at 39.

SBI and MFII filed a motion for reconsideration but it was denied by the Court of Appeals in a Resolution dated September 18, 2007.

Hence, this petition.

SBI and MFII assert that the Decision dated April 16, 2007 of the Court of Appeals is legally infirm as its conclusions are contrary to the judicial admissions of CBC. They allege that, in its Answer, CBC admitted paragraphs 25 and 26 of the Complaint regarding the interests and charges amounting to ₱35,093,980.14 and ₱80,614,525.15, respectively, which constituted more than 50% of the total obligation of ₱334,249,151.29 as of February 15, 2000. For SBI and MFII, CBC's admission of paragraphs 25 and 26 of the Complaint is an admission that the interest rate imposed by CBC is usurious, exorbitant and confiscatory. Thus, when the Court of Appeals granted the petition of CBC and ordered the lifting of the writ of preliminary injunction it effectively disposed of the main case, Civil Case No. 68105, without trial on the merits and rendered moot and academic as it enabled CBC to foreclose on the mortgages despite the usurious, exorbitant and confiscatory interest rates.[21]

SBI and MFII also claim that the Court of Appeals either overlooked or disregarded undisputed and admitted facts which, if properly considered, would have called for the maintenance and preservation of the preliminary injunction issued by the trial court. They argue that the Court of Appeals did not even consider Article 1229 of the Civil Code which provides:

> Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

For SBI and MFII, the failure of the Court of Appeals to take into account Article 1229 of the Civil Code and its act of lifting the preliminary injunction "would definitely pave the way

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

for [CBC's] unbridled imposition of illegal rates of interest and immediate foreclosure" of the properties of SBI and MFII "without the benefit of a full blown trial."[22]

For its part, CBC assails the petition contending that it is not allowed under Rule 45 of the Rules of Court because it simply raises issues of fact and not issues of law. CBC further asserts that the Decision of the Court of Appeals is an exercise of sound judicial discretion as it is in accord with the law and the applicable provisions of this Court.[23]

The petition fails.

This Court has recently reiterated the general principles in issuing a writ of preliminary injunction in *Palm Tree Estates, Inc. v. Philippine National Bank*:[24]

> A preliminary injunction is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action. A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise, the outcome of a litigation would be useless as far as the party applying for the writ is concerned.
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> At times referred to as the "Strong Arm of Equity," we have consistently ruled that there is no power the exercise of which is more delicate and which calls for greater circumspection than the issuance of an injunction. It should only be extended in cases of great injury where courts of law cannot afford an adequate or commensurate remedy in damages; "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one, and where the

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[22] *Id.* at 22.

[23] *Rollo*, pp. 226-228.

[24] G.R. No. 159370, October 3, 2012, citing *Barbieto v. Court of Appeals*, G.R. No. 184645, October 30, 2009, 604 SCRA 825, 844-845.

effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation."

A writ of preliminary injunction is an extraordinary event which must be granted only in the face of actual and existing substantial rights. The duty of the court taking cognizance of a prayer for a writ of preliminary injunction is to determine whether the requisites necessary for the grant of an injunction are present in the case before it.[25] In this connection, a writ of preliminary injunction is issued to preserve the *status quo ante*, upon the applicant's showing of two important requisite conditions, namely: (1) the right to be protected exists *prima facie*, and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented would cause an irreparable injury.[26]

Here, SBI and MFII basically claim a right to have their mortgaged properties shielded from foreclosure by CBC on the ground that the interest rate and penalty charges imposed by CBC on the loans availed of by SBI are iniquitous and unconscionable. In particular, SBI and MFII assert:

There is therefore an urgent necessity for the issuance of a writ of preliminary injunction or at least a *status quo* [order], otherwise, respondent bank will definitely foreclose petitioners' properties without awaiting the trial of the main case on the merits[,] with said usurious and confiscatory rates of interest as basis.[27]

and

There is therefore no legal justification for the Honorable Court of Appeals to lift/dissolve the injunction issued by the trial court, otherwise, respondent bank – on the basis of this illegal imposition

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[25] *Id.*

[26] *Philippine National Bank v. Castalloy Technology Corporation*, G.R. No. 178367, March 19, 2012, 668 SCRA 415, 421.

[27] *Rollo*, p. 25.

of interest – can already foreclose the properties of petitioners and render the whole case (sans trial on the merits) moot and academic.[28]

On this matter, the Order dated December 14, 2000 of the trial court enumerates as the first argument raised by SBI and MFII in support of their application for the issuance of a writ of preliminary injunction:

> 1. Their rights basically are for the protection of their properties put up as collateral for the loans extended by defendant bank to them[.][29]

As debtor-mortgagors, however, SBI and MFII do not have a right to prevent the creditor-mortgagee CBC from foreclosing on the mortgaged properties simply on the basis of alleged "usurious, exorbitant and confiscatory rate of interest."[30] First, assuming that the interest rate agreed upon by the parties is usurious, the nullity of the stipulation of usurious interest does not affect the lender's right to recover the principal loan, nor affect the other terms thereof.[31] Thus, **in a usurious loan with mortgage, the right to foreclose the mortgage subsists, and this right can be exercised by the creditor upon failure by the debtor to pay the debt due**.[32]

Second, even the Order dated December 14, 2000 of the trial court, which granted the application for the issuance of a writ of preliminary injunction, recognizes that the parties still have to be heard on the alleged lack of "fairness of the increase in interests and penalties" during the trial on the merits.[33] Thus,

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[28] *Id.* at 20.

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

[30] *Rollo*, p. 20.

[31] *First Metro Investment Corporation v. Este Del Sol Mountain Reserve, Inc.*, 420 Phil. 902, 918 (2001).

[32] *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, G.R. No. 192986, January 15, 2013.

[33] *Rollo*, p. 51.

the basis of the right claimed by SBI and MFII remains to be controversial or disputable as there is still a need to determine whether or not, upon consideration of the various circumstances surrounding the agreement of the parties, the interest rates and penalty charges are unconscionable. Therefore, such claimed right cannot be considered clear, actual and subsisting. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.[34]

The Order dated December 10, 2001 also shows the reasoning of the trial court which betrays that its grant of the application of SBI and MFII for the issuance of a writ of preliminary injunction was not based on a clear legal right. Said the trial court:

> It was likewise shown that plaintiffs [SBI and MFII] had the clear right and urgency to ask for injunction **because of the issue of validity of the increase in the amount of the loan obligation**.[35] (Emphasis supplied.)

At most, the above finding of the trial court that the validity of the increase in the amount of the loan obligation is in issue simply amounted to a finding that the rights of SBI and MFII *vis-à-vis* that of CBC are disputed and debatable. In such a case where the complainant-movant's right is doubtful or disputed, the issuance of an injunctive writ is not proper.[36]

Even assuming that SBI and MFII are correct in claiming their supposed right, it nonetheless disintegrates in the face of the ten promissory notes in the total amount of ₱218,540,648.00, exclusive of interest and penalties, issued by SBI in favor of CBC on March 1, 1999 which until now remain unpaid despite the maturity of the said notes on March 1, 2004 and CBC's

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[34] *Palm Tree Estates, Inc. v. Philippine National Bank*, *supra* note 24.

[35] CA *rollo*, p. 185.

[36] See *Selegna Management and Development Corporation v. United Coconut Planters Bank,* 522 Phil. 671, 691 (2006). In this case, it was held that preliminary injunction is not proper when the complainant's right is doubtful or disputed.

repeated demands for payment.[37] Foreclosure is but a necessary consequence of nonpayment of mortgage indebtedness.[38] As this Court held in *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*:[39]

> Where the parties stipulated in their credit agreements, mortgage contracts and promissory notes that the mortgagee is authorized to foreclose the mortgaged properties in case of default by the mortgagors, the mortgagee has a clear right to foreclosure in case of default, making the issuance of a Writ of Preliminary Injunction improper. x x x. (Citation omitted.)

In addition, the default of SBI and MFII to pay the mortgage indebtedness disqualifies them from availing of the equitable relief that is the injunctive writ. In particular, SBI and MFII have stated in their Complaint that they have made various requests to CBC for restructuring of the loan.[40] The trial court's Order dated December 14, 2000 also found that SBI wrote several letters to CBC "requesting, among others, for a reduction of interests and penalties and restructuring of the loan."[41] A debtor's various and constant requests for deferment of payment and restructuring of loan, without actually paying the amount due, are clear indications that said debtor was unable to settle his obligation.[42] SBI's default or failure to settle its obligation

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[37] Demand letters dated June 22, 2010 of CBC to SBI and MFII, respectively, Annexes "B" and "C" of the Urgent Ex-Parte Petition for Immediate Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction filed by SBI and MFII in this case on July 9, 2010.

[38] *Lotto Restaurant Corporation v. BPI Family Savings Bank, Inc.*, G.R. No. 177260, March 30, 2011, 646 SCRA 699, 705.

[39] G.R. No. 165950, August 11, 2010, 628 SCRA 79, 91-92.

[40] Paragraphs 13-16 of Part II (General Allegations) and 2 of Part III.A. (First Cause of Action), *rollo*, pp. 62-63 and 67-68, respectively.

[41] *Rollo*, p. 49.

[42] *Palm Tree Estates, Inc. v. Philippine National Bank*, *supra* note 24.

is a breach of contractual obligation which tainted its hands and disqualified it from availing of the equitable remedy of preliminary injunction.

As SBI is not entitled to the issuance of a writ of preliminary injunction, so is MFII. The accessory follows the principal. The accessory obligation of MFII as accommodation mortgagor and surety is tied to SBI's principal obligation to CBC and arises only in the event of SBI's default. Thus, MFII's interest in the issuance of the writ of preliminary injunction is necessarily prejudiced by SBI's wrongful conduct and breach of contract.

Even Article 1229 of the Civil Code, which SBI and MFII invoke, works against them. Under that provision, the equitable reduction of the penalty stipulated by the parties in their contract will be based on a finding by the court that such penalty is iniquitous or unconscionable. Here, the trial court has not yet made a ruling as to whether the penalty agreed upon by CBC with SBI and MFII is unconscionable. Such finding will be made by the trial court only after it has heard both parties and weighed their respective evidence in light of all relevant circumstances. Hence, for SBI and MFII to claim any right or benefit under that provision at this point is premature.

As no clear right that warrants the extraordinary protection of an injunctive writ has been shown by SBI and MFII to exist in their favor, the first requirement for the grant of a preliminary injunction has not been satisfied. In the absence of any requisite, and where facts are shown to be wanting in bringing the matter within the conditions for its issuance, the ancillary writ of injunction must be struck down for having been rendered in grave abuse of discretion.[43] Thus, the Court of Appeals did not err when it granted the petition for *certiorari* of CBC and ordered the dissolution of the writ of preliminary injunction issued by the trial court.

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[43] *Id.*

Neither has there been a showing of irreparable injury. An injury is considered irreparable if it is of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation. The provisional remedy of preliminary injunction may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard of compensation.[44]

In the first place, any injury that SBI and MFII may suffer in case of foreclosure of the mortgaged properties will be purely monetary and compensable by an appropriate judgment in a proper case against CBC. Moreover, where there is a valid cause to foreclose on the mortgages, it cannot be correctly claimed that the irreparable damage sought to be prevented by the application for preliminary injunction is the loss of the mortgaged properties to auction sale.[45] The alleged entitlement of SBI and MFII to the "protection of their properties put up as collateral for the loans" they procured from CBC is not the kind of irreparable injury contemplated by law. Foreclosure of mortgaged property is not an irreparable damage that will merit for the debtor-mortgagor the extraordinary provisional remedy of preliminary injunction. As this Court stated in *Philippine National Bank v. Castalloy Technology Corporation*:[46]

> [A]ll is not lost for defaulting mortgagors whose properties were foreclosed by creditors-mortgagees. The respondents will not be deprived outrightly of their property, given the right of redemption

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[44] *Philippine National Bank v. Castalloy Technology Corporation*, *supra* note 26 at 424.

[45] *G.G. Sportswear Manufacturing Corporation v. Banco De Oro Unibank, Inc.*, G.R. No. 184434, February 8, 2010, 612 SCRA 47, 53.

[46] *Supra* note 26 at 425.

granted to them under the law. Moreover, in extrajudicial foreclosures, mortgagors have the right to receive any surplus in the selling price. Thus, if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but will give the mortgagor a cause of action to recover such surplus. (Citation omitted.)

The *En Banc* Resolution in A.M. No. 99-10-05-0, *Re: Procedure in Extrajudicial or Judicial Foreclosure of Real Estate Mortgages*, further stacks the odds against SBI and MFII. Issued on February 20, 2007, or some two months before the Court of Appeals promulgated its decision in this case, the resolution embodies the additional guidelines intended to aid courts in foreclosure proceedings, specifically limiting the instances, and citing the conditions, when a writ against foreclosure of a mortgage may be issued, to wit:

(1) No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the loan secured by the mortgage has been paid or is not delinquent unless the application is verified and supported by evidence of payment.

(2) **No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the interest on the loan is unconscionable, unless the debtor pays the mortgagee at least twelve percent per annum interest on the principal obligation as stated in the application for foreclosure sale, which shall be updated monthly while the case is pending**.

(3) Where a writ of preliminary injunction has been issued against a foreclosure of mortgage, the disposition of the case shall be speedily resolved. To this end, the court concerned shall submit to the Supreme Court, through the Office of the Court Administrator, quarterly reports on the progress of the cases involving ten million pesos and above.

(4) All requirements and restrictions prescribed for the issuance of a temporary restraining order/writ of preliminary injunction, such as the posting of a bond, which shall be equal to the amount of the outstanding debt, and the time limitation for its effectivity, shall apply as well to a *status quo* order.[47]

The guidelines speak of strict exceptions and conditions.[48] To reverse the decision of the Court of Appeals and reinstate the writ of preliminary injunction issued by the trial court will be to allow SBI and MFII to circumvent the guidelines and conditions provided by the *En Banc* Resolution in A.M. No. 99-10-05-0 dated February 20, 2007 and prevent CBC from foreclosing on the mortgaged properties based simply on the allegation that the interest on the loan is unconscionable. This Court will not permit such a situation. What cannot be done directly cannot be done indirectly.[49]

All told, the relevant circumstances in this case show that there was failure to satisfy the requisites for the issuance of a writ of preliminary injunction. The injunctive writ issued by the trial court should therefore be lifted and dissolved. That was how the Court of Appeals decided. That is how it should be.

WHEREFORE, the petition is hereby **DENIED**.

SO ORDERED.

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

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[47] *Id.* at 423.

[48] *Id.* at 424.

[49] *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, G.R. No. 166471, March 22, 2011, 646 SCRA 21, 31.

FIRST DIVISION

[G.R. No. 182417. April 3, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALBERTO GONZALES *Y* SANTOS, also known as *TAKYO*,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** To secure a conviction of the accused charged with the illegal sale of dangerous drugs as defined and punished by Section 5, Article II of Republic Act No. 9165, the State must establish the concurrence of the following elements, namely: (a) that the transaction or sale took place between the accused and the poseur buyer; and (b) that the dangerous drugs subject of the transaction or sale is presented in court as evidence of the *corpus delicti*. Anent the second element, it is indispensable for the State to establish that the dangerous drugs subject of the transaction or sale and subsequently examined in the laboratory are the same dangerous drugs presented in court as evidence.

2. **ID.; ID.; IMPLEMENTING RULES AND REGULATIONS (IRR); CHAIN OF CUSTODY RULE; STRICT COMPLIANCE, REQUIRED; RATIONALE.—** The identity of the dangerous drugs is essential to proving the *corpus delicti*. To achieve that end, Section 21 of Republic Act No. 9165 and Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165 (IRR) define the procedures to be followed by the apprehending officers in the seizure and custody of the dangerous drugs. x x x These provisions obviously demand strict compliance, for only by such strict compliance may be eliminated the grave mischiefs of planting or substitution of evidence and the unlawful and malicious prosecution of the weak and unwary that they are intended to prevent. Such strict compliance is also consistent with the doctrine that penal laws shall be construed strictly against the Government and liberally

in favor of the accused. The procedures underscore the value of establishing the chain of custody vis-à-vis the dangerous drugs. The Prosecution does not prove the violation of Section 5 of Republic Act No. 9165 either when the dangerous drugs are missing, or when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts about the authenticity of the evidence presented in court. Accordingly, the Dangerous Drugs Board (DDB) – the policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control tasked to develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy – has expressly defined *chain of custody* involving the dangerous drugs and other substances. x x x Given the high concern for the due recording of the authorized movements and custody of the seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment, the presentation as evidence in court of the dangerous drugs subject of and recovered during the illegal sale is material in every prosecution for the illegal sale of dangerous drugs. Without such dangerous drugs being presented as evidence, the State does not establish the *corpus delicti*, which, literally translated from Latin, refers to the *body of the crime,* or the actual commission by someone of the particular offense charged.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURE, TO BE EXCUSABLE, MUST HAVE TO BE JUSTIFIED BY THE STATE'S AGENTS THEMSELVES; NOT ESTABLISHED IN CASE AT BAR.— By way of exception, Republic Act No. 9165 and its IRR both state that the non-compliance with the procedures thereby delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs provided there were justifiable grounds for the non-compliance, and provided that the integrity of the evidence of the *corpus delicti* was preserved. But the non-compliance with the procedures, to be excusable, must have to be justified by the State's agents themselves. Considering that PO1 Dimla tendered no justification in court for the non-compliance with the procedures, the exception did not apply herein. The absolution of Gonzales should then follow, for we cannot deny that the observance of the chain of custody as defined by the law was the only assurance to him that his

incrimination for the very serious crime had been legitimate and insulated from either invention or malice. In this connection, the Court states that the unexplained non-compliance with the procedures for preserving the chain of custody of the dangerous drugs has frequently caused the Court to absolve those found guilty by the lower courts.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

The State, and no other party, has the responsibility to explain the lapses in the procedures taken to preserve the chain of custody of the dangerous drugs. Without the explanation by the State, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.

The Case

Alberto S. Gonzales, also known as *Takyo*, appeals the affirmance by the Court of Appeal (CA) of his conviction for violating Section 5, Article II, of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) handed down by the Regional Trial Court (RTC) in Malolos, Bulacan.

Antecedents

On June 16, 2003, Gonzales was formally charged in the RTC with a violation of Section 5, Article II, of Republic Act No. 9165 under the following information, to wit:

That on or about the 13th day of June, 2003, in the Municipality of San Rafael, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there

willfully, unlawfully, and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of methylamphetamine hydrochloride weighing 0.194 gram.

CONTRARY TO LAW.[1]

At arraignment, Gonzales entered a plea of *not guilty*.[2]

Version of the Prosecution

On June 12, 2003, an informant reported to the Provincial Drug Enforcement Group (PDEG) based in Camp General Alejo Santos, Malolos, Bulacan, that Gonzales was engaging in illegal drug pushing. On June 13, 2003, Police Chief Inspector Celedonio I. Morales planned to mount a buy-bust operation against Gonzales, and designated PO1 Eduardo B. Dimla, Jr. to act as the poseur buyer and PO2 Roel S. Chan to serve as the back-up/arresting officer. PO1 Dimla marked with his own initials "ED" each of the two ₱100.00 bills to be used as the buy-bust money, and then recorded the marked bills in the police blotter. At noontime of that same day, PO1 Dimla and PO2 Chan met with the informant at Krus na Daan, San Rafael, Bulacan, and the three of them proceeded to Banca-Banca, San Rafael, Bulacan, where the house of Gonzales was located. After PO2 Chan posted himself beyond possible view of the suspect, PO1 Dimla and the informant approached Gonzales, with the informant introducing PO1 Dimla to Gonzales as a buyer of *shabu* worth ₱200.00. Gonzales handed to PO1 Dimla a plastic sachet containing white substances, and in turn PO1 Dimla handed the two marked ₱100.00 bills to Gonzales. At that point, PO1 Dimla removed his cap, the pre-arranged signal, in reaction to which PO2 Chan then rushed forward and arrested Gonzales. PO1 Dimla then immediately marked the plastic sachet with his initials "ED".[3]

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[1] Records, p. 2.

[2] *Id.* at 20.

[3] *Id.* at 49-55.

The Bulacan Provincial Crime Laboratory Office certified that the contents the plastic sachet were 0.194 gram of *shabu*.[4]

Version of the Defense

Gonzales denied the accusation. He attested that he was only resting in front of his house in the afternoon of June 13, 2003, when five armed men approached and forced him inside his house; that they queried him on the whereabouts of his father, but he told them he did not know; that they prevented his mother from leaving the house to seek help from *barangay* officials; and that after searching his house, they brought him to Camp General Alejo Santos.[5]

Almarie, Gonzales' sister, corroborated his version. She narrated that in the afternoon of June 13, 2003, five armed men entered their house; that when she tried to follow them inside, they shut the door at her; that, however, she was able to see inside through the window; that she heard the men querying her brother on the whereabouts of their father; and that she reported the incident to the *barangay* chairman, but when she and the *barangay* chairman reached the house, the men and her brother were no longer there.[6]

Ruling of the RTC

Giving credence to the narrative of PO1 Dimla as the Prosecution's sole witness, the RTC convicted Gonzales of the crime charged, *viz*:

> **WHEREFORE**, the foregoing considered, this Court finds accused Alberto Gonzales *y* Santos @ Takyo **GUILTY beyond reasonable doubt** of the offense of Violation of Section 5, Article II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT AND A FINE OF ₱500,000.00**.

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[4] *Id.* at 8.

[5] *Id.* at 123-132.

[6] *Id.* at 147-158.

In the service of his sentence, accused who is a detention prisoner shall be credited with the entire period during which he had undergone preventive imprisonment.

The drugs subject matter of this case is hereby forfeited in favor of the government. The Branch Clerk of Court is hereby directed to turn over the same to the Dangerous Drugs Board for proper disposal thereof.

SO ORDERED.[7]

Ruling of the CA

Gonzales appealed, insisting that the RTC erred in finding him guilty as charged despite the Prosecution's failure to prove his guilt beyond reasonable doubt.

Finding no error on the part of the RTC, however, the CA affirmed the conviction of Gonzales,[8] to wit:

The sale of illegal drugs having been established beyond reasonable doubt, We are constrained to uphold petitioners' conviction. Evidently, the errors assigned and the arguments in support thereof turn on the issue of credibility. It is an entrenched rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who, unlike appellate magistrates, can weigh such testimony in the light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between the true and the false. There is nothing on record to justify the deviation from this rule. Moreover, the allegation of appellant that his constitutional right was violated cannot overcome the presumption of regularity in the performance of official duties enjoyed by the officers tasked to enforce the law. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies with respect to the operation deserve full faith and credit.

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[7] CA *rollo*, p.15.

[8] *Rollo*, pp. 2-11; penned by Associate Justice Magdangal M. De Leon, and concurred in by Associate Justice Rebecca De Guia-Salvador and Associate Justice Ricardo R. Rosario.

WHEREFORE, the appeal is **DISMISSED** and the **APPEALED** decision is **AFFIRMED**.

SO ORDERED.

Issues

Hence, Gonzales has appealed,[9] still insisting that the Prosecution did not prove his guilt for violation of Section 5, Article II of Republic Act No. 9165 beyond reasonable doubt.[10]

Ruling

The appeal has merit.

To secure a conviction of the accused charged with the illegal sale of dangerous drugs as defined and punished by Section 5, Article II of Republic Act No. 9165, the State must establish the concurrence of the following elements, namely: (*a*) that the transaction or sale took place between the accused and the poseur buyer; and (*b*) that the dangerous drugs subject of the transaction or sale is presented in court as evidence of the *corpus delicti*.[11]

Anent the second element, it is indispensable for the State to establish that the dangerous drugs subject of the transaction or sale and subsequently examined in the laboratory are the same dangerous drugs presented in court as evidence. The identity of the dangerous drugs is essential to proving the *corpus delicti*.[12] To achieve that end, Section 21 of Republic Act No. 9165 and Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165 (IRR) define the procedures to be followed by the apprehending officers in the seizure and custody of the dangerous drugs.

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[9] *Id.* at 88.

[10] *Id.* at 37.

[11] *People v. Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295, 303.

[12] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 631-632.

Section 21 of Republic Act No. 9165 relevantly provides:

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

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x x x x x x

Similarly, Section 21(a), IRR of Republic Act No. 9165 pertinently states:

x x x x x x x x x

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

x x x x x x x x x

These provisions obviously demand strict compliance, for only by such strict compliance may be eliminated the grave mischiefs of planting or substitution of evidence and the unlawful and malicious prosecution of the weak and unwary that they are intended to prevent. Such strict compliance is also consistent with the doctrine that penal laws shall be construed strictly against the Government and liberally in favor of the accused.[13]

The procedures underscore the value of establishing the chain of custody *vis-à-vis* the dangerous drugs. The Prosecution does not prove the violation of Section 5 of Republic Act No. 9165 either when the dangerous drugs are missing, or when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts about the authenticity of the evidence presented in court.[14] Accordingly, the Dangerous Drugs Board (DDB) – the policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control tasked to develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy[15] – has expressly defined *chain of custody* involving the dangerous drugs and other substances in the following terms in Section 1(b) of DDB Regulation No. 1, Series of 2002,[16] to wit:

b. "Chain of Custody" means the **duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt**

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[13] *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 267-268.

[14] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 356-357.

[15] Section 77, Republic Act No. 9165.

[16] *Guidelines On The Custody And Disposition Of Seized Dangerous Drugs, Controlled Precursors And Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of RA No. 9165 in relation to Section 81(b), Article IX of RA No. 9165.*

in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition;

Given the high concern for the due recording of the authorized movements and custody of the seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment, the presentation as evidence in court of the dangerous drugs subject of and recovered during the illegal sale is material in every prosecution for the illegal sale of dangerous drugs.[17] Without such dangerous drugs being presented as evidence, the State does not establish the *corpus delicti*, which, literally translated from Latin, refers to the *body of the crime*, or the actual commission by someone of the particular offense charged.[18] *Corpus delicti*, as the Court puts it in *People v. Roluna*,[19] is:

xxx the body or substance of the crime and, in its primary sense, refers to the fact that a crime has been actually committed. As applied to a particular offense, it means *the actual commission by someone of the particular crime charged.* **The *corpus delicti* is a compound fact made up of two (2) things, *viz*: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result.**[20]

The first stage in the chain of custody is the marking of the dangerous drugs or related items. Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other

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[17] *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 718.

[18] 9A Words & Phrases, p. 517, citing *Hilyard v. State*, 214 P. 2d 953, 28 A.L.R. 2d 961.

[19] G.R. No. 101797, March 24, 1994, 231 SCRA 446, 452.

[20] Citing 23 C.J.S. 623-624 (italicized portions are found in the original text, but bold emphasis is supplied).

identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence.[21] In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.

Although PO1 Dimla, the State's lone witness,[22] testified that he had marked the sachet of *shabu* with his own initials of "ED" following Gonzales' arrest,[23] he did not explain, either in his court testimony or in the joint affidavit of arrest, whether his marking had been done in the presence of Gonzales, or done immediately upon the arrest of Gonzales. Nor did he show by testimony or otherwise who had taken custody of the sachet of *shabu* after he had done his marking, and who had subsequently brought the sachet of *shabu* to the police station, and, still later on, to the laboratory. Given the possibility of just anyone bringing any quantity of *shabu* to the laboratory for examination, there is now no assurance that the quantity presented here as evidence was the same article that had been the subject of the sale by Gonzales. The indeterminateness of the identities of the individuals who could have handled the sachet of *shabu* after PO1 Dimla's marking broke the chain of custody, and tainted the integrity of the *shabu* ultimately presented as evidence to the trial court. We hardly need to reiterate that the chain of custody, which Section 1(b) of DDB Regulation No. 1, Series of 2002, *supra*,

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[21] *People v. Alejandro,* G.R. No. 176350, August 10, 2011, 655 SCRA 279, 289-290.

[22] Records, pp. 47-58.

[23] *Id.* at 54.

explicitly describes as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction," demands such record of movements and custody of seized items to include the identities and signatures of the persons who held temporary custody of the seized item, the dates and times when such transfers of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

A further review of the records underscores that poseur-buyer PO1 Dimla nowhere recalled in court that he and PO2 Chua had conducted the physical inventory and photographing of the *shabu* subject of the sale by Gonzales. In fact, in their joint affidavit of arrest,[24] PO1 Dimla and PO2 Chua did not mention any inventory and photographing. The omission can only mean that no such inventory and photographing were done by them. The omission of the inventory and photographing exposed another weakness of the evidence of guilt, considering that the inventory and photographing to be made in the presence of the accused or his representative, or within the presence of any representative from the media, Department of Justice or any elected official, who must sign the inventory, or be given a copy of the inventory, were really significant stages of the procedures outlined by the law and its IRR.

By way of exception, Republic Act No. 9165 and its IRR both state that the non-compliance with the procedures thereby delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs provided there were justifiable grounds for the non-compliance, and provided that the integrity of the evidence of the *corpus delicti* was preserved. But the non-compliance with the procedures, to be excusable, must have to be justified by the State's agents themselves. Considering that PO1 Dimla tendered no justification in court for the non-

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[24] Records, pp. 5-6.

compliance with the procedures, the exception did not apply herein. The absolution of Gonzales should then follow,[25] for we cannot deny that the observance of the chain of custody as defined by the law was the only assurance to him that his incrimination for the very serious crime had been legitimate and insulated from either invention or malice. In this connection, the Court states that the unexplained non-compliance with the procedures for preserving the chain of custody of the dangerous drugs has frequently caused the Court to absolve those found guilty by the lower courts.[26]

WHEREFORE, we **REVERSE** the decision promulgated on September 28, 2007 by the Court of Appeals; and **ACQUIT** appellant **ALBERTO GONZALES *y* SANTOS, a.k.a. *TAKYO,*** due to the failure of the Prosecution to establish his guilt beyond reasonable doubt.

ACCORDINGLY, we **DIRECT** the immediate release from detention of **ALBERTO GONZALES *y* SANTOS, a.k.a. *TAKYO*,** unless he is detained for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to forthwith implement this decision, and to report his action hereon to this Court within 10 days from receipt hereof.

No pronouncement on costs of suit.

SO ORDERED.

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

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[25] *People v. Relato*, G.R. No. 173794, January 18, 2012, 663 SCRA 260, 270-271.

[26] See, *e.g. People v. Robles*, G.R. No. 177220, April 24, 2009, 586 SCRA 647; *People v. Alejandro*, *supra*, note 21; *People v. Salonga*, G.R. No. 186390, October 2, 2009, 602 SCRA 783; *People v. Gutierrez*, G.R. No. 179213, September 3, 3009, 598 SCRA 92; *People v. Cantalejo*, G.R. No. 182790, April 24, 2009, 586 SCRA 777.

SECOND DIVISION

[G.R. No. 183058. April 3, 2013]

SPOUSES MONTANO T. TOLOSA and MERLINDA TOLOSA, *petitioners, vs.* **UNITED COCONUT PLANTERS BANK,** *respondent.*

SYLLABUS

1. **MERCANTILE LAW; ACT NO. 3135 (EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE); WRIT OF POSSESSION, ISSUANCE THEREOF; REQUIREMENTS.—** A writ of possession is simply an order by which the sheriff is commanded by the court to place a person in possession of a real or personal property. Under Section 7 of Act No. 3135, as amended, a writ of possession may be issued in favor of a purchaser in a foreclosure sale either (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond. Within the one-year redemption period, the purchaser may apply for a writ of possession by filing a petition in the form of an ex parte motion under oath, in the registration or cadastral proceedings of the registered property. The law requires only that the proper motion be filed, the bond approved and no third person is involved. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, entitlement to the writ of possession becomes a matter of right. In the latter case, the right of possession becomes absolute because the basis thereof is the purchaser's ownership of the property.

2. **ID.; ID.; ID.; THE MINISTERIAL DUTY OF THE COURT DOES NOT BECOME DISCRETIONARY UPON THE FILING OF A COMPLAINT QUESTIONING THE MORTGAGE OR ITS FORECLOSURE; RATIONALE.—** The rule is likewise settled that the proceeding in a petition for a writ of possession is *ex-parte* and summary in nature. As one brought for the benefit of one party only and without notice by the court to any person adverse of interest, it is a judicial proceeding wherein relief is granted without giving the person

against whom the relief is sought an opportunity to be heard. The issuance of the writ of possession is, in turn, a ministerial function in the exercise of which trial courts are not granted any discretion. Since the judge to whom the application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure, it has been ruled that the ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage. Corollarily, any question regarding the validity of the extrajudicial foreclosure sale and the resulting cancellation of the writ may, likewise, be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135. x x x Given the ministerial nature of the RTC's duty to issue the writ of possession after the purchaser has consolidated its ownership, it has been ruled, moreover, that any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as justification for opposing the issuance of the writ. More to the point, a pending action for annulment of mortgage or foreclosure does not stay the issuance of a writ of possession. Regardless of the pendency of such suit, the purchaser remains entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case.

3. **ID.; ID.; ID.; THE MINISTERIAL DUTY OF THE REGIONAL TRIAL COURT REMAINS UNTIL THE ISSUES RAISED IN THE ANNULMENT OF THE WRIT ARE SETTLED BY THE COURT OF COMPETENT JURISDICTION; JURISPRUDENTIAL EXCEPTIONS; NOT APPLICABLE IN CASE AT BAR.—** [T]he issuance of the writ of possession remains the ministerial duty of the RTC until the issues raised in the annulment case are, once and for all, decided by a court of competent jurisdiction. To be sure, the foregoing rule admits of a few jurisprudential exceptions. In *Cometa v. Intermediate Appellate Court*, the judgment debtor filed a separate action to invalidate the auction sale of properties approximately worth ₱500,000.00 for the unusually low price of ₱57,396.85. Citing equitable considerations, this Court upheld the deferment of the issuance of the writ of possession sought by the judgment creditor on the ground that the validity of the auction sale is an issue that requires pre-emptive resolution to avoid injustice. In the case of *Barican v. Intermediate Appellate Court*, on

the other hand, the Court ruled that the duty ceases to be ministerial where the property mortgaged had been, in the meantime, sold to third parties who had assumed the mortgagor's indebtedness and took possession of the property. In *Sulit v. Court of Appeals*, the mortgagee's failure to deliver the surplus from the proceeds of the foreclosure sale equivalent to at least 40% of the mortgage debt was likewise found sufficient justification for the non-issuance of the writ of possession sought.

APPEARANCES OF COUNSEL

Stephen Arceño for petitioners.
Jose Barcelon and Associates for respondent.

D E C I S I O N

PEREZ, *J.*:

A purchaser at an extrajudicial foreclosure sale is entitled to a writ of possession as a matter of right after consolidation of ownership for failure of the mortgagor to redeem the property.[1] The exceptions to this rule are at the heart of this petition for review filed pursuant to Rule 45 of the *Rules of Court*, primarily assailing the 31 May 2007 Decision[2] rendered by the Nineteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 00593,[3] the decretal portion of which states:

WHEREFORE, in view of all the foregoing premises, the Orders dated December 1, 2004, and January 31, 2005, issued by the Honorable public respondent are hereby ANNULLED and SET ASIDE, and a new one is issued granting the issuance of writ of possession in favor of petitioner UCPB for the properties now

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[1] *Lam v. Metropolitan Bank and Trust Company*, G.R. No. 178881, 18 February 2008, 546 SCRA 200, 206.

[2] Penned by CA Associate Justice Stephen C. Cruz and concurred in by Associate Justices Isaias P. Dicdican and Antonio L. Villamor.

[3] CA *rollo*, 31 May 2007 Decision in CA-G.R. SP No. 00593, pp. 226-235.

covered by TCT Nos. T-30403 and T-30404 and Tax Declaration Nos. ARP/TD No. 2054 (PIN 038-12-006-04-050) and ARP/TD No. 2056 (PIN 038-12-006-04-051).

SO ORDERED.[4]

The Facts

On 7 April 1997, petitioners Spouses Montano and Merlinda Tolosa (***Spouses Tolosa***) entered into a Credit Agreement with respondent United Coconut Planters Bank (***UCPB***) for the purpose of availing of the latter's credit facilities.[5] To secure their credit availments, the Spouses Tolosa executed deeds of real estate mortgage over four properties in Barangay Caticlan, Malay, Aklan, which were registered and/or declared for taxation purposes in their names under the following certificates of title and/or tax declarations, to wit: (a) Transfer Certificate of Title (TCT) Nos. T-23589; (b) Original Certificate of Title (OCT) No. P-14743; (c) Tax Declaration No. ARP-TD 1561 (038-12-006-04-051); and Tax Declaration No. ARP-TD 93-006-0362 (038-12-006-04-050).[6] For failure of the Spouses Tolosa to pay their principal obligation which amounted to ₱13,300,000.00, exclusive of interests, penalties and other charges, UCPB foreclosed the mortgage on the aforesaid realties and filed a petition for the extra-judicial sale thereof with the Office of the Clerk of Court and *Ex-Officio* Sheriff of Kalibo, Aklan on 22 October 1999.[7]

After the due notice and publication, the mortgaged properties were sold on 4 January 2000 at a public auction where UCPB tendered the highest bid of ₱17,240,000.00. The proceeds of the sale were credited towards the partial satisfaction of the Spouses Tolosa's mortgage obligation which, inclusive of interests,

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[4] *Id.* at 234.

[5] Records, CAD Case No. 3028, Parties' 7 April 1997 Credit Agreement, pp. 38-44.

[6] Deeds of Real Estate Mortgage, *id.* at 57-67.

[7] UCPB's 9 August 1999 Petition for Sale Under Act No. 3135, As Amended, *id.* at 53-55.

penalties and other charges, was pegged at ₱24,253,847.64.[8] Issued the corresponding certificate of sale,[9] UCPB caused the same to be registered with the Office of the Register of Deeds of Aklan on 5 January 2000.[10] For failure of the Spouses Tolosa to exercise their right of redemption within the prescribed one year period, UCPB went on to consolidate its ownership over the subject realties on 22 January 2001.[11] With the cancellation of those in the name of the Spouses Tolosa, the following certificates of title and tax declarations were subsequently issued in the name of UCPB, to wit: (a) TCT No. T-30403; (b) TCT No. T-30404; (c) Tax Declaration No. ARP-TD 2054 (038-12-006-04-050); and (d) Tax Declaration No. ARP-TD 2056 (038-12-006-04-051).[12]

On 2 September 2004, UCPB filed an *ex-parte* petition for issuance of a writ of possession in the cadastral case docketed as Cadastral Case No. 3028 before the Regional Trial Court (***RTC***), Branch 5, Kalibo Aklan.[13] Notified of the filing of the petition,[14] the Spouses Tolosa filed their 8 November 2004 Opposition, calling the RTC's attention to the pendency of the complaint for declaration of nullity of promissory notes, foreclosure of mortgage and certificate of sale as well as accounting and damages which they instituted against UCPB. Docketed as Civil Case No. 6180 before Branch 8 of the RTC, the complaint alleged that the Spouses Tolosa were misled by UCPB into signing the Credit Agreement, Promissory Notes and Real Estate Mortgage sued upon. In addition to not releasing the full amount of their loans, UCPB was likewise faulted for supposedly failing to disclose the actual interests it charged and for causing the

[8] Spouses Tolosa's 16 June 2000 Letter, *id.* at 72.

[9] 4 January 2000 Certificate of Sale, *id.* at 6-8.

[10] *Id.* at 163.

[11] UCPB's 22 January 2001 Affidavit of Consolidation, *id.* at 163-164.

[12] UCPB's TCTs and Tax Declarations, *id.* at 9-12.

[13] UCPB's 30 July 2004 *Ex-Parte* Petition, *id.* at 2-5.

[14] RTC's 23 September 2004 Notice of hearing, *id.* at 16.

extrajudicial foreclosure of the mortgage despite the Spouses Tolosa's overpayment of their loans.[15] Claiming that there was *prima facie* showing of invalidity of their mortgage obligation, the foreclosure of the mortgage and the sale of their properties, the Spouses Tolosa prayed that the issuance of the writ of possession be held in abeyance and that UCPB's petition therefor be consolidated with Civil Case No. 6180.[16]

On 1 December 2004, the RTC issued an order, holding in abeyance the issuance of the writ of possession sought by UCPB. Citing equity and substantial justice as reasons for its disposition, the RTC ruled that the pendency of Civil Case No. 6180 necessitated the suspension of the grant of UCPB's petition since there was a possibility that the latter's foreclosure of the mortgage may be adjudged violative of the Spouses Tolosa's rights as mortgagors. While conceding that the issuance of a writ of possession is ministerial as a general rule, the RTC held that said function ceases to be of said nature where the grant of the writ "will prejudice another pending case for the nullification of the auction sale" and "might work inequity and injustice to mortgagors."[17] With its motion for reconsideration of the foregoing order[18] further denied for lack of merit in the RTC's Order dated 31 January 2005,[19] UCPB filed its Rule 65 petition for *certiorari* which was docketed as CA-G.R. SP No. 00593 before the CA.[20]

On 31 May 2007, the CA rendered the herein assailed decision, nullifying the RTC's 1 December 2004 Decision and granting the writ of possession sought by UCPB. Finding that the ministerial nature of the issuance of a writ of possession left no

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[15] Spouses Tolosa's 29 May 2002 Amended Complaint, *id.* at 24-34.

[16] Spouses Tolosa's 8 November 2004 Opposition, *id.* at 20-23.

[17] RTC's 1 December 2004 Order, *id.* at 75-76.

[18] UCPB's 28 December 2004 Motion for Reconsideration, *id.* at 84-87.

[19] RTC's 31 January 2005 Order, *id.* at 88.

[20] CA *rollo*, CA-G.R. SP No. 00593, UCPB's 14 April 2005 Petition for *Certiorari*, pp. 2-11.

discretion on the part of the RTC insofar as the grant of UCPB's application is concerned, the CA ruled that questions regarding the validity of the foreclosure sale as well as the propriety of the grant of writ can be raised by the Spouses Tolosa in the same proceedings pursuant to Section 8 of Act 3135. The fact that the Credit Agreement, Promissory Notes and Real Estate Mortgage executed by the Spouses Tolosa had yet to be declared invalid also led the CA to enunciate that the mere pendency of Civil Case No. 6180 cannot defeat the right to a writ of possession the law grants to UCPB as the absolute and registered owners of the subject realties.[21] The Spouses Tolosa's motions for reconsideration[22] of this decision were denied for lack of merit in the CA's second assailed Resolution dated 21 May 2008,[23] hence, this petition.

The Issues

The Spouses Tolosa seek the reversal of the CA's assailed decision and resolution on the following grounds, to wit:

I. THE CA REVERSIBLY ERRED IN NOT FINDING THAT THE *PRIMA FACIE* NULLITY OF THE MORTGAGE OBLIGATION AND THE FORECLOSURE SALE JUSTIFIED THE RTC'S ORDER TO HOLD IN ABEYANCE THE ISSUANCE OF THE WRIT OF POSSESSION SOUGHT BY UCPB.

II. THE CA REVERSIBLY ERRED IN ORDERING THE GRANT OF THE WRIT OF POSSESSION SOUGHT BY UCPB DESPITE THE RULE THAT THE SURPLUS IN THE BID PRICE SHOULD FIRST BE PAID TO THE MORTGAGOR BEFORE HE CAN BE DEPRIVED OF POSSESSION OF THE PROPERTY MORTGAGED.[24]

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[21] CA's 31 May 2007 Decision, *id.* at 226-235.

[22] Spouses Tolosa's 22 June 2007 Motions for Reconsideration, *id.* at 242-255; 280-297.

[23] CA's 21 May 2008 Resolution, *id.* at 343-345.

[24] *Rollo*, Spouses Tolosa's 21 July 2008 Petition for Review, pp. 20-21.

The Court's Ruling

The petition is bereft of merit.

A writ of possession is simply an order by which the sheriff is commanded by the court to place a person in possession of a real or personal property.[25] Under Section 7 of Act No. 3135, as amended, a writ of possession may be issued in favor of a purchaser in a foreclosure sale either (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond. Within the one-year redemption period, the purchaser may apply for a writ of possession by filing a petition in the form of an *ex parte* motion under oath,[26] in the registration or cadastral proceedings of the registered property.[27] The law requires only that the proper motion be filed, the bond approved and no third person is involved.[28] After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, entitlement to the writ of possession becomes a matter of right.[29] In the latter case, the right of possession becomes absolute because the basis thereof is the purchaser's ownership of the property.[30]

The rule is likewise settled that the proceeding in a petition for a writ of possession is *ex-parte* and summary in nature.[31]

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[25] *Motos v. Real Bank (A Thrift Bank), Inc.*, G.R. No. 171386, 17 July 2009, 593 SCRA 216, 224.

[26] *Sagarbarria v. Philippine Business Bank*, G.R. No. 178330, 23 July 2009, 593 SCRA 645, 651-652.

[27] *Metropolitan Bank & Trust Company v. Santos*, G.R. No. 157867, 15 December 2009, 608 SCRA 222, 233.

[28] *Motos v. Real Bank (A Thrift Bank), Inc.*, *supra*, note 25 at 225 citing *Metropolitan Bank and Trust Company v. Tan*, G.R. No. 159934, 26 June 2008, 555 SCRA 502, 512.

[29] *Spouses Alex and Julie Lam v. Metropolitan Bank & Trust Company*, G.R. No. 178881, 18 February 2008, 546 SCRA 200, 206.

[30] *Torbela v. Rosario*, G.R. No. 140528, 7 December 2011, 661 SCRA 633, 683.

[31] *Fernandez v. Espinoza*, G.R. No. 156421, 14 April 2008, 551 SCRA 136, 150.

As one brought for the benefit of one party only and without notice by the court to any person adverse of interest, it is a judicial proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.[32] The issuance of the writ of possession is, in turn, a ministerial function in the exercise of which trial courts are not granted any discretion.[33] Since the judge to whom the application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure,[34] it has been ruled that the ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage.[35] Corollarily, any question regarding the validity of the extrajudicial foreclosure sale and the resulting cancellation of the writ may, likewise, be determined in a subsequent proceeding as outlined in Section 8[36] of Act No. 3135.[37]

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[32] *Oliveros v. The Hon. Presiding Judge, RTC, Branch 24, Biñan, Laguna*, G.R. No. 165963, 3 September 2007, 532 SCRA 109, 119.

[33] *Esperidion v. Court of Appeals*, 523 Phil. 664, 667-668.

[34] *Idolor v. Court of Appeals*, 490 Phil. 808, 814 (2005).

[35] *Metropolitan Bank and Trust Company v. Tan*, G.R. No. 159934, 26 June 2008, 555 SCRA 502, 512.

[36] SECTION 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

[37] *Cua Lai Chu v. Laqui*, G.R. No. 169190, 11 February 2010, 612 SCRA 227, 235.

Gauged from the foregoing principles, we find that the CA committed no reversible error in ordering the issuance of the writ of possession sought by UCPB. The record shows that UCPB caused the extrajudicial foreclosure of the mortgage on the subject realties as a consequence of the Spouses Tolosa's default on their mortgage obligation. As the highest bidder at the 4 January 2000 foreclosure sale, UCPB consolidated its ownership on 22 January 2001 or upon failure of the Spouses Tolosa to exercise their right of redemption within the one-year period therefor prescribed. Subsequent to the issuance of the certificates of title and tax declarations over the same properties in its name, UCPB complied with the requirements under Act 3135 by filing its *ex-parte* petition for issuance of a writ of possession before the RTC on 2 September 2004. Since UCPB had already become the absolute and registered owner of said properties, the CA correctly ruled that it was the ministerial duty of the RTC to issue the writ of possession in favor of the former.

In urging the reversal of the assailed decision and resolution, the Spouses Tolosa argue that the *prima facie* merit of their complaint in Civil Case No. 6180 justified, at the very least, the deferment of the issuance of the writ of possession. For this purpose, they call our attention to the supposed fact that UCPB not only failed to release the entirety of the proceeds of their loans but also violated Republic Act No. 3765[38] by failing to specify the rates of interest it charged on their mortgage obligation. Insisting that they were misled by UCPB into signing the Credit Agreement, Promissory Notes and Real Estate Mortgage which they impugned in Civil Case No. 6180, the Spouses Tolosa also claim that, discounting the illegal interests and charges imposed thereon, their mortgage obligation only amounted to ₱14,041,000.00 and was more than amply discharged by the ₱17,240,000.00 proceeds realized at the foreclosure sale.

Given the ministerial nature of the RTC's duty to issue the writ of possession after the purchaser has consolidated its

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[38] *The Truth in Lending Act.*

ownership, it has been ruled, moreover, that any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as justification for opposing the issuance of the writ.[39] More to the point, a pending action for annulment of mortgage or foreclosure does not stay the issuance of a writ of possession.[40] Regardless of the pendency of such suit, the purchaser remains entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case.[41] Otherwise stated, the issuance of the writ of possession remains the ministerial duty of the RTC until the issues raised in the annulment case are, once and for all, decided by a court of competent jurisdiction.[42]

To be sure, the foregoing rule admits of a few jurisprudential exceptions. In *Cometa v. Intermediate Appellate Court*,[43] the judgment debtor filed a separate action to invalidate the auction sale of properties approximately worth ₱500,000.00 for the unusually low price of ₱57,396.85. Citing equitable considerations, this Court upheld the deferment of the issuance of the writ of possession sought by the judgment creditor on the ground that the validity of the auction sale is an issue that requires pre-emptive resolution to avoid injustice. In the case of *Barican v. Intermediate Appellate Court*,[44] on the other hand, the Court ruled that the duty ceases to be ministerial where the property mortgaged had been, in the meantime, sold to third parties who had assumed the mortgagor's indebtedness and took possession of the property. In *Sulit v. Court of Appeals*,[45] the mortgagee's

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[39] *Fortaleza v. Lapitan*, G.R. No. 178288, 15 August 2012, 678 SCRA 469, 484.

[40] *Spouses Rempson & Milagros Samson v. Judge Mauricio M. Rivera*, G.R. No. 154355, 20 May 2004, 428 SCRA 759, 769.

[41] *Torbela v. Spouses Andres Rosario and Lena Duque-Rosario*, *supra*, note 30.

[42] *Fortaleza v. Lapitan*, *supra*, note 39 at 485.

[43] 235 Phil. 569 (1987).

[44] 245 Phil. 316 (1988).

[45] 335 Phil. 914 (1997).

failure to deliver the surplus from the proceeds of the foreclosure sale equivalent to at least 40% of the mortgage debt was likewise found sufficient justification for the non-issuance of the writ of possession sought.

The Spouses Tolosa invoked the Court's ruling in *Barican* which is not, however, on all fours with the case at bench. Aside from the fact that the Spouses Tolosa appear to have remained in possession of the subject realties, there is no showing in the record these properties have, in the meantime, been acquired or transferred to third persons whose adverse possession and/ or interest would have justified the non-issuance of the writ of possession sought by UCPB. Absent showing that the mortgaged properties had been sold at an unusually low price or that the foreclosure sale had been attended with irregularities, the ruling in *Cometa* is also of little utility to the Spouses Tolosa's cause. Despite the latter's insistence on the supposed *prima facie* invalidity of their mortgage obligation and the foreclosure proceedings, we find that the CA correctly steered clear from said issues since they have yet to be definitively resolved in Case No. 6180.

The Spouses Tolosa are similarly out on a limb in relying on *Sulit* which was premised on the existence of surplus from the proceeds realized in the foreclosure sale. Considering that their mortgage obligation was computed by UCPB at an aggregate of ₱24,253,847.64, inclusive of interests, penalties and other charges, the ₱17,240,000.00 realized at the foreclosure sale of the properties mortgaged clearly left no surplus to speak of in the case. The Spouses Tolosa would, of course, have us believe that, without the invalid interests and charges imposed by the UCPB, their obligation would have only amounted to ₱14,041,000.00 and would have meant a surplus of ₱3,199,000.00 from the proceeds realized at the foreclosure sale.[46] Like the matter of the invalidity of their mortgage obligation to which it is inextricably linked, however, this issue has yet to be resolved in Case No. 6180 and, for said reason, cannot justify the non-issuance of the writ of possession in favor of UCPB.

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[46] *Rollo*, pp. 38-39.

At any rate, the exception made in *Sulit* had been held inapplicable where, as here, the period to redeem has already expired or when the ownership over the property had already been consolidated in favor of the mortgagee-purchaser.[47] Having consolidated its ownership over the subject properties after the Spouses Tolosa failed to exercise their right of redemption, UCPB was correctly found by the CA entitled to a writ of possession. Since any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing a writ of possession,[48] the RTC's ministerial duty to issue the same writ was by no means rendered discretionary by the pendency of Civil Case No. 6180. While there are, concededly, exceptions to the foregoing rules as above-discussed, none of them was adequately established in the Spouses Tolosa's petition.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. Accordingly, the CA's assailed 31 May 2007 Decision and 21 May 2008 Resolution are **AFFIRMED** ***in toto.***

SO ORDERED.

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

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[47] *Metropolitan Bank & Trust Co. v. Lamb Construction Consortium Corporation*, G.R. No. 170906, 27 November 2009, 606 SCRA 159, 171, citing *Saguan v. Philippine Bank of Communications*, G.R. No. 159882, 23 November 2007, 538 SCRA 390.

[48] *Torbela v. Spouses Rosario*, *supra* note 30.

[*] Per Special Order No. 1437 dated 25 March 2013.

FIRST DIVISION

[G.R. No. 195317. April 3, 2013]

SPOUSES WELTCHIE RAYMUNDO and EMILY RAYMUNDO, *petitioners, vs.* **LAND BANK OF THE PHILIPPINES, substituted by PHILIPPINE DISTRESSED ASSET ASIA PACIFIC [SPV-AMC] 2, INC.,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PLEADINGS; AMENDED COMPLAINT; MUTUAL AGREEMENT OF THE PARTIES TO ALLOW ITS ADMISSION, JUSTIFIED.— The case below is still at its pre-trial stage. Indeed, the inordinate delay is no longer justified by the petitioners' persistence to have their amended complaint admitted. It is incumbent that trial should continue to settle the issues between the parties once and for all. Court litigation which is primarily a search for truth must proceed; and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret out such truth. Concomitantly, neither the parties nor their lawyers should be allowed to dictate the pace by which a case proceeds. The Judge shall see to it that the proceedings are expedited by all means available to him, including the issuance of orders to force the parties to go to trial if a settlement could not be reached within a reasonable time. With the mutual agreement of the parties to allow the admission of the amended complaint, the Court finds no bar for the proceedings in the RTC to continue.

APPEARANCES OF COUNSEL

Stephen C. Arceño for petitioners.
Rene Gonzales II for respondent.
Caguioa & Gatmaytan for Philippine Distressed Asset Asia Pacific (SPV-AMC) 2, Inc.

RESOLUTION

REYES, *J.*:

The instant petition[1] was filed by Spouses Weltchie Raymundo and Emily Raymundo (petitioners) questioning the Decision[2] dated September 16, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 79945 which upheld the Order[3] dated May 9, 2003 of the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 7, in Civil Case No. 5613, denying the petitioners' Motion for Leave to File Amended and Supplemental Complaint and for Admission of the Same[4] and the Order[5] dated July 18, 2003 denying the motion for reconsideration thereof.

The antecedents are as follows:

Sometime in 1996, the petitioners availed of the loan packages offered by the Land Bank of the Philippines (LBP) for the development of their resort complex in Kalibo, Aklan. As security thereof, they executed real and chattel mortgages which were later foreclosed due to their failure to pay loan obligations.

On October 16, 1998, the petitioners filed a Complaint[6] for annulment of loan documents, to which the LBP moved to dismiss on the ground that the said complaint did not state a cause of action.[7]

The instant case was in its pre-trial stage when the petitioners requested for the suspension of proceedings, manifesting that they were exploring the possibility of either taking out the loan

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[1] *Rollo*, pp. 11-21.

[2] Penned by Associate Justice Florito S. Macalino, with Associate Justices Manuel M. Barrios and Samuel H. Gaerlan, concurring; *id.* at 23-30.

[3] Rendered by Judge Virgilio Luna Paman; *id.* at 65-66.

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

[5] *Id.* at 71-73.

[6] *Id.* at 34-37.

[7] *Id.* at 39.

from LBP or settle the case altogether. The petitioners further manifested that within 30 days, they would file the appropriate pleading either for the withdrawal of the case or for the continuation of proceedings. On June 28, 2001, the RTC issued an order archiving the instant case.[8]

On April 9, 2002, the petitioners filed the Motion for Leave to File Amended and Supplemental Complaint and for Admission of the Same.

Finding that the motion was merely intended to delay the proceedings, the RTC denied the same in the Order[9] dated May 9, 2003. Moreover, the RTC stated that:

> [C]omparing the original complaint with that of the amended complaint, it is very apparent that plaintiffs are trying to change their cause of action from Annulment of [L]oan documents to Specific Performance. The consistent ruling is that amendment of pleading may be resorted to, subject to the condition that amendment sought do [sic] not alter the cause of action of the original complaint (*Guzman-Castillo vs. CA*, 159 SCRA 220).
>
> WHEREFORE, premises considered, the Motion to File Amended and Supplemental Complaint is DENIED for lack of merit. This case is ordered de-archived [sic] and restored to the calendar of the Court.
>
> The continuation of the pre-trial is set on JUNE 16, 2003 at 10:30 A.M.
>
> SO ORDERED.[10]

Denying the petitioners' motion for reconsideration thereof in the Order[11] dated July 18, 2003, the RTC even added that while it realized that a "change of cause of action was already omitted as a ground to dismiss;"[12] it was, nonetheless, not convinced to reconsider its previous order because:

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[8] *Id.* at 123.

[9] *Id.* at 65-66.

[10] *Id.*

[11] *Id.* at 71-73.

[12] *Id.* at 72.

[B]ased on the record of postponements (November 13, 2000, January 17, 2001, March 7, 2001, June 28, 2001) all at the instance of the plaintiffs for various pretexts that they are negotiating with the defendant Bank, this Court reiterates it has no doubt that the filing of the Motion for Leave to File Amended and Supplemental Complaint is just to delay the proceedings.[13]

Aggrieved, the petitioners filed a petition for *certiorari*[14] under Rule 65 before the CA. On September 16, 2009, the CA rendered the assailed decision affirming the orders of the RTC. The motion for reconsideration was likewise denied; hence, this petition.

After being required to file a Comment,[15] the LBP and Philippine Distressed Asset Asia Pacific (SPV-AMC) 2, Inc., (herein referred to as PDAS2), a corporation organized and existing under and pursuant to the laws of the Republic of the Philippines, filed a Joint Manifestation and Motion for Substitution of Parties[16] on July 13, 2011 alleging in the main that pursuant to Republic Act (R.A.) No. 9182,[17] as amended by R.A. No. 9343, LBP absolutely sold, assigned and conveyed to PDAS2, on a "without recourse" basis, all of LBP's rights, title and interests, in all obligations arising out of or in connection with, or directly or indirectly related to the acquired subject property, as evidenced by the Deed of Absolute Sale dated January 14, 2009 executed by them. Thus, LBP prayed that it be substituted by PDAS2 in this case.[18]

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

[14] *Id.* at 74-80.

[15] Resolution dated March 30, 2011; *id.* at 83.

[16] *Id.* at 85-89.

[17] AN ACT GRANTING TAX EXEMPTIONS AND FEE PRIVILEGES TO SPECIAL PURPOSE VEHICLE WHICH ACQUIRE OR INVEST IN NON-PERFORMING ASSETS, SETTING THE REGULAR FRAMEWORK THEREFORE, AND FOR OTHER PURPOSES.

[18] *Rollo*, pp. 126-127.

In the Resolution[19] dated October 10, 2011, the Court noted and granted the aforesaid motion and thereby directed the substitution of PDAS2 as the real party-in-interest. The Court also noted the Comment subsequently filed by the respondents and required the petitioners to file a reply thereto.

On February 3, 2012, PDAS2 filed a Manifestation, Motion to Withdraw, and Motion to Resolve[20] manifesting its withdrawal of its opposition to the admission of the amended and supplemental complaint of the petitioners, and praying for the withdrawal of its comment to the instant petition. According to PDAS2, the proceedings involving the admission of the amended and supplemental complaint have caused the suspension of proceedings more than eight years ago, not only of Civil Case No. 5613,[21] but also that of Civil Case No. 7398[22] which were consolidated by the RTC per Order[23] dated June 21, 2006. PDAS2 posits that "[t]he delay occasioned by the proceedings involving the admission of the Amended and Supplemental Complaint has been inordinate and no longer justifies opposing the Petition for Review."[24]

On February 6, 2012, PDAS2 filed a Motion to Reopen[25] repleading its position in its Manifestation, Motion to Withdraw, and Motion to Resolve and prays for: (a) the reopening of Civil Cases Nos. 5613 and 7398; and (b) resuming the conduct of pre-trial in Civil Case No. 5613.[26]

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[19] *Id.* at 124-125.

[20] *Id.* at 135-138.

[21] The instant Civil Case filed by the petitioners seeking the annulment of the loan extended to them.

[22] A Petition for the issuance of a writ of possession filed by LBP against the petitioners; *rollo,* p. 146.

[23] *Id.* at 139.

[24] *Id.* at 136.

[25] *Id.* at 145-150.

[26] *Id.* at 148.

On June 27, 2012, the Court issued a Resolution[27] noting the Motion to Reopen and resolved to await the reply of the petitioners. A Second Motion to Resolve[28] was subsequently filed by PDAS2.

On August 31, 2012, the petitioners filed their reply stating that they join PDAS2 in praying for the resumption of the conduct of the pre-trial in Civil Case No. 5613, and further prays that their motion for admission of amended and supplemental complaint be now granted since PDAS2 has withdrawn its opposition thereto.[29]

The Court also notes the respondent's withdrawal of its opposition to the admission of the petitioners' amended and supplemental complaint, just so the proceedings before the RTC which have been suspended for more than eight years may continue. As the records show, the case below is still at its pre-trial stage. Indeed, the inordinate delay is no longer justified by the petitioners' persistence to have their amended complaint admitted. It is incumbent that trial should continue to settle the issues between the parties once and for all. Court litigation which is primarily a search for truth must proceed; and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret out such truth.[30] Concomitantly, neither the parties nor their lawyers should be allowed to dictate the pace by which a case proceeds. The Judge shall see to it that the proceedings are expedited by all means available to him, including the issuance of orders to force the parties to go to trial if a settlement could not be reached within a reasonable time.[31]

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

[28] *Id.* at 166-169.

[29] *Id.* at 177-178.

[30] *Mortel v. Kerr,* G.R. No. 156296, November 12, 2012.

[31] *See* Court Resolution dated July 26, 2006 in A.M. No. RTJ-04-1829, *Re: Corazon Vda. De Lopez v. Judge Roberto S. Javellana, Presiding Judge, Regional Trial Court, Branch 59, San Carlos City, Negros Occidental.*

With the mutual agreement of the parties to allow the admission of the amended complaint, the Court finds no bar for the proceedings in the RTC to continue.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. SP No. 79945 dated September 16, 2009 is **SET ASIDE**. The Regional Trial Court of Kalibo, Aklan, Branch 7 is hereby **DIRECTED to ADMIT** the said Amended and Supplemental Complaint, and to proceed with the proceedings in Civil Case Nos. 5613 and 7398 with utmost dispatch.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 197291. April 3, 2013]

DATU ANDAL AMPATUAN, JR., *petitioner, vs.* **SEC. LEILA DE LIMA, as Secretary of the Department of Justice, CSP CLARO ARELLANO, as Chief State Prosecutor, National Prosecution Service, and PANEL OF PROSECUTORS OF THE MAGUINDANAO MASSACRE, headed by RSP PETER MEDALLE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CRIMES; THE PUBLIC PROSECUTORS ARE SOLELY RESPONSIBLE FOR THE DETERMINATION OF THE AMOUNT OF EVIDENCE SUFFICIENT TO ESTABLISH PROBABLE CAUSE TO JUSTIFY THE FILING OF

APPROPRIATE CRIMINAL CHARGES AGAINST A RESPONDENT; EXCEPTION.— The prosecution of crimes pertains to the Executive Department of the Government whose principal power and responsibility are to see to it that our laws are faithfully executed. A necessary component of the power to execute our laws is the right to prosecute their violators. The right to prosecute vests the public prosecutors with a wide range of discretion – the discretion of what and whom to charge, the exercise of which depends on a smorgasbord of factors that are best appreciated by the public prosecutors. The public prosecutors are solely responsible for the determination of the amount of evidence sufficient to establish probable cause to justify the filing of appropriate criminal charges against a respondent. Theirs is also the quasi-judicial discretion to determine whether or not criminal cases should be filed in court. Consistent with the principle of separation of powers enshrined in the Constitution, the Court deems it a sound judicial policy not to interfere in the conduct of preliminary investigations, and to allow the Executive Department, through the Department of Justice, exclusively to determine what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. By way of exception, however, judicial review may be allowed where it is clearly established that the public prosecutor committed grave abuse of discretion, that is, when he has exercised his discretion "in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law."

2. **ID.; ID.; STATE WITNESS; TWO MODES BY WHICH A PARTICIPANT IN THE COMMISSION OF CRIME MAY BECOME A STATE WITNESS.—** The two modes by which a participant in the commission of a crime may become a state witness are, namely: (a) by discharge from the criminal case pursuant to Section 17 of Rule 119 of the *Rules of Court*; and (b) by the approval of his application for admission into the Witness Protection Program of the DOJ in accordance with Republic Act No. 6981 (*The Witness Protection, Security and Benefit Act*). These modes are intended to encourage a person who has witnessed a crime or who has knowledge of its commission to come forward and testify in court or quasi-

judicial body, or before an investigating authority, by protecting him from reprisals, and shielding him from economic dislocation. These modes, while seemingly alike, are distinct and separate from each other.

3. ID.; ID.; ID.; CONDITIONS REQUIRED TO BE ASCERTAINED BY THE TRIAL COURT.— Under Section 17, Rule 119 of the *Rules of Court*, the discharge by the trial court of one or more of several accused with their consent so that they can be witnesses for the State is made upon motion by the Prosecution before resting its case. The trial court shall require the Prosecution to present evidence and the sworn statements of the proposed witnesses at a hearing in support of the discharge. The trial court must ascertain if the following conditions fixed by Section 17 of Rule 119 are complied with, namely: (*a*) there is absolute necessity for the testimony of the accused whose discharge is requested; (*b*) there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (*c*) the testimony of said accused can be substantially corroborated in its material points; (*d*) said accused does not appear to be most guilty; and (*e*) said accused has not at any time been convicted of any offense involving moral turpitude. On the other hand, Section 10 of Republic Act No. 6981 provides: x x x a. the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code or its equivalent under special laws; x x x Save for the circumstance covered by paragraph (*a*) of Section 10, *supra*, the requisites under both rules are essentially the same. Also worth noting is that an accused discharged from an information by the trial court pursuant to Section 17 of Rule 119 may also be admitted to the Witness Protection Program of the DOJ provided he complies with the requirements of Republic Act No. 6981.

4. ID.; ID.; ID.; ID.; DISCHARGE OF THE CO-ACCUSED TO BECOME A STATE WITNESS UNDER THE TWO MODES, DISTINGUISHED.— A participant in the commission of the crime, to be discharged to become a state witness pursuant to Rule 119, must be one charged as an accused in the criminal case. The discharge operates as an acquittal of the discharged accused and shall be a bar to his future prosecution for the same offense, unless he fails or refuses to testify against his

co-accused in accordance with his sworn statement constituting the basis for his discharge. The discharge is expressly left to the sound discretion of the trial court, which has the exclusive responsibility to see to it that the conditions prescribed by the rules for that purpose exist. While it is true that, as a general rule, the discharge or exclusion of a co-accused from the information in order that he may be utilized as a Prosecution witness rests upon the sound discretion of the trial court, such discretion is not absolute and may not be exercised arbitrarily, but with due regard to the proper administration of justice. Anent the requisite that there must be an absolute necessity for the testimony of the accused whose discharge is sought, the trial court has to rely on the suggestions of and the information provided by the public prosecutor. The reason is obvious – the public prosecutor should know better than the trial court, and the Defense for that matter, which of the several accused would best qualify to be discharged in order to become a state witness. The public prosecutor is also supposed to know the evidence in his possession and whomever he needs to establish his case, as well as the availability or non-availability of other direct or corroborative evidence, which of the accused is the 'most guilty' one, and the like. On the other hand, there is no requirement under Republic Act No. 6981 for the Prosecution to first charge a person in court as one of the accused in order for him to qualify for admission into the Witness Protection Program. The admission as a state witness under Republic Act No. 6981 also operates as an acquittal, and said witness cannot subsequently be included in the criminal information except when he fails or refuses to testify. The immunity for the state witness is granted by the DOJ, not by the trial court. Should such witness be meanwhile charged in court as an accused, the public prosecutor, upon presentation to him of the certification of admission into the Witness Protection Program, shall petition the trial court for the discharge of the witness. The Court shall then order the discharge and exclusion of said accused from the information.

5. ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*, CONSTRUED. — *Mandamus* shall issue when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act that the law specifically enjoins as a duty resulting from an office, trust, or station. It is proper when the act against

which it is directed is one addressed to the discretion of the tribunal or officer. In matters involving the exercise of judgment and discretion, *mandamus* may only be resorted to in order to compel respondent tribunal, corporation, board, officer or person to take action, but it cannot be used to direct the manner or the particular way discretion is to be exercised, or to compel the retraction or reversal of an action already taken in the exercise of judgment or discretion.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
The Solicitor General for respondents.

D E C I S I O N

BERSAMIN, *J.*:

In matters involving the exercise of judgment and discretion, *mandamus* cannot be used to direct the manner or the particular way the judgment and discretion are to be exercised. Consequently, the Secretary of Justice may be compelled by writ of *mandamus* to act on a letter-request or a motion to include a person in the information, but may not be compelled by writ of *mandamus* to act in a certain way, *i.e.*, to grant or deny such letter-request or motion.

The Case

This direct appeal by petition for review on *certiorari* has been taken from the final order issued on June 27, 2011 in Civil Case No. 10-124777[1] by the Regional Trial Court (RTC), Branch 26, in Manila, dismissing petitioner's petition for *mandamus.*[2]

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[1] Entitled *Datu Andal Ampatuan, Jr. v. Secretary Leila De Lima, as Secretary of the Department of Justice, CSP Claro Arellano, as Chief State Prosecutor, National Prosecution Service, and Panel of Prosecutors of the Maguindanao Massacre, headed by DCSP Richard Fadullon*,

[2] *Rollo,* pp. 45-46.

Antecedents

History will never forget the atrocities perpetrated on November 23, 2009, when 57 innocent civilians were massacred in Sitio Masalay, Municipality of Ampatuan, Maguindanao Province. Among the principal suspects was petitioner, then the Mayor of the Municipality of Datu Unsay, Maguindanao Province. Inquest proceedings were conducted against petitioner on November 26, 2009 at the General Santos (Tambler) Airport Lounge, before he was flown to Manila and detained at the main office of the National Bureau of Investigation (NBI). The NBI and the Philippine National Police (PNP) charged other suspects, numbering more than a hundred, for what became aptly known as the Maguindanao massacre.[3]

Through Department Order No. 948, then Secretary of Justice Agnes Devanadera constituted a Special Panel of Prosecutors to conduct the preliminary investigation.

On November 27, 2009, the Department of Justice (DOJ) resolved to file the corresponding informations for murder against petitioner, and to issue subpoenae to several persons.[4] On December 1, 2009, 25 informations for murder were also filed against petitioner in the Regional Trial Court, 12th Judicial Region, in Cotabato City.[5]

On December 3, 2009, Secretary of Justice Devanadera transmitted her letter to Chief Justice Puno requesting the transfer of the venue of the trial of the Maguindanao massacre from Cotabato City to Metro Manila, either in Quezon City or in Manila, to prevent a miscarriage of justice.[6] On December 8, 2009, the Court granted the request for the transfer of venue.[7] However, on December 9, 2009, but prior to the transfer of

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[3] *Id.* at 258.

[4] *Id.* at 672-678.

[5] *Id.* at 679-751.

[6] *Id.* at 752.

[7] *Id.* at 753-757.

the venue of the trial to Metro Manila, the Prosecution filed a manifestation regarding the filing of 15 additional informations for murder against petitioner in Branch 15 of the Cotabato City RTC.[8] Later on, additional informations for murder were filed against petitioner in the RTC in Quezon City, Branch 211, the new venue of the trial pursuant to the resolution of the Court.[9]

The records show that petitioner pleaded *not guilty* to each of the 41 informations for murder when he was arraigned on January 5, 2010,[10] February 3, 2010,[11] and July 28, 2010.[12]

In the joint resolution issued on February 5, 2010, the Panel of Prosecutors charged 196 individuals with multiple murder in relation to the Maguindanao massacre.[13] It appears that in issuing the joint resolution of February 5, 2010 the Panel of Prosecutors partly relied on the twin affidavits of one Kenny Dalandag, both dated December 7, 2009.[14]

On August 13, 2010, Dalandag was admitted into the Witness Protection Program of the DOJ.[15] On September 7, 2010, the QC RTC issued its amended pre-trial order,[16] wherein Dalandag was listed as one of the Prosecution witnesses.[17]

On October 14, 2010, petitioner, through counsel, wrote to respondent Secretary of Justice Leila De Lima and Assistant Chief State Prosecutor Richard Fadullon to request the inclusion of Dalandag in the informations for murder considering that

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[8] *Id.* at 758-759.

[9] *Id.* at 805-806.

[10] *Id.* at 839.

[11] *Id.* at 840.

[12] *Id.* at 841.

[13] *Id.* at 65-141.

[14] *Id.* at 180-189.

[15] *Id.* at 842.

[16] *Id.* at 191-244.

[17] *Id.* at 214.

Dalandag had already confessed his participation in the massacre through his two sworn declarations.[18] Petitioner reiterated the request twice more on October 22, 2010[19] and November 2, 2010.[20]

By her letter dated November 2, 2010,[21] however, Secretary De Lima denied petitioner's request.

Accordingly, on December 7, 2010, petitioner brought a petition for *mandamus* in the RTC in Manila (Civil Case No. 10-124777),[22] seeking to compel respondents to charge Dalandag as another accused in the various murder cases undergoing trial in the QC RTC.

On January 19, 2011,[23] the RTC in Manila set a pre-trial conference on January 24, 2011 in Civil Case No. 10-124777. At the close of the pre-trial, the RTC in Manila issued a pre-trial order.

In their manifestation and motion dated February 15, 2011[24] and February 18, 2011,[25] respondents questioned the propriety of the conduct of a trial in a proceeding for *mandamus*. Petitioner opposed.

On February 15, 2011, petitioner filed a motion for the production of documents,[26] which the RTC in Manila granted on March 21, 2011 after respondents did not file either a comment or an opposition.

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[18] *Id.* at 246-247.

[19] *Id.* at 249.

[20] *Id.* at 251.

[21] *Id.* at 253.

[22] *Id.* at 255-271.

[23] *Id.* at 300.

[24] *Id.* at 331-334.

[25] *Id.* at 336-340.

[26] *Id.* at 415-417.

Respondents then sought the reconsideration of the order of March 21, 2011.

On March 21, 2011,[27] the RTC in Manila issued a subpoena to Dalandag, care of the Witness Protection Program of the DOJ, requiring him to appear and testify on April 4, 2011 in Civil Case No. 10-124777.

On April 4, 2011, respondents moved to quash the subpoena.[28] Petitioner opposed the motion to quash the subpoena on April 15, 2011.[29] The parties filed other papers, specifically, respondents their reply dated April 26, 2011;[30] petitioner an opposition on May 12, 2011;[31] and respondents another reply dated May 20, 2011.[32]

On June 27, 2011,[33] the RTC of Manila issued the assailed order in Civil Case No. 10-124777 dismissing the petition for *mandamus*.[34]

Hence, this appeal by petition for review on *certiorari*.

Issues

Petitioner raises the following issues, to wit:

1. WHETHER THE PUBLIC RESPONDENTS MAY BE COMPELLED BY MANDAMUS TO INVESTIGATE AND PROSECUTE KENNY DALANDAG AS AN ACCUSED IN THE INFORMATIONS FOR MULTIPLE MURDER IN THE MAGUINADANAO MASSACRE CASES IN LIGHT OF HIS ADMITTED PARTICIPATION THEREAT IN

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[27] *Id.* at 418.

[28] *Id.* at 452-457.

[29] *Id.* at 459-466.

[30] *Id.* at 468-476.

[31] *Id.* at 478-485.

[32] *Id.* at 487-492.

[33] *Supra*, note 2.

[34] *Rollo*, pp. 3-43.

AFFIDAVITS AND OFFICIAL RECORDS FILED WITH THE PROSECUTOR AND THE QC RTC; and,

2. WHETHER THE SUBSEQUENT INCLUSION OF KENNY DALANDAG IN THE WITNESS PROTECTION PROGRAM JUSTIFIES EXCLUSION AS AN ACCUSED AND HIS NON-INDICTMENT FOR HIS COMPLICITY IN THE MAGUINDANAO MASSACRE NOTWITHSTANDING ADMISSIONS MADE THAT HE TOOK PART IN ITS PLANNING AND EXECUTION.[35]

The crucial issue is whether respondents may be compelled by writ of *mandamus* to charge Dalandag as an accused for multiple murder in relation to the Maguindanao massacre despite his admission to the Witness Protection Program of the DOJ.

Ruling

The appeal lacks merit.

The prosecution of crimes pertains to the Executive Department of the Government whose principal power and responsibility are to see to it that our laws are faithfully executed. A necessary component of the power to execute our laws is the right to prosecute their violators. The right to prosecute vests the public prosecutors with a wide range of discretion – the discretion of what and whom to charge, the exercise of which depends on a smorgasbord of factors that are best appreciated by the public prosecutors.[36] The public prosecutors are solely responsible for the determination of the amount of evidence sufficient to establish probable cause to justify the filing of appropriate criminal charges against a respondent. Theirs is also the quasi-judicial discretion to determine whether or not criminal cases should be filed in court.[37]

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[35] *Id.* at 11.

[36] *Soberano v. People*, G.R. No. 154629, October 5, 2005, 472 SCRA 125, 139-140; *Leviste v. Alameda,* G.R. No. 182677, August 3, 2010, 626 SCRA 575, 598.

[37] *Crespo v. Mogul*, No. L-53373, June 30, 1987, 151 SCRA 462, 410; *Paderanga v. Drilon,* G.R. No. 96080, April 19, 1991, 196 SCRA 86, 90.

Consistent with the principle of separation of powers enshrined in the Constitution, the Court deems it a sound judicial policy not to interfere in the conduct of preliminary investigations, and to allow the Executive Department, through the Department of Justice, exclusively to determine what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. By way of exception, however, judicial review may be allowed where it is clearly established that the public prosecutor committed grave abuse of discretion, that is, when he has exercised his discretion "in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law."[38]

The records herein are bereft of any showing that the Panel of Prosecutors committed grave abuse of discretion in identifying the 196 individuals to be indicted for the Maguindanao massacre. It is notable in this regard that petitioner does not assail the joint resolution recommending such number of individuals to be charged with multiple murder, but only seeks to have Dalandag be also investigated and charged as one of the accused based because of his own admissions in his sworn declarations. However, his exclusion as an accused from the informations did not at all amount to grave abuse of discretion on the part of the Panel of Prosecutors whose procedure in excluding Dalandag as an accused was far from arbitrary, capricious, whimsical or despotic. Section 2, Rule 110 of the *Rules of Court*, which requires that "the complaint or information shall be xxx against all persons who appear to be responsible for the offense involved," albeit a mandatory provision, may be subject of some exceptions, one of which is when a participant in the commission of a crime becomes a state witness.

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[38] *Glaxosmithkline Philippines, Inc. v. Khalid Mehmood Malik*, G.R. No. 166924, August 17, 2006, 499 SCRA 268, 273; *Metropolitan Bank and Trust Company v. Reynado*, G.R. No. 164538 August 9, 2010, 627 SCRA 88, 101.

The two modes by which a participant in the commission of a crime may become a state witness are, namely: (*a*) by discharge from the criminal case pursuant to Section 17 of Rule 119 of the *Rules of Court*; and (*b*) by the approval of his application for admission into the Witness Protection Program of the DOJ in accordance with Republic Act No. 6981 (*The Witness Protection, Security and Benefit Act*).[39] These modes are intended to encourage a person who has witnessed a crime or who has knowledge of its commission to come forward and testify in court or quasi-judicial body, or before an investigating authority, by protecting him from reprisals, and shielding him from economic dislocation.

These modes, while seemingly alike, are distinct and separate from each other.

Under Section 17, Rule 119 of the *Rules of Court*, the discharge by the trial court of one or more of several accused with their consent so that they can be witnesses for the State is made upon motion by the Prosecution before resting its case. The trial court shall require the Prosecution to present evidence and the sworn statements of the proposed witnesses at a hearing in support of the discharge. The trial court must ascertain if the following conditions fixed by Section 17 of Rule 119 are complied with, namely: (*a*) there is absolute necessity for the testimony of the accused whose discharge is requested; (*b*) there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (*c*) the testimony of said accused can be substantially corroborated in its material points; (*d*) said accused does not appear to be most guilty; and (*e*) said accused has not at any time been convicted of any offense involving moral turpitude.

On the other hand, Section 10 of Republic Act No. 6981 provides:

> Section 10. State Witness. — Any person who has participated in the commission of a crime and desires to be a witness for the

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[39] Approved on April 24, 1991.

State, can apply and, if qualified as determined in this Act and by the Department, shall be admitted into the Program whenever the following circumstances are present:

a. the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code or its equivalent under special laws;

b. there is absolute necessity for his testimony;

c. there is no other direct evidence available for the proper prosecution of the offense committed;

d. his testimony can be substantially corroborated on its material points;

e. he does not appear to be most guilty; and

f. he has not at any time been convicted of any crime involving moral turpitude.

An accused discharged from an information or criminal complaint by the court in order that he may be a State Witness pursuant to Sections 9 and 10 of Rule 119 of the Revised Rules of Court may upon his petition be admitted to the Program if he complies with the other requirements of this Act. Nothing in this Act shall prevent the discharge of an accused, so that he can be used as a State Witness under Rule 119 of the Revised Rules of Court.

Save for the circumstance covered by paragraph (*a*) of Section 10, *supra*, the requisites under both rules are essentially the same. Also worth noting is that an accused discharged from an information by the trial court pursuant to Section 17 of Rule 119 may also be admitted to the Witness Protection Program of the DOJ provided he complies with the requirements of Republic Act No. 6981.

A participant in the commission of the crime, to be discharged to become a state witness pursuant to Rule 119, must be one charged as an accused in the criminal case. The discharge operates as an acquittal of the discharged accused and shall be a bar to his future prosecution for the same offense, unless he fails or refuses to testify against his co-accused in accordance with his

sworn statement constituting the basis for his discharge.[40] The discharge is expressly left to the sound discretion of the trial court, which has the exclusive responsibility to see to it that the conditions prescribed by the rules for that purpose exist.[41]

While it is true that, as a general rule, the discharge or exclusion of a co-accused from the information in order that he may be utilized as a Prosecution witness rests upon the sound discretion of the trial court,[42] such discretion is not absolute and may not be exercised arbitrarily, but with due regard to the proper administration of justice.[43] Anent the requisite that there must be an absolute necessity for the testimony of the accused whose discharge is sought, the trial court has to rely on the suggestions of and the information provided by the public prosecutor. The reason is obvious – the public prosecutor should know better than the trial court, and the Defense for that matter, which of the several accused would best qualify to be discharged in order to become a state witness. The public prosecutor is also supposed to know the evidence in his possession and whomever he needs to establish his case,[44] as well as the availability or non-availability of other direct or corroborative evidence, which of the accused is the 'most guilty' one, and the like.[45]

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[40] Section 18, Rule 119, *Rules of Court.*

[41] *People v. Tabayoyong*, No. L-31084, May 29, 1981, 104 SCRA 724, 739.

[42] *Chua v. Court of Appeals,* G.R. No. 103397, August 28, 1996, 261 SCRA 112, 120; citing *U.S. v. De Guzman*, 30 Phil. 416 (1915) and *U.S. v. Bonete*, 40 Phil. 958 (1920).

[43] *Ramos v. Sandiganbayan*, G.R. No. 58876, November 27, 1990, 191 SCRA 671, 682; *People v. De Atras*, No. L-27267, May 29, 1969, 28 SCRA 389, 392.

[44] *People v. Ocimar*, G.R. No. 94555, August 17, 1992, 212 SCRA 646, 655.

[45] *People v. Court of Appeals*, G.R. No. 62881, August 30, 1983, 124 SCRA 338, 343.

On the other hand, there is no requirement under Republic Act No. 6981 for the Prosecution to first charge a person in court as one of the accused in order for him to qualify for admission into the Witness Protection Program. The admission as a state witness under Republic Act No. 6981 also operates as an acquittal, and said witness cannot subsequently be included in the criminal information except when he fails or refuses to testify. The immunity for the state witness is granted by the DOJ, not by the trial court. Should such witness be meanwhile charged in court as an accused, the public prosecutor, upon presentation to him of the certification of admission into the Witness Protection Program, shall petition the trial court for the discharge of the witness.[46] The Court shall then order the discharge and exclusion of said accused from the information.[47]

The admission of Dalandag into the Witness Protection Program of the Government as a state witness since August 13, 2010 was warranted by the absolute necessity of his testimony to the successful prosecution of the criminal charges. Apparently, all the conditions prescribed by Republic Act No. 6981 were met in his case. That he admitted his participation in the commission of the Maguindanao massacre was no hindrance to his admission into the Witness Protection Program as a state witness, for all that was necessary was for him to appear not the most guilty. Accordingly, he could not anymore be charged for his participation in the Maguindanao massacre, as to which his admission operated as an acquittal, unless he later on refuses or fails to testify in accordance with the sworn statement that became the basis for his discharge against those now charged for the crimes.

Mandamus shall issue when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act that the law specifically enjoins as a duty resulting from an office, trust, or station. It is proper when the act against which it is directed is one addressed to the discretion of the tribunal

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[46] Section 12, Republic Act No. 6981.

[47] *Id.*

or officer. In matters involving the exercise of judgment and discretion, *mandamus* may only be resorted to in order to compel respondent tribunal, corporation, board, officer or person to take action, but it cannot be used to direct the manner or the particular way discretion is to be exercised,[48] or to compel the retraction or reversal of an action already taken in the exercise of judgment or discretion.[49]

As such, respondent Secretary of Justice may be compelled to act on the letter-request of petitioner, but may not be compelled to act in a certain way, *i.e.*, to grant or deny such letter-request. Considering that respondent Secretary of Justice already denied the letter-request, *mandamus* was no longer available as petitioner's recourse.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the final order issued on June 27, 2011 in Civil Case No. 10-124777 by the Regional Trial Court in Manila; and **ORDERS** petitioner to pay the costs of suit.

SO ORDERED.

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

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[48] See *Quarto v. Marcelo,* G.R. No. 169042, October 5, 2011, 658 SCRA 580, 594; *Angchangco, Jr. v. Ombudsman*, 335 Phil. 766 (1997).

[49] *Angchangco, Sr. v. Ombudsman*, *supra*, 771-772.

FIRST DIVISION

[G.R. No. 197937. April 3, 2013]

FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, *petitioner, vs.* **SM PRIME HOLDINGS, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; *LITIS PENDENTIA*, AS GROUND; REQUISITES.** — *Litis pendentia*, as a ground for the dismissal of a civil action, refers to a situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits and authorizes a court to dismiss a case *motu proprio*. x x x The requisites in order that an action may be dismissed on the ground of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interest in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

2. **ID.; ID.; ID.; PRINCIPLE OF *LITIS PENDENTIA*; CONSTRUED; WHEN APPLICABLE.—** The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons, and also to avoid the costs and expenses incident to numerous suits. Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other. The determination of whether there is an identity of causes of

action for purposes of *litis pendentia* is inextricably linked with that of *res judicata*, each constituting an element of the other. In either case, both relate to the sound practice of including, in a single litigation, the disposition of all issues relating to a cause of action that is before a court. x x x Under the established jurisprudence on *litis pendentia*, the following considerations predominate in the ascending order of importance in determining which action should prevail: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Josefina Wan-Remollo for respondent.

D E C I S I O N

VILLARAMA, JR., *J*.:

Petitioner appeals the Orders[1] dated February 21, 2011 and July 25, 2011 of the Regional Trial Court (RTC) of Pasig City, Branch 166 which granted respondent's motion to dismiss on the ground of *litis pendentia.*

The factual antecedents:

Respondent SM Prime Holdings, Inc. is the owner and operator of cinema houses at SM Cebu in Cebu City. Under Republic Act (R.A.) No. 7160 otherwise known as the Local Government Code of 1991, owners, proprietors and lessees of theaters and cinema houses are subject to amusement tax as provided in Section 140, Book II, Title One, which reads:

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[1] *Rollo,* pp. 32-42. Penned by Presiding Judge Rowena De Juan-Quinagoran.

SECTION 140. *Amusement Tax* –

(a) The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.

(b) In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.

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(d) The *sangguniang panlalawigan* may prescribe the time, manner, terms and conditions for the payment of tax. In case of fraud or failure to pay the tax, the *sangguniang panlalawigan* may impose such surcharges, interest and penalties as it may deem appropriate.

On June 21, 1993, the *Sangguniang Panglunsod* of Cebu City approved City Tax Ordinance No. LXIX[2] pursuant to Section 140, in relation to Section 151[3] of the Local Government Code of 1991. Chapter XI of said ordinance provides:

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[2] AN ORDINANCE REVISING THE CITY TAX ORDINANCE NO. 1, OTHERWISE KNOWN AS 'THE OMNIBUS TAX ORDINANCE OF THE CITY OF CEBU' AS AMENDED. *Rollo*, pp. 136-213.

[3] Art. III (Cities)

Section 151. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however,* That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

CHAPTER XI

Amusement Tax

SECTION 42. *Rate of Tax*. – There shall be paid to the Office of the City Treasurer by the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia and other places of amusement an amusement tax at the rate of thirty percent (30%) of the gross receipts from admission fees.

SECTION 43. *Manner of Payment.* – In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessee, or operators and paid to the city treasurer before the gross receipts are divided between said proprietors, lessee, operators and the distributors of the cinematographic films.

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SECTION 45. *Time of Payment.* – The tax shall be due and payable within the first twenty (20) days of the succeeding month.

On June 7, 2002, Congress approved R.A. No. 9167[4] which created the Film Development Council of the Philippines, herein petitioner. Petitioner's mandate includes the development and implementation of "an incentive and reward system for the producers based on merit to encourage the production of quality films."[5] The Cinema Evaluation Board (CEB) was established to review and grade films in accordance with criteria and standards and procedures it shall formulate subject to the approval of petitioner.

Films reviewed and graded favorably by the CEB are given the following privileges:

Section 13. *Privileges of Graded Films*. - Films which have obtained an "A" or "B" grading from the Council pursuant to Sections 11 and 12 of this Act shall be entitled to the following privileges:

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[4] AN ACT CREATING THE FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, DEFINING ITS POWERS AND FUNCTIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[5] R.A. No. 9167, Sec. 3(2).

a. Amusement tax reward. - A grade "A" or "B" film shall entitle its producer to an incentive equivalent to the amusement tax imposed and collected on the graded films by cities and municipalities in Metro Manila and other highly urbanized and independent component cities in the Philippines pursuant to Sections 140 and 151 of Republic Act No. 7160 at the following rates:

1. For grade "A" films - 100% of the amusement tax collected on such films; and

2. For grade "B" films. - 65% of the amusement tax collected on such films. The remaining thirty-five (35%) shall accrue to the funds of the Council.

For the purpose of implementing the above incentive system, R.A. No. 9167 mandates the remittance of the proceeds of the amusement tax collected by the local government units (LGUs) to petitioner.

Section 14. *Amusement Tax Deduction and Remittances.* - All revenue from the amusement tax on the graded film which may otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of Republic Act. No. 7160 during the period the graded film is exhibited, shall be deducted and withheld by the proprietors, operators or lessees of theaters or cinemas and **remitted within thirty (30) days from the termination of the exhibition to the Council which shall reward the corresponding amusement tax to the producers of the graded film** within fifteen (15) days from receipt thereof.

Proprietors, operators and lessees of theaters or cinemas who fail to remit the amusement tax proceeds within the prescribed period shall be liable to a **surcharge** equivalent to five percent (5%) of the amount due for each month of delinquency which shall be paid to the Council. (Emphasis supplied.)

To ensure enforcement of the above provision, the law empowered petitioner not only to impose administrative fines and penalties but also to cause or initiate criminal or administrative prosecution to the violators.[6]

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[6] *Id.*, Sec. 15.

On January 27, 2009, petitioner through the Office of the Solicitor General (OSG) sent a demand letter to respondent for the payment of the sum of ₱76,836,807.08 representing the amusement tax rewards due to producers of 89 films graded "A" and "B" which were shown at SM cinemas from September 11, 2003 to November 4, 2008.[7]

Sometime in May 2009, the City of Cebu filed in the RTC of Cebu City (Cebu City RTC) a petition[8] for declaratory relief with application for a writ of preliminary injunction against the petitioner, docketed as Civil Case No. **CEB-35529**. The City of Cebu sought to declare Section 14 of R.A. No. 9167 as invalid and unconstitutional on grounds that: (1) it violates the basic policy on local autonomy; (2) it constitutes an undue limitation of the taxing power of LGUs; (3) it unduly deprives LGUs of the revenue from the amusement tax imposed on theatre owners and operators; and (4) it amounts to technical malversation since revenue from the collection of amusement taxes that would otherwise accrue to and form part of the general fund of the LGU concerned would now be directly awarded to a private entity – the producers of graded films – bypassing the budget process of the LGU and without the proper appropriation ordinance from the *sanggunian.*[9]

A temporary restraining order (TRO) was issued by the Cebu City RTC enjoining petitioner and its duly constituted agents from collecting the amusement tax incentive award from the owners, proprietors or lessees of theaters and cinema houses within the City of Cebu; imposing surcharge on the unpaid amount; filing any case or suit of whatever kind or nature due to or arising from the failure to deduct, withhold and remit the amusement tax incentives award on the graded films of petitioner; and initiating administrative or criminal prosecution against the said owners, proprietors or lessees.[10]

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[7] *Rollo,* pp. 43-45.

[8] *Id.* at 46-63.

[9] *Id.* at 55.

[10] *Id.* at 260.

On October 16, 2009, petitioner sued the respondent for the payment of ₱76,836,807.08 representing the unpaid amusement tax incentive reward (with 5% surcharge for each month of delinquency) due to the producers of 89 graded films which were shown at SM Cinemas in Cebu City from September 11, 2003 to November 4, 2008, plus a 5% surcharge for each month of delinquency until fully paid. Said collection suit was docketed as Civil Case **No. 72238** of the RTC of Pasig City (Pasig City RTC), Branch 166.[11]

Petitioner filed a Comment (In Lieu of Answer)[12] in Civil Case No. CEB-35529 praying for the dismissal of the petition filed by the City of Cebu.

Meanwhile, respondent filed a Motion to Dismiss[13] in Civil Case No. 72238 arguing that petitioner's complaint merits outright dismissal considering that its claim had already been extinguished by respondent's prior payment or remittance of the subject amusement taxes to the City of Cebu. Respondent called attention to Section 26 of the Implementing Rules and Regulations (IRR) of R.A. No. 9167 which directed petitioner to execute a Memorandum of Agreement (MOA) with proprietors, operators and lessees of theaters and cinemas as well as movie producers, on the systems and procedures to be followed for the collection, remittance and monitoring of the amusement taxes withheld on graded films. In the apparent absence of such MOA and the "general procedure/process" duly adopted by all proprietors, operators and lessees of theaters or cinemas, respondent has been withholding such taxes and remitting the same to the City of Cebu pursuant to Cebu City Tax Ordinance No. LXIX, as shown by the Certification[14] dated February 5, 2009 issued by the Office of the Treasurer of Cebu City stating that respondent "had religiously remitted their monthly

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[11] *Id.* at 433-442.

[12] *Id.* at 93-110.

[13] *Id.* at 121-134.

[14] *Id.* at 230.

amusement taxes due to the Cebu City Government." Respondent pointed out that even the Cebu City Government recognizes that when it receives the amusement taxes collected or withheld by the owners, operators and proprietors of theaters and cinema houses on graded films, it is mandated to forward the said taxes to petitioner.

In its Comment[15] on the motion to dismiss, petitioner argued that Section 14 of R.A. No. 9167 is valid and constitutional. As to respondent's defense of prior payment, petitioner asserted that the execution of a MOA with the proprietors, owners and lessees of theaters and cinema houses is not a condition *sine qua non* for a valid enforcement of the provisions of R.A. No. 9167. The IRR cited by respondent cannot prevail over the clear import of the law on which it is based, and hence respondent cannot invoke it to excuse non-payment of the amusement tax incentive rewards due to the producers of graded films which should have been remitted to petitioner in accordance with Section 14 of R.A. No. 9167. Petitioner pointed out that from the time R.A. No. 9167 took effect up to the present, all the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines, with the sole exception of Cebu City and a number of theater establishments therein, have unanimously acceded to and have faithfully complied with the mandate of said law notwithstanding the absence of a MOA.

Respondent filed its Reply[16] to petitioner's Comment maintaining that its remittance of the amusement tax incentive reward to the City of Cebu extinguished its obligation to petitioner, and arguing that the case should be dismissed on the additional ground of *litis pendentia.*

On August 13, 2010, respondent filed in Civil Case No. CEB-35529 a Motion for Leave to File and Admit Attached Comment-in-Intervention.[17] In its Comment-in-Intervention With

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[15] *Id.* at 261-295.

[16] *Id.* at 577-590.

[17] *Id.* at 421-430.

Interpleader, respondent prayed that the judgment on the validity and constitutionality of Sections 13 and 14 of R.A. No. 9167 include a pronouncement on its rights and duties as a consequence of such judgment, as it clearly has a legal interest in the success of either party in the case.[18] On October 21, 2010, the Cebu City RTC granted respondent's motion for intervention.[19]

On February 21, 2011, the Pasig City RTC issued the assailed order granting the motion to dismiss, holding that the action before the Cebu City RTC (Civil Case No. CEB-35529) is the appropriate vehicle for litigating the issues between the parties in Civil Case No. 72238. Moreover, said court found all the elements of *litis pendentia* present and accordingly dismissed the complaint. Petitioner's motion for reconsideration was likewise denied.

In a direct recourse to this Court, petitioner advances the following questions of law:

I

THE RTC, BRANCH 166, OF PASIG CITY UTTERLY IGNORED AND DISREGARDED THE WELL-SETTLED RULE THAT UNLESS AND UNTIL A SPECIFIC PROVISION OF LAW IS DECLARED INVALID AND UNCONSTITUTIONAL, THE SAME IS ENTITLED TO OBEDIENCE AND RESPECT.

II

THE RTC, BRANCH 166, OF PASIG CITY ERRED IN DISMISSING THE COMPLAINT IN CIVIL CASE NO. 72238 ON THE GROUND OF *LITIS PENDENTIA*.[20]

Petitioner reiterates that every law has in its favor the presumption of constitutionality, and unless and until a specific provision of law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes. In dismissing the complaint, the Pasig City RTC abdicated its

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[18] *Id.* at 452-470.

[19] *Id.* at 781.

[20] *Id.* at 13.

solemn duty and jurisdiction to rule on the constitutional issues raised by respondent in Civil Case No. 72238 upon the mistaken assumption that only the Cebu City RTC in Civil Case No. CEB-35529 can directly determine the constitutionality of Sections 13 and 14 of R.A. No. 9167 and the indispensability of a MOA in the remittance to petitioner of amusement tax rewards due to the producers of graded films. Petitioner further contends that, contrary to the ruling of the Pasig City RTC, the principle of judicial courtesy is not applicable because a judgment in Civil Case No. CEB-35529 will not result in rendering moot the issues brought before the Pasig City RTC in Civil Case No. 72238.

The petition has no merit.

We do not subscribe to petitioner's view that the dismissal of the complaint in Civil Case No. 72238 amounts to an abdication of the Pasig City RTC's concurrent jurisdiction to settle constitutional questions involving a statute or its implementing rules. The 1997 Rules of Civil Procedure, as amended, provides for specific grounds for the dismissal of any complaint in civil cases including those where the trial court has competence and authority to hear and decide the issues raised and relief sought. One of these grounds is *litis pendentia.*

Litis pendentia, as a ground for the dismissal of a civil action, refers to a situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious.[21] It is based on the policy against multiplicity of suits[22] and authorizes a court to dismiss a case *motu proprio.*[23]

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[21] *Proton Pilipinas Corporation v. Republic of the Phils.,* 535 Phil. 521, 536-537 (2006); *Guaranteed Hotels, Inc. v. Baltao,* 489 Phil. 702, 707 (2005).

[22] *Dotmatrix Trading v. Legaspi,* G.R. No. 155622, October 26, 2009, 604 SCRA 431, 436, citing *Cruz v. Court of Appeals*, G.R. No. 164797, February 13, 2006, 482 SCRA 379, 393; *Calo v. Tan,* G.R. No. 151266, November 29, 2005, 476 SCRA 426, 440.

[23] *Subic Telecommunications Company, Inc. v. Subic Bay Metropolitan Authority,* G.R. No. 185159, October 12, 2009, 603 SCRA 470, 481, citing

Section 1(e), Rule 16 of the 1997 Rules of Civil Procedure, as amended, thus provides:

SECTION 1. *Grounds*.—Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

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(e) That there is another action pending between the same parties for the same cause[.]

The requisites in order that an action may be dismissed on the ground of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interest in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[24]

Petitioner submits that while there is identity of parties in Civil Case Nos. CEB-35529 and 72238, the second and third requisites are absent. It points out that in the former, it is not claiming any monetary award but merely prayed for the dismissal of the declaratory relief petition. Moreover, since the issues raised in the former case are purely legal, petitioner is not necessarily called upon to present testimonial or documentary evidence to prove factual matters. Petitioner thus concludes that the judgment in former case would not amount to *res judicata* in the latter case. Petitioner further notes that when a judgment dismissing the former case is appealed and the assailed provisions of R.A. No. 9167 are declared constitutional by this Court, petitioner will not be automatically awarded the unpaid amusement taxes it is claiming against respondent in Civil Case No. 72238.

Petitioner's submissions fail to persuade.

Rudolf Lietz Holdings, Inc. v. Registry of Deeds of Parañaque City, G.R. No. 133240, November 15, 2000, 344 SCRA 680, 686.

[24] *Republic v. Carmel Development, Inc.,* 427 Phil. 723, 739 (2002).

The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons,[25] and also to avoid the costs and expenses incident to numerous suits.[26]

Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other.[27]

The determination of whether there is an identity of causes of action for purposes of *litis pendentia* is inextricably linked with that of *res judicata*, each constituting an element of the other. In either case, both relate to the sound practice of including, in a single litigation, the disposition of all issues relating to a cause of action that is before a court.[28]

In this case, what petitioner failed to take into account is that the Cebu City RTC allowed respondent to intervene in Civil Case No. CEB-35529 by way of an interpleader action as to which government entity – whether petitioner or the Cebu City Government – should have remitted the amusement taxes it collected from the admission fees of graded films shown in respondent's cinemas in Cebu City. It must be noted that since

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[25] *Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 429.

[26] *Subic Telecommunications Company, Inc. v. Subic Metropolitan Authority, supra* note 23, at 481-482.

[27] *Id.* at 482, citing *Feliciano v. Court of Appeals*, G.R. No. 123293, March 5, 1998, 287 SCRA 61, 68 and *Victronics Computers, Inc. v. RTC, Branch 63, Makati*, G.R. No. 104019, January 25, 1993, 217 SCRA 517, 530.

[28] *Id.*

1993 when City Tax Ordinance No. LXIX was enforced, respondent had been faithfully remitting amusement taxes to the City of Cebu and because of the collection suit filed by petitioner, such defense of prior payment and evidence to prove it which respondent could have presented at the trial in Civil Case No. 72238 would be the same defense and evidence necessary to sustain respondent's interpleader action in Civil Case No. CEB-35529 before the Cebu City RTC. Also, in both cases, respondent had raised the matter of conflicting provisions of R.A. No. 9167 and Local Government Code of 1991, while petitioner pleaded and argued the constitutionality and validity of Sections 13 and 14 of R.A. No. 9167.

The interpleader action of respondent/intervenor, anchored on its defense of prior payment, would be considered by the Cebu City RTC in its final determination of the parties' rights and interests as it resolves the legal questions. The Pasig City RTC is likewise confronted with the legal and constitutional issues in the collection suit, alongside with respondent's defense of prior payment. It is evident that petitioner's claim against the respondent hinges on the correct interpretation of the conflicting provisions of the Local Government Code of 1991 and R.A. No. 9167. There could be no doubt that a judgment in either case would constitute *res judicata* to the other. Sound practice thus dictates that the common factual and legal issues be resolved in a single proceeding.

We also find no reversible error in the Pasig City RTC's ruling that Civil Case No. CEB-35529 is the appropriate vehicle for litigating the issues raised by petitioner and respondent in Civil Case No. 72238.

Under the established jurisprudence on *litis pendentia*, the following considerations predominate in the ascending order of importance in determining which action should prevail: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the

action is the appropriate vehicle for litigating the issues between the parties.[29]

Moreover, considering the predicament of respondent, we also find relevant the criterion of the *consideration of the interest of justice* we enunciated in *Roa v. Magsaysay.*[30] In applying this standard, what was asked was which court would be "in a better position to serve the interests of justice," taking into account (a) the nature of the controversy, (b) the comparative accessibility of the court to the parties and (c) other similar factors.[31]

In this case, all things considered, there can be no doubt Civil Case No. CEB-35529 is the appropriate vehicle to determine the rights of petitioner and respondent. In that declaratory relief case instituted by the City of Cebu, to which respondent had been remitting the subject amusement taxes being claimed by petitioner in Civil Case No. 72238, the issue of validity or constitutionality of Sections 13 and 14 of R.A. No. 9167 was directly pleaded and argued between petitioner and the City of Cebu, with subsequent inclusion of respondent as intervenor. Moreover, the presence of City of Cebu as party plaintiff would afford proper relief to respondent in the event the Cebu City RTC renders judgment sustaining the validity of the said provisions. Respondent had vigorously asserted in both courts that it had remitted the amusement taxes in *good faith* to the City of Cebu which had threatened sanctions for non-compliance with City Tax Ordinance No. LXIX, and that it should not be made to pay once again the same taxes to petitioner. As equally

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[29] *Dotmatrix Trading v. Legaspi, supra* note 22, at 442, citing *Mid-Pasig Land Development Corporation v. Court of Appeals*, G.R. No. 153751, October 8, 2003, 413 SCRA 204, 213; *Panganiban v. Pilipinas Shell Petroleum Corp.,* G.R. No. 131471, January 22, 2003, 395 SCRA 624, 634; *Compania General de Tabacos de Filipinas v. Court of Appeals,* G.R. Nos. 130326 & 137868, November 29, 2001, 371 SCRA 95, 114-115; *Allied Banking Corp. v. Court of Appeals,* G.R. No. 95223, July 26, 1996, 259 SCRA 371, 378.

[30] 187 Phil. 390, 402 (1980).

[31] *Victronics Computers, Inc. v. RTC, Branch 63, Makati, supra* note 27, at 534.

dire consequences for non-compliance with the demand for payment having been made by petitioner, such defense of good faith is best ventilated in Civil Case No. CEB-35529 where the City of Cebu is a party.

Petitioner's insistence that the Pasig City RTC proceed with trial notwithstanding the pendency of Civil Case No. CEB-35529 before the Cebu City RTC is thus untenable. To allow the parties to litigate the same issues upon the same evidence and defenses will only defeat the public policy reasons behind *litis pendentia*, which, like the rule on forum shopping, aims to prevent the unnecessary burdening of our courts and undue taxing of the manpower and financial resources of the judiciary; to avoid the situation where co-equal courts issue conflicting decisions over the same cause; and to preclude one party from harassing the other party through the filing of an unnecessary or vexatious suit.[32]

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Orders dated February 21, 2011 and July 25, 2011 of the Regional Trial Court of Pasig City, Branch 166 are hereby **AFFIRMED.**

No pronouncement as to costs.

SO ORDERED.

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

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[32] *Dotmatrix Trading v. Legaspi, supra* note 22, at 443, citing *Abines v. Bank of the Philippine Islands,* G.R. No. 167900, February 13, 2006, 482 SCRA 421, 433-434.

SECOND DIVISION

[G.R. No. 199219. April 3, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERRY OCTAVIO *Y* FLORENDO and REYNALDO CARIÑO *Y* MARTIR,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; R.A. NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); BUY-BUST OPERATIONS; NOTHING IN THE PROVISION THEREOF NOR IN ITS IMPLEMENTING RULES REQUIRES THE PRESENCE OF AN ELECTED PUBLIC OFFICIAL DURING THE BUY-BUST OPERATION.—** Relevant to accused-appellants' case is the procedure to be followed in the custody and handling of the seized dangerous drugs as outlined in Section 21, paragraph 1, Article II, R.A . No. 9165. x x x This provision is elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of R.A . No. 9165. x x x Clearly, there is nothing in the aforesaid law or its implementing rules which require the presence of the elected public official during the buy-bust operation. It is enough that he is present during the physical inventory immediately conducted after the seizure and confiscation of the drugs and he signs the copies of the inventory and is given a copy thereof. During the cross-examination by the defense counsel. x x x Barangay Captain Del Prado, not only positively identified both accused but also identified the items contained in the inventory receipt. Such testimony clearly established compliance with the requirement of Section 21 with regard to the presence and participation of the elected public official.
2. **ID.; ID.; ID.; FAILURE TO TAKE A PHOTOGRAPH OF THE SEIZED DRUGS IS NOT FATAL AND WILL NOT RENDER THE ITEMS SEIZED INADMISSIBLE IN EVIDENCE; RATIONALE.—** This Court has consistently ruled that even if the arresting officers failed to take a photograph of the seized drugs as required under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized

inadmissible in evidence. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even though the procedural requirements provided for in Sec. 21 of R.A. No. 9165 was not faithfully observed, the guilt of the accused will not be affected.

3. **ID.; ID.; ID.; THE INTEGRITY OF EVIDENCE IS PRESUMED TO HAVE BEEN PRESERVED UNLESS THERE IS A SHOWING OF BAD FAITH, ILL WILL, OR PROOF THAT THE EVIDENCE HAS BEEN TAMPERED WITH; APPLICATION IN CASE AT BAR.—** The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Appellants bear the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties. Appellants in this case failed to present any plausible reason to impute ill motive on the part of the arresting officers. Thus, the testimonies of the apprehending officers deserve full faith and credit. In fact, accused- appellants did not even questioned the credibility of the prosecution witnesses. They anchored their appeal solely on the alleged broken chain of the custody of the seized drugs. x x x In *People v. Mateo*, this Court brushed aside the accused's belated contention that the illegal drugs confiscated from his person was inadmissible because the arresting officers failed to comply with Section 21 of R.A. No. 9165. Whatever justifiable grounds may excuse the police officers from literally complying with Section 21 will remain unknown, because accused did not question during trial the safekeeping of the items seized from him. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to

reject the evidence offered, he must so state in the form of an objection. Without such objection, he cannot raise the question for the first time on appeal.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

For review of this Court is the appeal filed by Gerry Octavio (Octavio) and Reynaldo Cariño (Cariño) assailing the 29 March 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03900. The CA affirmed the Decision of the Regional Trial Court (RTC), Branch 65, Makati City finding both accused guilty of violating Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Drugs Act of 2002.

The Antecedents

On 21 August 2007, three (3) separate Informations were filed before the Regional Trial Court (RTC), Makati City for violations of R.A No. 9165. The first information charges Gerry Octavio *y* Florendo with violation of Section 5 thereof in the following manner:

CRIMINAL CASE NO. 07-1580

That on or about the 16th day of August, 2007, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give

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[1] Penned by Associate Justice Ramon R. Garcia,with Associate Justices Rosmari D. Carandang and Samuel H. Gaerlan, concurring. *Rollo*, pp. 2-23.

away Php200.00 worth of [Methamphetamine] Hydrochloride (*Shabu*) weighing zero point zero two (0.02) gram, a dangerous drug.[2]

The second information charges the same accused with violation of Section 11 of the same law allegedly committed as follows:

CRIMINAL CASE NO. 07-1581

That on or about the 16th day of August, 2007, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess and/or use dangerous drugs and without any license or proper prescription, did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) plastic sachets of Methamphetamine Hydrochloride (*Shabu*) each weighing zero point zero two (0.02) gram or a total of zero point zero four (0.04) gram, which is a dangerous drug, in violation of the aforesaid law.[3]

The third information charges Reynaldo Cariño *y* Martir (Cariño) of violating Section 11 of R.A. No. 9165, to wit:

CRIMINAL CASE NO. 07-1582

That on or about the 16th day of August, 2007, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess and/or use dangerous drugs and without any license or proper prescription, did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) plastic sachets of [Methamphetamine] Hydrochloride (*Shabu*) each weighing zero point zero two (0.02) gram or a total of zero point zero four (0.04) gram, which is a dangerous drug, in violation of the aforesaid law.[4]

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[2] Records, p. 2.

[3] *Id.* at 4.

[4] *Id.* at 6.

Version of the Prosecution:

At around 7:00 o'clock in evening of 16 August 2007, an informant went to the Office of the Makati Anti-Drug Abuse Council (MADAC) to report the alleged rampant illegal drug trafficking activities of Gerry Octavio alias "Buboy" at Pateros Street, *Barangay* Olympia, Makati City.[5]

On the basis of this report, an anti-narcotics team was formed to conduct a buy-bust operation with MADAC operatives Danilo Baysa (Baysa) and Danilo Sumudlayon (Sumudlayon) as the designated poseur-buyer and immediate back-up, respectively. Two (2) pieces of One Hundred Peso bills were pre-marked to be utilized as buy-bust money. Proper coordination was made with the Philippine Drug Enforcement Agency (PDEA) before the team, together with the asset, proceeded to the target area.[6]

Upon arrival at the designated area, the team spotted Octavio conversing with another male person along an alley. MADAC operative Baysa and the asset approached the duo while the rest of the team strategically positioned themselves. The asset, who was familiar with the subject, introduced MADAC operative Baysa as a "scorer" or user of *shabu*. The other male person, however, tried to convince MADAC operative Baysa to buy *shabu* from him instead, at the same time showing two (2) pieces of small heat-sealed transparent plastic sachets containing suspected *shabu*. The subject then introduced his companion to MADAC operative Baysa as *alias* "Nano" before asking him how much he wanted to purchase. MADAC operative Baysa intimated that he needed ₱200.00 worth of *shabu*, while simultaneously handing over the marked money to the subject who, in turn, gave him one (1) small heat-sealed transparent plastic sachet containing suspected *shabu*.

The transaction having been consummated, MADAC operative Baysa executed the pre-arranged signal to the rest of the team for assistance. Taking their cue, [PO1 Michelle V. Gimena]

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[5] TSN, 6 October 2008. *Id.* at 155 and 163.

[6] CA Decision. *Rollo*, pp. 5-6.

(PO1 Gimena) and MADAC operative Sumudlayon rushed to the scene. Meanwhile, MADAC operative Baysa introduced himself before effecting the arrest of the subject, who was later identified as the herein accused Gerry Octavio *y* Florendo. A routine body search upon his person yielded the marked money, two (2) pieces of small plastic sachets containing suspected *shabu* and another two (2) ₱100 bills. MADAC operative Sumudlayon, on the other hand, was able to arrest *alias* "Nano," who was later identified as the herein accused Reynaldo Cariño *y* Martir. Two (2) pieces of heat-sealed transparent plastic sachets containing the same illegal substance were recovered from his possession.

Thereafter, both of the accused, as well as the confiscated items were brought to the SAID-SOTF office for further investigation and later to the PNP Crime Laboratory for drug test and examination, respectively.[7]

Version of the Defense

Both accused vehemently denied the charges against them. Accused Cariño maintained that at around 6:00 c'clock in the evening of 17August 2007, he was resting inside his house when four (4) men suddenly entered. They asked him if he was Cesar Martir, referring to his cousin who resided next door. When he did not respond, they handcuffed and boarded him inside their vehicle. One of those on board was MADAC operative Ed Monteza who previously invited him to the *barangay* hall in connection with an investigation regarding persons suspected to be drug peddlers within the neighborhood. Upon seeing him, MADAC Ed Monteza allegedly told his companions that they arrested the wrong person ("*Hindi iyan ang target natin.*") Thus, the men returned to the house of Cesar Martir but the latter was already nowhere in sight. They later proceeded to the SAID-SOTF and MADAC office, passing through Pateros Street, *Brgy*. Olympia, Makati City, where his co-accused Gerry Octavio was also arrested.

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[7] RTC Decision. Records, pp. 139-140.

For his part, accused Octavio narrated that at around 6:30 o'clock in the evening of 16 August 2007, he was walking along Pateros Street on his way to the house of Sylvia Lopez. Since he worked as a car painter, he was supposed to estimate the cost of materials needed to repaint her vehicle. Along the way, he caught sight of an incoming Mitsubishi L-300 van. When it stopped in front of him, two (2) armed men alighted therefrom and wanted to know where he was going. They likewise accused him of using illegal drugs ("*Siguro i-iscore ka, ano*?"). Although he denied the accusation, they handcuffed and boarded him just the same inside their vehicle. Once inside, he saw MADAC operative Eduardo Monteza who arrested him sometime in 2003. He likewise saw his co-accused Reynaldo Cariño already on board the van. Upon arrival at the SAID-SOTF office, the men asked if they knew the whereabouts of Cesar Martir. They allegedly threatened to file charges against the accused if they refused to provide any information about him. Since the accused were unable to give any information, an investigator accordingly produced plastic sachets of *shabu* which were allegedly recovered from them.[8]

Upon arraignment, both accused pleaded not guilty to the offenses charged. After pre-trial, trial on the merits ensued.

Ruling of the RTC

On 23 March 2009, the trial court rendered a decision finding both accused guilty beyond reasonable doubt of the offenses charged. In Criminal Case No. 07-1580, accused Octavio was sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. In Criminal Case No. 07-1581, he was sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum, to fourteen years (14) and eight (8) months as maximum and to pay a fine of ₱300,000.00. Cariño, for his part, was sentenced in Criminal Case No. 07-1582 to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum, to fourteen years (14) and eight (8) months as maximum and to pay a fine of ₱300,000.00.[9]

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[8] *Id.* at 140-141.

[9] *Id.* at 144.

The RTC found that the prosecution succeeded in proving beyond reasonable doubt the guilt of the two accused for violation of Sections 5 and 11, Article II, R.A. No. 9165. It ruled that the evidence presented during the trial adequately established that a valid buy-bust operation was conducted by the operatives of the MADAC, as well as the SAID-SOTF, Makati City on 16 August 2007 upon proper coordination with the PDEA.[10] On the other hand, accused Octavio and Cariño failed to present substantial evidence to establish their defense of frame-up. The RTC ruled that frame-up, as advanced by the herein accused, is generally looked upon with caution by the court because it is easy to contrive and difficult to disprove. Like *alibi*, frame-up as a defense had invariably been viewed with disfavor as it is common and standard line of defense in most prosecutions arising from violation of the Dangerous Drugs Act.[11]

The Ruling of the Court of Appeals

The CA affirmed the decision of the RTC, upon a finding that all of the elements of illegal sale and illegal possession of dangerous drug have been sufficiently established by the prosecution. It found credible the statements of prosecution witnesses Baysa, Sumudlayon and *Barangay* Captain Victor Del Prado (*Barangay* Captain Del Prado) about what transpired during and after the buy-bust operation. Further, it ruled that the prosecution has proven as unbroken the chain of custody of evidence. The CA likewise upheld the findings of the trial court that the buy-bust operation conducted enjoyed the presumption of regularity, absent any showing of ill-motive on the part of the police operatives who conducted the same.

The CA found accused-appellants' defenses of denial and frame-up unconvincing and lacked strong corroboration.[12]

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[10] *Id.* at 141

[11] *Id.* at 143 citing *People of the Philippines v. Evangelista*, G.R. No. 175281, 27 September 2007, 534 SCRA 241.

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

ISSUE

Accused-appellants raised in their brief a lone error on the part of the appellate court, to wit:

> The court *a quo* gravely erred in finding the accused-appellants guilty beyond reasonable doubt of the crime charged.[13]

Our Ruling

The appeal is bereft of merit.

Accused-appellants submit that the trial court failed to consider the procedural flaws committed by the arresting officers in the seizure and custody of drugs as embodied in Section 21, paragraph 1, Article II, R.A. No. 9165.[14] Accused-appellants allege that no photograph was taken of the items seized from them. Further, *Barangay* Captain Del Prado, an elected public official, was not present during the alleged buy-bust operation. He was only asked to sign the inventory of the seized items shortly after his arrival at the scene of the buy-bust operation. Thus, he has no personal knowledge as to whether the drugs allegedly seized from the accused-appellants were indeed recovered from them. Accused-appellants maintain that such failure created a cloud of doubt as to whether the alleged *shabu* seized from them were the same ones forwarded by the apprehending officers to the investigating officer, to the crime laboratory for examination and later presented in court.[15]

Relevant to accused-appellants' case is the procedure to be followed in the custody and handling of the seized dangerous drugs as outlined in Section 21, paragraph 1, Article II, R.A. No. 9165, which reads:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused

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[13] CA *rollo,* p. 41.

[14] Brief for the accused-appellants. *Id.* at 43.

[15] *Id.* at 47-48.

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

This provision is elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which states:

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

Clearly, there is nothing in the aforesaid law or its implementing rules which require the presence of the elected public official during the buy-bust operation. It is enough that he is present during the physical inventory immediately conducted after the seizure and confiscation of the drugs and he signs the copies of the inventory and is given a copy thereof.

During the cross-examination by the defense counsel, *Barangay* Captain Del Prado testified as follows:

Q: Mr. Witness, you mentioned it was evening time when Eduardo Monteza called you?
A: Yes, sir.
Q: What was the date again?
A: August 16 think.

Q: Am I correct to say that Eduardo Monteza called you up regarding the arrest of the suspect in this case?

A: Yes, sir.

Q: When you proceeded to the place, it was designated by Ed Monteza, the place you would be?

A: They told me the site of apprehension because I know the place of operation, sir.

THE COURT:

Q: Where was the area of operation?

A: Pateros Street Barangay Olympia near Osmeña Street.

Q: You said that some items were shown to you, will you please enlighten us what are these items?

A: I remember four (4) items in the inventory receipt that I signed, the first item consists of five (5) transparent plastic sachets containing suspected shabu, one with marking 'BUBOY', the subject which was bought from Buboy, then 2 plastic sachets with marking 'BUBOY' 1 and 2, those recovered from the possession of the said @Buboy, then 2 items with marking 'NANO-1' and 'NANO-2' recovered from accused Reynaldo.

Q: When you proceeded to the place, did you happen to see the accused?

A: Yes, sir.

Q: What were they wearing at that time, if you can still remember?

A: I remember that Gerry was wearing sando and short.

Q: What's the color of the sando?

A: I remember it's white, sir.

Q: The short, what's the color?

A: It's maong shorts, sir.

Q: What about the other accused?

A: I remember he's wearing white t-shirt, sir.

Q: And his lower garment?

A: I did not notice, sir, because they were then sitting.[16]

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In the aforesaid testimony, *Barangay* Captain Del Prado, not only positively identified both accused but also identified the

[16] TSN, 12 January 2009. Records, pp. 291-293.

items contained in the inventory receipt. Such testimony clearly established compliance with the requirement of Section 21 with regard to the presence and participation of the elected public official.

Furthermore, this Court has consistently ruled that even if the arresting officers failed to take a photograph of the seized drugs as required under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence.[17] What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[18] In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even though the procedural requirements provided for in Sec. 21 of R.A. No. 9165 was not faithfully observed, the guilt of the accused will not be affected.[19]

The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or

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[17] *People v. Jose Almodiel*, G.R. No. 200951, 5 September 2012; *People v. Campos*, G.R. No. 186526, 25 August 2010, 629 SCRA 462 citing *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 436-437.

[18] *People v. Mangundayao*, G.R. No. 188132, 29 February 2012, 667 SCRA 310, 338; *People v. Le*, G.R. No. 188976, 29 June 2010, 622 SCRA 571, 583 citing *People v. De Leon*, G.R. No. 186471, 25 January 2010, 611 SCRA 118, 133 further citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 448; *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 437.

[19] *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 639 SCRA 455, 467 citing *People v. Rosialda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507, 520-521 further citing *People v. Rivera*, G.R. No. 182347, 17 October 2008, 569 SCRA 879, 897-899.

proof that the evidence has been tampered with. Appellants bear the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.[20] Appellants in this case failed to present any plausible reason to impute ill motive on the part of the arresting officers. Thus, the testimonies of the apprehending officers deserve full faith and credit.[21] In fact, accused-appellants did not even questioned the credibility of the prosecution witnesses. They anchored their appeal solely on the alleged broken chain of the custody of the seized drugs.

Finally, we note and agree with the observation of the CA that the issue regarding the break in the chain of custody of evidence was raised belatedly and only for the first time on appeal.[22] *In People v. Mateo*,[23] this Court brushed aside the accused's belated contention that the illegal drugs confiscated from his person was inadmissible because the arresting officers failed to comply with Section 21 of R.A. No. 9165. Whatever justifiable grounds may excuse the police officers from literally complying with Section 21 will remain unknown, because accused did not question during trial the safekeeping of the items seized from him. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of an objection. Without such objection, he cannot raise the question for the first time on appeal.

On the basis of the aforesaid disquisition, we find no reason to modify or set aside the decision of the CA.

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[20] *People v. Miranda*, G.R. No. 174773, 2 October 2007, 534 SCRA 552, 568-569.

[21] See *People v. Macabalang*, G.R. No. 168694, 27 November 2006, 508 SCRA 282, 300.

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

[23] G.R. No. 179478, 28 July 2008, 560 SCRA 397, 410-411 citing *People v. Sta. Maria*, G.R. No. 171019, 23 February 2007, 516 SCRA 621, 633-634.

WHEREFORE, the appeal is **DENIED** and the 29 March 2011 Decision of the Court of Appeals in CA-G.R. CR-HC No. 03900 in is hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 199747. April 3, 2013]

TEODORO DARCEN, MAMERTO DARCEN, JR., NESTOR DARCEN, BENILDA DARCEN-SANTOS, and ELENITA DARCEN-VERGEL, *petitioners, vs.* **V.R. GONZALES CREDIT ENTERPRISES, INC., represented by its President, VERONICA L. GONZALES,** *respondent.*

SYLLABUS

1. **MERCANTILE LAW; ACT NO. 3135 (REAL ESTATE MORTGAGE LAW); WRIT OF POSSESSION; AS A RULE, ISSUANCE THEREOF IS A MINISTERIAL DUTY OF THE COURT WHICH THE NEW OWNER MAY OBTAIN THROUGH AN *EX-PARTE* MOTION; SUSTAINED.—** The established rule is that the purchaser in an extrajudicial foreclosure sale becomes the **absolute** owner of the property if no redemption is made within one (1) year from the registration of the certificate of sale by those who are entitled to redeem. Possession being a recognized essential attribute of ownership, after consolidation of title the purchaser may

[*] Per Special Order No. 1437 dated 25 March 2013.

demand possession as a matter of right. Under Section 7 of Act No. 3135, as amended by Act No. 4118, the issuance of the writ is merely a ministerial function of the RTC, which the new owner may obtain through an *ex parte* motion. x x x The possession may be granted to the buyer either (a) within the one-year redemption period, upon the filing by the purchaser of a bond, or (b) after the lapse of the redemption period, without need of a bond. x x x Moreover, we made it clear in the recent case of *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.,* that not even a pending action for annulment of mortgage or foreclosure sale will stay the issuance of the writ of possession.

2. ID.; ID.; ID.; THE MINISTERIAL DUTY OF THE COURT TO ISSUE AN *EX-PARTE* WRIT CEASES ONCE IT APPEARS THAT THERE IS A THIRD PARTY IN POSSESSION OF THE SUBJECT PROPERTY; CONDITION, EXPLAINED.— Section 33, Rule 39 of the Rules of Court provides that in an execution sale, the possession of the property shall be given to the purchaser or last redemptioner, **unless a third party is actually holding the property adversely to the judgment obligor:** x x x The application of the above Section has been extended to extrajudicial foreclosure sales pursuant to Section 6 of Act No. 3135. x x x But in *China Banking Corporation v. Lozada,* the Supreme Court clarified that it is not enough that the property be possessed by a third party, but the same must also held by the third party adversely to the debtor/mortgagor: x x x The Court then discussed the meaning of "third party who is actually holding the property adversely to the judgment obligor," thus: The exception provided under Section 33 of Rule 39 of the Revised Rules of Court 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. x x x Thus, it was held in *BPI Family Savings Bank, Inc*. that to be error for the court to issue an *ex parte* writ of possession to the purchaser in an extrajudicial foreclosure, or to refuse to abate one already granted, where a third party claimant in actual possession has raised, in an opposition to the writ or in a motion to quash the

same, the matter of his actual possession upon a claim of ownership or a right adverse to that of the debtor or mortgagor. The procedure, accordingly to *Unchuan v. CA*, is for the trial court to order a hearing to determine the nature of the adverse possession.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioners.
Carlo Jolette S. Fajardo for respondent.

D E C I S I O N

REYES, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure of the Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 114265 dated July 20, 2011, denying herein petitioners' petition for *certiorari* and prohibition which sought to annul and set aside the Orders dated March 16, 2010[3] and May 4, 2010[4] of the Regional Trial Court (RTC) of the City of Malolos, Bulacan, Branch 81, in P-826-2009, entitled, "*In Re: Ex-Parte Petition for Issuance of a Writ of Possession, V.R. Gonzalez Credit Enterprises, Inc., as represented by its President Veronica Gonzalez, Petitioner, Teodoro Darcen, et al., Oppositors*."

Antecedent Facts

The spouses Mamerto Darcen (Mamerto) and Flora De Guzman (Flora) were married on February 2, 1947, and they begot seven (7) children, namely: Teodoro, Mamerto, Jr., Nestor, Benilda, and Elenita (the petitioners), and their brothers Arturo and

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

[2] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Rosmari D. Carandang and Ramon R. Garcia, concurring; *id.* at 32-39.

[3] Rendered by Judge Herminia V. Pasamba; *id.* at 130-131.

[4] *Id.* at 140.

Manuel. Mamerto died on September 18, 1986, leaving behind an estate consisting of three titled parcels of land located in Baliuag, Bulacan and covered by Transfer Certificate of Title (TCT) No. RT-19565 (T-41394), TCT No. RT-19566 (T-11678), and TCT No. RT-19564 (T-193099), all under the name "Mamerto Darcen married to Flora de Guzman."

According to the petitioners, sometime in 1990 their late brother Manuel borrowed money from Veronica Gonzales (Gonzales), president of V.R. Gonzales Credit Enterprises, Inc. (respondent company). Manuel sought their consent in constituting a mortgage over the above properties of their father, but the petitioners refused. Manuel then caused the execution of an *Extra-Judicial Settlement of Estate with Waiver* by forging the signatures of the petitioners and their mother Flora. In the said instrument, the petitioners and their siblings were said to have waived their shares in their father's estate in favor of their mother, thus making Flora the sole owner of the three lots.[5] Meanwhile, fire had razed part of the Office of the Register of Deeds of Bulacan and destroyed the titles to the said parcels. After the reconstitution of the titles on April 7, 1992,[6] new titles were issued in the name of "Flora de Guzman, Filipino, of legal age, widow," to wit:

(1) TCT No. T-19267, which is a transfer from TCT No. RT-19565 (T-41394), containing an area of 512 square meters, located in *Barangay* Sabang, Baliuag, Bulacan;

(2) TCT No. T-19268, which is a transfer from TCT No. RT-19566 (T-116789), covering an area of 478.4 sq m, located at P. Angeles St., Baliuag, Bulacan; and

(3) TCT No. T-19269, which is a transfer from TCT No. RT-19564 (T-193099), covering an area of 580 sq m, located in Baliuag, Bulacan.[7]

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[5] *Id.* at 12.

[6] *Id.* at 13.

[7] *Id.* at 60-65.

Petitioners further claim that on the day that the above new titles were issued, they caused the annotation thereon of their hereditary claim in their father's estate.[8] On December 4, 2000, Flora died.

Sometime in January 2007, Gonzales appeared and, claiming that the petitioners' late mother Flora had mortgaged the above properties to respondent company in 1995, demanded payment from the petitioners of several loans allegedly taken out by Flora, as follows:[9]

(i) ₱3,000,000.00, borrowed by Flora on January 30, 1995 secured by a mortgage contract over TCT No. T-19269;

(ii) ₱3,500,000.00, taken out on July 12, 1995 by Flora upon a mortgage over TCT No. T-19267;

(iii) ₱500,000.00, also borrowed on July 12, 1995 by Flora secured by a mortgage over TCT No. T-19268;

On Februry 16, 2007, the petitioners were able to verify from the Register of Deeds of Bulacan that the above properties had indeed been mortgaged to respondent company in 1995, but they now say that they "immediately noted that the purported signatures of their mother on the three (3) mortgage contracts were actually forgeries, and that the mortgage contracts did not state when the supposed loan obligations would become due and demandable."[10] They maintain that their mother did not contract the loans, and they point to their brothers Manuel and Arturo, whose signatures appear as witnesses on the mortgage documents, as guilty of forging her signatures and of receiving the proceeds of the loans. The petitioners also disclaim any knowledge of the loans, or of their consent thereto, either before or after.

The respondent company extrajudicially foreclosed on the mortgage over the aforesaid lots sometime in 2007, but

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

[9] *Id.* at 68-75.

[10] *Id.* at 112.

meanwhile, on June 8, 2007, the petitioners filed Civil Case No. 333-M-2007[11] with the RTC-Branch 78, for *"Annulment of Mortgage, Extra-Judicial Foreclosure, Auction Sale, Certificate of Sale, and Damages,"* seeking to void the real estate mortgages, the extrajudicial foreclosure and the auction sale of the lots. Named defendants were respondent company and their brothers Manuel and Arturo.

After posting and publication of the notice of sheriff's sale dated October 20, 2008, the three properties were sold at auction held on November 18, 2008 for a total price of ₱8,000,000, with the respondent company as the highest bidder. A certificate of sale was issued by *Ex-Officio* Sheriff Emmanuel Ortega on November 20, 2008, duly annotated on the titles on November 28, 2008.[12]

The one-year period to redeem lapsed. Respondent company executed an affidavit of consolidation of ownership. On December 8, 2009, it filed an *ex parte* petition for issuance of a writ of possession in the RTC-Branch 81 docketed as P-826-2009.[13] In its Order[14] dated December 17, 2009, the court set the petition for hearing on February 26, 2010. Meanwhile, on February 25, 2010, the petitioners were able to file an Opposition[15] to the petition, praying for the outright denial thereof on the ground of forum shopping because the respondent company did not disclose the pendency of Civil Case No. 333-M-2007 in its certification against forum-shopping. On March 10, 2010, V.R. Gonzales filed a Comment to the Opposition,[16] to which the petitioners filed a Reply[17] on March 23, 2010.

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[11] *Id.* at 42-50.

[12] *Id.* at 93-100.

[13] *Id.* at 88-91.

[14] *Id.* at 101-102.

[15] *Id.* at 103-108.

[16] *Id.* at 179-181.

[17] *Id.* at 182-184.

In its Order[18] dated March 16, 2010, the RTC-Branch 81 denied the petitioners' opposition and ruled that the respondent company was not guilty of forum shopping. Citing *Sps. Ong v. CA*,[19] it held that the issuance of the writ of possession was a mere ministerial function of the court, and was summary in nature.[20] Not being a judgment on the merits, *litis pendentia* or *res judicata* would not set in to bar the filing of Civil Case No. 333-M-2007.

Petitioners' motion for reconsideration was denied in the court's Order[21] dated May 4, 2010.

On June 2, 2010, the petitioners filed a petition for *certiorari*[22] in the CA docketed as CA-G.R. SP No. 114265, whose decision therein, dated July 20, 2011, is now the subject of this Petition.

Meanwhile, on February 28, 2011, the RTC-Branch 81 granted the writ of possession sought by the respondent company in P-826-2009. The notice to vacate was issued on April 26, 2011 against the petitioners.

In a related development, on August 10, 2010, the RTC-Branch 78 dismissed the complaint in Civil Case No. 333-M-2007, holding that the mortgage contracts executed by Flora in favor of the respondent company over TCT Nos. T-19267, T-19268, and T-19269 are valid, and declaring valid the extrajudicial foreclosure and auction sale of the said properties. The decision is now pending appeal in the CA, docketed as CA-G.R. CV No. 96251.

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[18] *Id.* at 130-131.

[19] 388 Phil. 857 (2000).

[20] *Id.* at 867.

[21] *Rollo*, p. 140.

[22] *Id.* at 141-157.

Petition for *Certiorari* in the CA

In CA-G.R. SP No. 114265,[23] the petitioners reiterated their arguments: (1) that due to identity of parties and cause of action, the respondent company committed forum shopping for failing to disclose the pendency of Civil Case No. 333-M-2007; (2) that due to the pendency of Civil Case No. 333-M-2007, the RTC-Branch 81 has no jurisdiction over the *ex parte* petition for writ of possession, since the question of possession was already laid before the RTC-Branch 78; and (3) that the issue of validity of the mortgage contracts executed by Flora and the foreclosure of the mortgages are material to the issue of possession.

On April 25, 2011, the CA denied petitioners' urgent motion for writ of preliminary injunction and/or Temporary Restraining Order.

On July 20, 2011, the CA rendered its now assailed decision denying the petition in CA-G.R. SP No. 114265, ruling that respondent company was not guilty of forum shopping since the *ex parte* petition for writ of possession it filed in P-826-2009 is not an initiatory pleading as to require that a certification of non-forum shopping be attached thereto; that the issuance of the writ of possession is merely a ministerial function of the court *a quo*, the possession being incidental to the transfer of title to the new owner; that the issuance of the writ is summary in nature and is not a judgment on the merits.

The CA further explained that the *ex parte* writ of possession is for the sole benefit of the new owner, without need of notice to or consent by any party who might be adversely affected. Thus, notwithstanding the pendency of a suit to annul the real estate mortgage and the extrajudicial foreclosure and auction sale, the purchaser is entitled to a writ of possession, without prejudice to the outcome in the annulment case, which can proceed without encroaching on the jurisdiction of the court resolving the *ex parte* petition for writ of possession.

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[23] *Id.* at 141-157.

Petition for Review in the Supreme Court

On December 12, 2011, the CA denied the petitioners' Motion for Reconsideration from its above decision.[24] Hence, this petition for review.

The petitioners now contend that the CA erred in failing to take into account the fact that they, against whom the writ of possession issued by the RTC in P-826-2009 was directed, are adverse claimants who are third parties and strangers to the real estate mortgages executed by their mother. They cite *Villanueva v. Cherdan Lending Investors Corporation*,[25] where it was reiterated that the issuance of a writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial where the property is in the possession of a third party who holds the property under a claim adverse to that of the debtor/mortgagor.[26]

The petitioners maintain that they knew nothing about the mortgage contracts, whose validity is now the subject of their appeal in CA-G.R. CV No. 96251. They further claim that their signatures in the *Extrajudicial Settlement of Estate with Waiver,* which they supposedly executed in favor of their mother Flora, were forged. As co-heirs and co-owners with their mother of the subject lots, they have a claim directly adverse to hers, and therefore, also directly adverse to her successor-in-interest, the respondent company. Consequently, the duty of the RTC to issue the writ of possession to respondent company ceases to be ministerial.

Our Ruling

We dismiss the petition.

The long-settled rule in extrajudicial foreclosure of real estate mortgage is that after consolidation of ownership

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[24] *Id.* at 41.

[25] G.R. No. 177881, October 13, 2010, 633 SCRA 173.

[26] *Id.* at 181.

of the foreclosed property, it is the ministerial duty of the court to issue, as a matter of right, an *ex parte* writ of possession to the buyer.

The established rule is that the purchaser in an extrajudicial foreclosure sale becomes the **absolute** owner of the property if no redemption is made within one (1) year from the registration of the certificate of sale by those who are entitled to redeem.[27] Possession being a recognized essential attribute of ownership,[28] after consolidation of title the purchaser may demand possession as a matter of right.[29] Under Section 7 of Act No. 3135, as amended by Act No. 4118, the issuance of the writ is merely a ministerial function of the RTC, which the new owner may obtain through an *ex parte* motion.[30] Section 7 of Act No. 3135 provides:

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act

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[27] Act No. 3135, Section 6.

[28] *See* NEW CIVIL CODE, Book II, Title II, Articles 428-430.

[29] *Samson v. Rivera,* G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768-769.

[30] *Metropolitan Bank & Trust Company v. Santos*, G.R. No. 157867, December 15, 2009, 608 SCRA 222, 234. (Citations omitted)

numbered Four hundred and ninety-six, as amended by Act numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

The possession may be granted to the buyer either (a) within the one-year redemption period, upon the filing by the purchaser of a bond, or (b) after the lapse of the redemption period, without need of a bond.[31] As explained in *Spouses Arquiza v. CA*:[32]

Indeed, it is well-settled that an ordinary action to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property is not necessary. There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale. The basis of this right to possession is the purchaser's ownership of the property. The mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and no bond is required.[33] (Citations omitted and underscoring ours)

We repeated the above rule in *Asia United Bank v. Goodland Company, Inc.*,[34] in this wise:

It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title. To accentuate the writ's ministerial character, the Court has consistently disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.

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[31] *Idolor v. Court of Appeals*, 490 Phil. 808, 813 (2005).

[32] 498 Phil. 793 (2005).

[33] *Id.* at 804.

[34] G.R. No. 188051, November 22, 2010, 635 SCRA 637.

The nature of an *ex parte* petition for issuance of the possessory writ under Act No. 3135 has been described as a non-litigious proceeding and summary in nature. As an *ex parte* proceeding, it is brought for the benefit of one party only, and without notice to or consent by any person adversely interested.[35] (Citations omitted)

Moreover, we made it clear in the recent case of *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.,*[36] that not even a pending action for annulment of mortgage or foreclosure sale will stay the issuance of the writ of possession:

Furthermore, it is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case.[37] (Citations omitted)

Nonetheless, the ministerial duty of the court to issue an *ex parte* writ of possession ceases once it appears that there is a third party in possession of the property, who is a stranger to the mortgage and who claims a right adverse to that of the debtor/ mortgagor.

Section 33, Rule 39 of the Rules of Court provides that in an execution sale, the possession of the property shall be given to the purchaser or last redemptioner, **unless a third party is actually holding the property adversely to the judgment obligor:**

Sec. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given*.—If no redemption be made within one (1) year from the date of the registration of the

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[35] *Id.* at 646-647.

[36] G.R. No. 176019, January 12, 2011, 639 SCRA 405.

[37] *Id.* at 418.

certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

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.

The application of the above Section has been extended to extrajudicial foreclosure sales pursuant to Section 6 of Act No. 3135, to wit:

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 sale; and such redemption shall be governed by the provisions of section 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.

Thus emboldened by Section 33 of Rule 39, the petitioners have persisted in making the point that they are strangers to the mortgage contracts executed by their mother over their father's lots, which they claim to co-own with her, an interest adverse to that of the respondent company. In *Villanueva,*[38] they found support for their contention:

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[38] *Supra* note 26.

It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed within one year after the registration of the sale. As such, he is entitled to the possession of the property and can demand that he be placed in possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. Time and again, we have held that it is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption. Upon the filing of an *ex parte* motion and the approval of the corresponding bond, the court issues the order for a writ of possession. The writ of possession issues as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new TCT in the name of the purchaser.

This rule, however, is not without exception. Under Section 33, Rule 39 of the Rules of Court, which is made to apply suppletorily to the extrajudicial foreclosure of real estate mortgages by Section 6, Act 3135, as amended, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure unless a third party is actually holding the property adversely to the judgment debtor. Section 33 provides:

x x x x x x x x x

The same issue had been raised in *Bank of the Philippine Islands v. Icot*, *Development Bank of the Philippines v. Prime Neighborhood Association, Dayot v. Shell Chemical Company (Phils.), Inc.*, and *Philippine National Bank v. Court of Appeals,* and we uniformly held that the obligation of the court to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor.

The purchaser's right of possession is recognized only as against the judgment debtor and his successor-in-interest but not against persons whose right of possession is adverse to the latter. In this case, petitioner opposed the issuance of the writ of possession on the ground that he is in actual possession of the mortgaged property under a claim of ownership. He explained that his title to the property was cancelled by virtue of a falsified deed of donation executed in favor of spouses Peñaredondo. Because of this falsification, he filed civil and criminal cases against spouses Peñaredondo to nullify the

deed of donation and to punish the party responsible for the falsified document. Petitioner's claim that he is in actual possession of the property is not challenged, and he has come to court asserting an ownership right adverse to that of the mortgagors, the spouses Peñaredondo.[39] (Citations omitted)

But in *China Banking Corporation v. Lozada*,[40] the Supreme Court clarified that it is not enough that the property be possessed by a third party, but the same must also held by the third party adversely to the debtor/mortgagor:

Where a parcel levied upon on **execution** is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession. Similarly, in an **extrajudicial foreclosure** of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party adversely to the debtor/mortgagor.[41] (Citation omitted and emphasis ours)

The Court then discussed the meaning of "third party who is actually holding the property adversely to the judgment obligor,"[42] thus:

The exception provided under Section 33 of Rule 39 of the Revised Rules of Court 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. x x x.[43] (Citations omitted)

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[39] *Id.* at 180-182.

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

[41] *Supra* note 41, at 198.

[42] *Supra* note 37, at 417-418.

[43] *Supra* note 41, at 202-204.

Thus, it was held in *BPI Family Savings Bank, Inc.* that to be error for the court to issue an *ex parte* writ of possession to the purchaser in an extrajudicial foreclosure, or to refuse to abate one already granted, where a third party claimant in actual possession has raised, in an opposition to the writ or in a motion to quash the same, the matter of his actual possession upon a claim of ownership or a right adverse to that of the debtor or mortgagor. The procedure, accordingly to *Unchuan v. CA*,[44] is for the trial court to order a hearing to determine the nature of the adverse possession:[45]

> Note, however, that a third party not privy to the debtor is protected by the law. He may be ejected from the premises only after he has been given an opportunity to be heard, conformably with the time-honored principle of due process. "Where a parcel of land levied on execution is occupied by a party other than the judgment debtor, the proper procedure is for the court to order a hearing to determine the nature of said adverse possession."[46] (Citations omitted)

We find no proof that the petitioners are adverse third-party claimants entitled to be retained in possession.

The RTC's chief consideration for granting to the respondent company a writ of possession was that the assailed mortgages purportedly executed by Flora in 1995 were constituted on properties covered by certificates of title issued solely in her name.

It will be noted that it was only in June 2007, after respondent company had threatened them with extrajudicial foreclosure and eviction, or after 12 years had passed, that the petitioners brought an action to annul the real estate mortgages, and meanwhile, Flora had obtained several loans totaling ₱7.5 million

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[44] 244 Phil. 733 (1988).

[45] *Supra* note 37, at 416.

[46] *Id.* at 738.

from the respondent company in 1995. It took petitioners even longer, 15 years, to assail the validity of the alleged *Extrajudicial Settlement of Estate with Waiver,* which gave Flora sole title to the subject lots under the new titles issued to her in April 1992.

Realizing that their claim of forgery of their mother's signature in the mortgage contracts was tenuous after the RTC-Branch 78 dismissed Civil Case No. 333-M-2007, the petitioners now claim that an earlier instrument, an *Extrajudicial Settlement of Estate with Waiver*, was falsified by their brothers Manuel and Arturo who forged their signatures. Yet, why the said instrument named neither Manuel nor Arturo but their mother Flora as the sole beneficiary of the heirs' waiver, the petitioners did not explain. Thus, through the said instrument, on April 7, 1992, TCT No. RT-19565 (T-41394), TCT No. RT-19566 (T-11678), and TCT No. RT-19564 (T-193099), all under the name of "*Mamerto Darcen married to Flora de Guzman,*" were cancelled and replaced with TCT Nos. T-19267, T-19268, and T-19269, respectively, now in the name solely of "*Flora de Guzman, Filipino, of legal age, widow.*"

Considering that the petitioners are now stridently asserting that their signatures in the aforesaid *Extrajudicial Settlement of Estate with Waiver* had been forged, it is inexplicable why they failed to attach a copy thereof either to their Opposition to the *ex parte* petition for writ of possession, or to this petition. All that they could say about this "oversight" is that they "were never able to insist on the presentation of the said document because they were never parties in the case for writ of possession. Besides, the case for writ of possession is summary and non-adversarial."[47]

But this is a lie and an obvious subterfuge, for the fact is that the RTC set a hearing on February 26, 2010 to hear out the petitioners on the nature of their claimed adverse possession. They appeared with their lawyer, and had an opportunity to lay out the complete facts and present whatever pertinent documents were in their possession. They did no such thing,

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[47] *Rollo*, p. 13.

and only affirmed the contents of their Opposition, wherein they chiefly asserted their defense of lack of jurisdiction of the RTC-Branch 81 and forum shopping.

Not only did petitioners not sue to annul the extrajudicial settlement, but on the very day, April 7, 1992, that the new titles were issued to Flora, an inscription appears in the said titles announcing that one-half (½) of the lots would be bound for the next two years to possible claims by other heirs or unknown creditors against the estate of Mamerto, pursuant to Section 4 of Rule 74 of the Rules of Court. All three titles bear this same inscription,[48] which the petitioners admit that they themselves had caused to be annotated on their mother's titles,[49] in the following words:

> Entry No. 7550 – The ½ portion of the land described herein is subject to the provision of Sec. 4, Rule 74 of the Rules with respect to the inheritance left by the deceased Mamerto Darcen.
>
> Date of instrument – March 7, 1992
> Date of inscription – April 7, 1992 at 9:35 a.m.[50]

All the above leave little doubt that the petitioners had always known about, and had consented to, the extrajudicial settlement of the estate of their father Mamerto, as well as waiver by them of their shares therein in favor of their mother Flora. For this very reason, they cannot now be permitted to interpose an adverse claim in the subject mortgaged lots and defeat the writ of possession issued to the respondent company.

The petitioners were accorded an opportunity to be heard on the nature of their claimed adverse possession, conformably with the time-honored principle of due process.

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[48] *Id.* at 61, 63, 65.

[49] *Id.* at 13.

[50] *Id.*

On December 17, 2009, the RTC-Branch 81 set for hearing on February 26, 2010 the petition for writ of possession in P-826-2009.[51] On February 25, 2010, the petitioners were able to file their Opposition[52] to the said petition, wherein they asserted that they are co-owners of the properties, being heirs of the deceased Mamerto; that they filed a case, Civil Case No. 333-M-2007, to annul the mortgages over the three lots on account of forgery; and that the extrajudicial foreclosure sale of the lots was invalid. They, thus, prayed for outright denial of the writ on the ground of forum shopping, because respondent company did not disclose the pendency of Civil Case No. 333-M-2007 in its certification against forum shopping.

At the hearing on February 26, 2010, the petitioners appeared with their counsel, Atty. Enrique dela Cruz, Jr. They did not however present any documents, and only affirmed their Opposition already in the records.[53] On March 11, 2010, respondent company filed its comment to petitioners' Opposition.[54] On March 23, 2010, the petitioners filed their reply.[55]

In its Order dated March 16, 2010, the RTC-Branch 81 held that respondent company was not guilty of forum shopping, citing *Sagarbarria v. Philippine Business Bank*,[56] as follows:

> [A]ct No. 3135, as amended by Act No. 4118, is categorical in stating that the purchaser must first be placed in possession of the mortgaged property pending proceedings assailing the issuance of the writ of possession.

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[51] *Id.* at 101-102.

[52] *Id.* at 103-108.

[53] *Id.* at 177-178.

[54] *Id.* at 179-181.

[55] *Id.* at 182-184.

[56] G.R. No. 178330, July 23, 2009, 593 SCRA 645.

Consequently, the RTC under which the application for the issuance of a writ of possession over the subject property is pending cannot defer the issuance of the said writ in view of the pendency of an action for annulment of mortgage and foreclosure sale. The judge with whom an application for a writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure.

Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession without prejudice, of course, to the eventual outcome of the pending annulment case.[57] (Underscoring ours)

On April 8, 2010, petitioners filed their Motion for Reconsideration[58] from the denial of their opposition, but it was denied on May 4, 2010.

Even granting that the petitioners should be allowed to retain possession, the petition has been rendered moot and academic by the issuance and satisfaction of the writ of possession issued in P-826-2009.

As the petitioners have themselves admitted in their Petition,[59] the RTC-Branch 81, issued a Writ of Possession[60] dated April 18, 2011, and on October 4, 2011 they were physically evicted from the disputed lots by the Sheriff, and the respondent company was placed in possession thereof, per the Sheriff's report dated October 4, 2011.[61] With the writ of possession

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[57] *Id.* at 654, citing *Fernandez v. Espinosa*, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 149-150; *rollo,* pp. 130-131 .

[58] *Rollo*, pp. 132-138.

[59] *Id.* at 18.

[60] *Id.* at 234-236.

[61] *Id.* at 237.

having been served and fully satisfied, the instant petition has ceased to present a justiciable controversy for this Court to resolve, and a declaration thereon would be of no practical use or value,[62] in view of the pendency in the CA of the petitioners' appeal from the decision in Civil Case No. 333-M-2007 on the question of the ownership of the subject mortgaged lots, and thus of the rightful possession thereover. As we have reiterated in *Madriaga, Jr. v. China Banking Corporation*:[63]

> Judicial power presupposes actual controversies, the very antithesis of mootness. Where there is no more live subject of controversy, the Court ceases to have a reason to render any ruling or make any pronouncement. Courts generally decline jurisdiction on the ground of mootness – save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review, which are not extant in this case.[64] (Citations omitted)

What is now left for the petitioners to do is to await the resolution of their appeal in Civil Case No. 333-M-2007. Their restoration to possession may then be sought therein as an incident or relief, if justified.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **DENIED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[62] See *Madriaga, Jr. v. China Banking Corporation,* G.R. No. 192377, July 25, 2012, citing *Sps. de Vera v. Hon. Agloro*, 489 Phil. 185 (2005).

[63] G.R. No. 192377, July 25, 2012.

[64] *Id.*

FIRST DIVISION

[G.R. No. 201449. April 3, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WELVIN DIU *Y* KOTSESA and DENNIS DAYAON *Y* TUPIT,**[1] *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS AND CONCLUSIONS OF THE TRIAL COURT THEREON ASSUME GREATER WEIGHT WHEN AFFIRMED BY THE COURT OF APPEALS; CASE AT BAR.— Thus, it has been an established rule in appellate review that the trial court's factual findings – including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings – are accorded great respect and even conclusive effect. These factual findings and conclusions assume greater weight if they are affirmed by the Court of Appeals. In this case, the RTC, affirmed by the Court of Appeals, gave more weight and credence to the testimony of Perlie compared to that of accused- appellants and their witnesses. There is no reason for the Court to overturn the judgment of the trial and the appellate courts on the matter. Perlie is more than just an eyewitness, she is a surviving victim of the crime. x x x Perlie's certainty that the knife shown to her at the police station and during trial was the very same knife used in the stabbing of Nely was wholly dependent on the police officer's representation to her that it was such. Nevertheless, failure of the prosecution to present the weapon used in Nely's stabbing is not fatal to

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[1] Three accused were charged before the Regional Trial Court (RTC), namely, Elvin Diu *y* Kotsesa (Diu), Dennis Dayaon *y* Tupit (Dayaon), and Cornelio de la Cruz, Jr., *alias* "Jay-Ar de la Cruz" (De la Cruz). However, only Diu and Dayaon were arrested, then arraigned, tried, and convicted by the RTC. De la Cruz remained at large. Hence, only Diu and Dayaon appealed their conviction before the Court of Appeals, and presently before this Court. Accordingly, De la Cruz's name was removed from the title as an accused-appellant.

its case. Presentation of the knife used is not essential to prove homicide. The fact and manner of Nely's death were duly established by evidence on record. Perlie saw accused-appellant Dayaon and De la Cruz embrace Nely, then stab Nely with a double-edged knife that was approximately seven inches long.

2. **ID.; ID.; ID.; THE TESTIMONY OF A SOLE EYEWITNESS IS SUFFICIENT TO SUPPORT A CONVICTION SO LONG AS IT IS CLEAR, STRAIGHTFORWARD AND WORTHY OF CREDENCE BY THE TRIAL COURT; PRESENT IN CASE AT BAR.—** Time and again, the Court has held that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward, and worthy of credence by the trial court, as in the case of Perlie's testimony. The trustworthiness of Perlie's testimony is further bolstered by its consistency and details. In her Sworn Statement executed on October 4, 2003, only a day after the incident, Perlie already mentioned that she and her sister were victims of a "hold-up" and that her shoulder bag, containing ₱1,800.00 cash and her work uniform, was taken. On the witness stand, under oath, she retold how after embracing her, accused-appellant Diu grabbed her shoulder bag with the ₱1,800.00 cash, her work uniform, and her other personal belongings. The ₱1,800.00 cash was not some random amount that Perlie conjured, but it was her salary from the hotel.

3. **CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; ELEMENTS.—** In *People v. De Jesus*, the Court explained extensively the nature of the complex crime of Robbery with Homicide: For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is animo lucrandi; and (4) by reason of the robbery or on the occasion thereof, homicide is committed.

4. **ID.; ID.; ID.; CRIMINAL LIABILITY AS PRINCIPALS, ESTABLISHED IN CASE AT BAR.—** The actuations of accused-appellants and De la Cruz were clearly coordinated and complementary to one another. Spontaneous agreement or active cooperation by all perpetrators at the moment of

the commission of the crime is sufficient to create joint criminal responsibility. As the RTC declared, "[t]he actions of the three accused, from the deprivation of the eyewitness [Perlie] of her personal belongings by accused Diu to the stabbing of the victim Nely by accused Dayaon and De la Cruz, Jr., are clear and indubitable proofs of a concerted effort to deprive [Perlie] and Nely of their personal belongings, and that by reason or on the occasion of the said robbery, stabbed and killed victim Nely Salvador." The absence of proof that accused-appellants attempted to stop Nely's killing, plus the finding of conspiracy, make accused-appellants liable as principals for the crime of Robbery with Homicide.

5. ID.; ID.; ID.; IMPOSABLE PENALTY.— The special complex crime of robbery with homicide is punishable under Article 294 of the Revised Penal Code, as amended, by *reclusion perpetua* to death. Article 63 of the same Code states that when the law prescribes a penalty consisting of two indivisible penalties, and the crime is neither attended by mitigating nor aggravating circumstances, the lesser penalty shall be imposed. In the present case, the Court of Appeals correctly refused to consider the aggravating circumstance of night time since it was not alleged in the Information. In the absence of any aggravating or mitigating circumstance, the penalty of *reclusion perpetua* was appropriately imposed upon accused-appellants as principals in the crime of Robbery with Homicide.

6. ID.; ID.; CIVIL LIABILITY; AWARD OF DAMAGES, PROPER. — In line with recent jurisprudence, accused-appellants are ordered to pay Nely's heirs the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages. Accused-appellants are further ordered to pay Perlie ₱50,000.00 as moral damages and ₱1,800.00 as restitution for the cash taken from her. The award for exemplary damages is deleted in view of the absence of any aggravating circumstance.

APPEARANCES OF COUNSEL

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

DECISION

LEONARDO-DE CASTRO, *J*.:

This is an appeal of the Decision[2] dated March 11, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03785, affirming with modification the Decision[3] dated December 23, 2008 of the Regional Trial Court (RTC) of Angeles City, Pampanga, Branch 59, in Criminal Case No. 03-668, which found accused-appellants Welvin Diu *y* Kotsesa (Diu) and Dennis Dayaon *y* Tupit (Dayaon) guilty beyond reasonable doubt of robbery with homicide.

Accused-appellants, together with Cornelio de la Cruz, Jr., *alias* "Jay-Ar de la Cruz" (De la Cruz), were charged before the RTC on March 28, 2005 under the following Amended Information:

> That on or about the 3rd day of October, 2003, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, armed with double bladed weapon, with intent of gain and by means of violence and intimidation against person, did and there willfully, unlawfully and feloniously take, steal and carry away from PERLIE SALVADOR *y* PALISOC, one (1) shoulder bag containing cash money amounting to ₱1,800.00, to the damage and prejudice of the said PERLIE SALVADOR, in the amount of ONE THOUSAND EIGHT HUNDRED PESOS (₱1,800.00), Philippine currency, and on the occasion of the said taking and stealing the said accused, did then and there willfully, unlawfully and feloniously with intent to rob, stab [the] other complainant NELY SALVADOR *y* PALISOC, with the use of the bladed weapon on the different parts of her body, and as a result

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[2] *Rollo*, pp. 2-23; penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Priscilla J. Baltazar-Padilla and Jane Aurora C. Lantion, concurring.

[3] CA *rollo*, pp. 72-81; penned by Presiding Judge Ma. Angelica T. Paras-Quiambao.

thereof, sustained fatal wounds on the different parts of her body, which eventually caused her death.[4]

Only accused-appellants were arrested, while their co-accused De la Cruz remained at large.[5]

When arraigned on November 4, 2003, accused-appellants, duly assisted by counsel, pleaded not guilty.[6]

The prosecution presented as witnesses Perlie Salvador (Perlie),[7] the surviving victim; and Police Inspector Medardo M. Manalo (P/Insp. Manalo),[8] involved in the follow-up police operation that resulted in the arrest of accused-appellants.

Perlie testified that she and her sister Nely Salvador (Nely) were employed as waitresses at Halla Hotel in Angeles City. As the sisters were walking home from work along Colorado Street in Villasol Subdivision at around 10:30 in the evening of October 3, 2003, they saw accused-appellants and De la Cruz about two to three meters away. The three men were facing the wall, approximately one and one-half feet apart, urinating. As soon as the sisters passed by the three men, the latter accosted the former. Accused-appellant Diu embraced Perlie while accused-appellant Dayaon and De la Cruz held on to Nely. Perlie was able to break loose by elbowing accused-appellant Diu, but accused-appellant Diu grabbed Perlie's bag, which contained her work uniform, personal effects, and ₱1,800.00 cash. Perlie ran away to ask for help from people nearby. Meanwhile, accused-appellant Dayaon and De la Cruz were

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[4] Records, p. 1. The original Information charged only accused-appellants (records, p. 4). Pursuant to the Resolution/Recommendation dated March 28, 2005 of the Office of the City Prosecutor of Angeles City (records, p. 3), the Information was amended to include De la Cruz as an accused.

[5] *Id.* at 10-12.

[6] *Id.* at 24.

[7] TSN, February 24, 2004; April 20, 2004; May 26, 2004; and July 21, 2004.

[8] TSN, November 3, 2004.

embracing Nely from behind. As she tried to go near Nely, Perlie saw accused-appellant and De la Cruz stabbing Nely, passing a knife to each other. Perlie described the knife as double bladed and approximately seven inches long. After the stabbing, Nely was left lying face down on the ground, covered in blood. The entire incident took place within two minutes. Two men then helped Perlie bring Nely to the Ospital Ning Angeles, where Nely was pronounced dead on arrival. Perlie recovered Nely's bag and upon checking its contents, she discovered that ₱50.00 was missing. Perlie herself sustained wounds on her left elbow and left hip when she fell to the ground as she was trying to escape from accused-appellant Diu.

Perlie asserted that Colorado Street was populated and well-lit. The light coming from the streetlamps was "like sun rays,"[9] enabling Perlie to see not only the profiles of accused-appellants and De la Cruz, but also their facial expressions. During the police investigation, Perlie described accused-appellant Diu as "[having] a flat nose, somewhat ugly. *Medyo payat and maitim*."[10] Perlie also claimed that accused-appellant Diu looked like he was going to kill her. Perlie additionally observed that accused-appellants and De la Cruz, with their red eyes, appeared to be under the influence of drugs. In open court, Perlie was able to identify accused-appellant Diu as the one who attacked her, and accused-appellant Dayaon as one of those who stabbed Nely.[11]

The second prosecution witness, P/Insp. Manalo, was assigned at Police Station No. 5 from 2002 to May 10, 2004. On October 7, 2003, he was the commander-in-charge of intelligence, investigation, and operations of Police Kabayan Center (PKC) No. 51. While on duty, he witnessed police officers of PKC No. 52 questioning accused-appellant Diu regarding the homicide committed on October 3, 2003. He

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[9] TSN, February 24, 2004, p. 8.

[10] *Id.* at 17.

[11] *Id.* at 12-18.

heard accused-appellant Diu name accused-appellant Dayaon, residing in *Daang Bakal*, Balibago, Angeles City, as the other suspect. Immediately, P/Insp. Manalo organized a raiding team. P/Insp. Manalo and the raiding team, with accused-appellant Diu, conducted an investigation at *Daang Bakal* from 10:00 to 11:00 in the morning. They suspected that accused-appellant Dayaon was staying at a house in a depressed area along the railroad track. They stayed about 30 meters away from the house, and waited for four to seven minutes until accused-appellant Dayaon stepped out. Accused-appellant Diu pointed to accused-appellant Dayaon, saying "That's him in the red t-shirt."[12] However, only after a few seconds, accused-appellant Dayaon stepped back inside the house. The raiding team rushed into the house. Since there was no other entrance or exit into the house except for the front door, accused-appellant Dayaon merely sat down on the floor and asked "why, what."[13] Accused-appellant Diu again pointed to accused-appellant Dayaon as the other suspect in the homicide case.

The prosecution submitted as documentary evidence: (1) the Affidavit of Apprehension[14] dated October 7, 2003 of the police officers who arrested accused-appellants; (2) the Custodial Investigation Report[15] dated October 7, 2003 signed by Senior Police Officer (SPO) 4 Ernesto C. Silva; (3) Nely's Certificate of Death;[16] (4) Perlie's Sworn Statement[17] dated October 4, 2003 and Additional Sworn Statement[18] dated October 7, 2003; and (5) the Medical Certificate[19] dated January 27, 2004 executed by Dr. Rachell P. Gutierrez who attended to Nely at the hospital.

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[12] TSN, November 3, 2004, p. 6.

[13] *Id.*

[14] Records, pp. 31-32.

[15] *Id.* at 33.

[16] *Id.* at 34.

[17] *Id.* at 35.

[18] *Id.* at 36.

[19] *Id.* at 37.

For the defense, accused-appellants Diu[20] and Dayaon[21] themselves took the witness stand. They denied their culpability and participation in the incident, and mainly laid the blame on their co-accused De la Cruz, who remained at-large.

According to accused-appellant Diu, on the night of October 3, 2003, he and accused-appellant Dayaon were walking along Colorado Street *en route* from a carnival in Balibago, when they chanced upon their common friend, De la Cruz. The accused-appellants were walking behind two girls as they entered Colorado Street. De la Cruz suddenly approached and embraced the two girls. Accused-appellants, who were only about a meter away, took a step back in surprise. Accused-appellant Diu tried to help the girls but accused-appellant Dayaon stopped him, warning him that they might be implicated. The girls shouted, and one of them fell down bloodied. The other girl was left standing, and when De la Cruz was about to approach her, accused-appellant Diu ran to her, embraced her, and then pushed her away. The girl, who accused-appellant Diu identified as Perlie, fell to the ground because he pushed her hard, but Perlie was able to get up and run away. Accused-appellant Diu at first said that accused-appellant Dayaon tried to approach and hold De la Cruz, but later he stated that accused-appellant Dayaon likewise ran away.[22] Accused-appellant remembered that De la Cruz was very angry and was about to advance towards him, but De la Cruz left the place at once when he heard other people coming. Accused-appellant Diu also left the scene to go home to Plaridel II.

Accused-appellant Diu admitted going to Manila right after the incident and returning to Plaridel II only two days later. Upon accused-appellant Diu's return, a certain Police Officer (PO) Paragas, together with three other men, went to see him at his auntie's house also in Plaridel II. PO Paragas said that

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[20] TSN, January 19, 2006; March 30, 2006; May 25, 2006; and June 15, 2006.

[21] TSN, November 16, 2006.

[22] TSN, March 30, 2006, pp. 8-10.

a security guard saw accused-appellant Diu at the scene of the incident on October 3, 2003. Accused-appellant Diu admitted his presence on Colorado Street on October 3, 2003 and told PO Paragas everything he witnessed. PO Paragas and his three companions then brought accused-appellant Diu to the Friendship police station. At the police station, PO Paragas typed a one-page statement in *Tagalog*, which accused-appellant was unable to read or understand. The police next boarded accused-appellant Diu on a van and took him to Cuayan where he was detained for one day and one night. Thereafter, accused-appellant Diu was once more boarded on a van by PO Paragas and brought to Balibago. PO Paragas asked accused-appellant Diu to pinpoint accused-appellant Dayaon. Failing to find accused-appellant Dayaon in Balibago after a night of search, the police brought accused-appellant Diu to the police precinct at Cuayan. After a day, the police brought in accused-appellant Dayaon to join accused-appellant Diu at the same precinct. The police told both accused-appellants that "Anyway, [De la Cruz] is not here, we will lock you up instead."[23]

As for accused-appellant Dayaon, he recounted that on the night of October 3, 2003, he and accused-appellant Diu went to a carnival and were on their way to accused-appellant Diu's house in Plaridel II. Accused-appellant Dayaon initially said that the carnival was very far from Colorado Street so he and accused-appellant Diu rode a jeep, but subsequently, he stated that they were walking along Colorado Street.[24] During his direct examination, accused-appellant Dayaon recalled that Colorado Street was very dark, having only one streetlight, so he did not see anyone else on the street. Accused-appellants then heard a woman scream.[25] Accused-appellant Diu noticed a commotion along Colorado Street, about 15 meters away from them. Accused-appellant Dayaon told accused-appellant Diu that they should just go back from where they came. Accused-

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[23] TSN, May 25, 2006, p. 6.

[24] TSN, June 15, 2006, pp. 7-8.

[25] TSN, June 16, 2006, p. 4.

appellant Diu, however, replied that accused-appellant Dayaon should just go home, and since accused-appellant Diu was going the same direction as the commotion, he would be the one taking care of it. Following accused-appellant Diu's advice, accused-appellant Dayaon went home at Checkpoint *riles*.

Accused-appellant Dayaon gave more details when he was cross-examined. He maintained that only accused-appellant Diu was previously acquainted with De la Cruz and he only came to know De la Cruz during his detention. He reported that on October 3, 2003, he and accused-appellant Diu saw De la Cruz about 15 meters away from them, walking towards the opposite direction on the other side of Colorado Street. Accused-appellant Diu commented that "Jay-Ar (De la Cruz)" was approaching. De la Cruz came near some people who were also walking, but because it was so dark, accused-appellant Dayaon could not even tell if the other people were girls. Accused-appellants later heard women screaming.[26] Accused-appellant Dayaon insisted that he did not know anything else since he already went home. Police eventually picked him up to ask him some questions regarding the stabbing incident. While accused-appellant Dayaon was detained at Cuayan, accused-appellant Diu told him about De la Cruz and his reaction was, "so that is Jay-Ar. I do not know him."[27]

During re-direct examination, accused-appellant Dayaon recollected that relative to his and accused-appellant Diu's position, the two girls were on the other side of the street but were nearer to them than De la Cruz. Accused-appellant Dayaon first said that the girls were walking towards the opposite direction, but later contradicted himself by saying that the girls were heading the same direction accused-appellants were going.[28]

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

[27] *Id.* at 12.

[28] TSN, June 15, 2006, pp. 12-13.

In addition, the defense called to the witness stand Eduardo Roxas Mekitpekit (Eduardo)[29] and Esther Mekitpekit (Esther).[30]

Eduardo related that between 9:00 and 9:15 in the evening of October 3, 2003, he was on his way home from work on board a tricycle, when he saw De la Cruz standing at the corner of Colorado and New York Streets. De la Cruz was staying with his uncle who was his (Eduardo's) neighbor, so De la Cruz was familiar. Eduardo asked De la Cruz what he was doing there when it was already evening and De la Cruz replied that he was waiting for somebody. Eduardo proceeded home in Plaridel II. The next day, October 4, 2003, his sister Ludy warned him against passing by Colorado Street because somebody got killed there. Yet, at 11:00 in the evening of the same day, Eduardo went to the apartment his family was renting on Colorado Street. He asked the security guard of the apartment about the stabbing incident and the security guard pointed to the place where it happened. Eduardo was terrified as it was the same place where he saw De la Cruz the night before. At around 6:00 in the morning of October 5, 2003, as he stepped out of their house in Plaridel II, Eduardo saw De la Cruz who likewise just awakened. Eduardo asked De la Cruz, "you were the one who did it?" and De la Cruz answered, "[y]es, I did it because the girl fought back."[31] Eduardo's sister, Esther, who was standing just half a meter away, heard De la Cruz, and she got angry. Esther hit De la Cruz's nape (*binatukan*) and said, "*babae ang inano ni'yo, hindi na kayo naawa.*"[32] Eduardo claimed that he executed a statement at the Cuayan Police Station but it was not presented before the RTC.

Esther corroborated Eduardo's testimony. She was outside their house in Plaridel cleaning fish when she heard De la Cruz admitting to Eduardo that he stabbed the girl on Colorado Street.

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[29] TSN, February 8, 2007.

[30] TSN, May 3, 2007.

[31] TSN, February 8, 2007, p. 7.

[32] *Id.*

Esther hit De la Cruz's head and started to nag ("*nagbubunganga na ako*"), so De la Cruz immediately left.[33] When asked on cross-examination whether De la Cruz admitted that he was alone, it took Esther too long to answer, and when she finally did, she replied "[n]o sir."[34]

In its Decision dated December 23, 2008, the RTC found that Perlie's testimony was more credible; that Perlie's positive identification of accused-appellants, without showing of ill motive on her part, prevailed over accused-appellants' denial; and that there was conspiracy among accused-appellants and De la Cruz in the commission of the crime Robbery with Homicide. The RTC further determined that with the aggravating circumstance of nighttime present in this case, accused-appellants should be sentenced to death, but said sentence could not be imposed because of the enactment of Republic Act No. 9346. The RTC decreed in the end:

> WHEREFORE, the Court finds accused WELVIN DIU *y* KOTSESA and DENNIS DAYAON *y* TUPIT guilty beyond reasonable doubt of the crime of Robbery with Homicide defined in Article 293 and penalized in paragraph 1, Article 294 of the Revised Penal Code, and hereby sentences each of them to suffer the penalty of *reclusion perpetua*; to jointly and severally pay the heirs of victim Nely P. Salvador the amount of Fifty thousand pesos (₱50,000.00) as civil indemnity; to jointly and severally pay the heirs of victim Nely P. Salvador and complainant [Perlie] P. Salvador the amount of Twenty thousand pesos (₱20,000.00) as exemplary damages; to pay complainant [Perlie] P. Salvador the amount of One thousand eight hundred pesos (₱1,800.00) for actual damages; and to pay the costs of suit in the amount of Three hundred pesos (₱300.00).[35]

In an Order[36] dated February 6, 2009, the RTC gave due course to accused-appellants' Notice of Appeal and ordered the transmittal of the records of the case to the Court of Appeals.

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[33] TSN, May 3, 2007, p. 7.

[34] *Id.* at 8.

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

[36] Records, p. 300.

The Court of Appeals rendered a Decision on March 11, 2011, affirming the judgment of conviction against accused-appellants. However, the appellate court did not appreciate the aggravating circumstance of nighttime because it was not alleged in the Information. It also modified the amounts of damages awarded. The dispositive portion of the Court of Appeals judgment reads:

> **WHEREFORE**, the appealed Decision dated December 23, 2008 finding accused-appellants guilty of Robbery with Homicide is affirmed, subject to the modification that accused-appellants are ordered to pay the heirs of Nely Salvador moral damages in the amount of ₱50,000.00 and temperate damages of ₱25,000.00. Accused-appellants are also ordered to pay moral damages of ₱50,000.00 to [Perlie] Salvador. The award of exemplary damages to [Perlie] Salvador and the heirs of Nely Salvador is increased to ₱30,000.00 each. The Decision is affirmed in all other respects.[37]

Insisting on their innocence, accused-appellants appealed before this Court.

Since both parties had manifested that they would no longer file supplemental briefs,[38] the Court considers the arguments the parties previously raised in their briefs before the Court of Appeals.

Accused-appellants raised a lone assignment of error, to wit:

> THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THE SAME BEYOND REASONABLE DOUBT.[39]

Accused-appellants contend that the RTC heavily relied on Perlie's testimony, the certainty and veracity of which on material points are highly questionable. Accused-appellants called attention to the following: (1) the crime happened late at night, so it was

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[37] *Rollo,* p. 23.

[38] *Id.* at 36-39, 40-43.

[39] CA *rollo*, p. 56.

very dark, and Perlie could not have seen clearly the culprits' faces; (2) Perlie had not seen accused-appellants before so she could not have recognized them instantly; (3) it would have been impossible for Perlie to identify the exact knife used in Nely's stabbing, and she was only led on to believe that she was being presented with the very same knife by the police officers' suggestive remarks; (4) Perlie was merely informed by police officers that the men who assaulted her and Nely had been apprehended, but Perlie was not required to identify accused-appellants; (5) there is no proof, other than Perlie's own statements, that robbery took place and the original police investigation only focused on homicide; (6) accused-appellants were illegally arrested without warrants; and (7) except for the fact that accused-appellants were at the scene of the crime, there was no other positive and convincing evidence of conspiracy.[40] Hence, accused-appellants pray for their acquittal.

There is no merit in the instant appeal.

Essentially, accused-appellants assail the credibility of the prosecution's key witness, Perlie.

Worth reiterating herein is the ruling of the Court in *People v. Maxion*[41] that:

> [T]he issue raised by accused-appellant involves the credibility of witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances

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[40] Accused-appellants' argument that there was no aggravating circumstance of nighttime in this case was already sustained by the Court of Appeals.

[41] 413 Phil. 740, 747-748 (2001).

of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case. x x x (Citation omitted.)

Thus, it has been an established rule in appellate review that the trial court's factual findings – including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings – are accorded great respect and even conclusive effect. These factual findings and conclusions assume greater weight if they are affirmed by the Court of Appeals.[42]

In this case, the RTC, affirmed by the Court of Appeals, gave more weight and credence to the testimony of Perlie compared to that of accused-appellants and their witnesses. There is no reason for the Court to overturn the judgment of the trial and the appellate courts on the matter.

Perlie is more than just an eyewitness, she is a surviving victim of the crime. Her testimony, as described by the RTC, was "categorical and straightforward."[43] Perlie had positively identified both accused-appellants and described specifically the role each played, together with De la Cruz, in the commission of the crime. The physical injuries Perlie and her sister Nely suffered were consistent with Perlie's account of the events of October 3, 2003. In *People v. Pabillano*,[44] the Court similarly accorded credence and weight to the testimonies of the prosecution witnesses, especially the deceased victim's son, who gave an eyewitness account of the crime, ratiocinating as follows:

No reason or motive was adduced by appellants why any of the prosecution witnesses should falsely accuse them. Where there is no evidence to show that the principal witnesses for the State were actuated by ill-motive, their testimonies are entitled to full faith and credit. The natural interest of a witness who is a relative of the

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[42] *People v. Algarme,* G.R. No. 175978, February 12, 2009, 578 SCRA 601, 613.

[43] CA *rollo,* p. 79.

[44] 404 Phil. 43, 62 (2001).

victim, (such as Jose Roño, III, the son of Jose Jr.) in securing the conviction of the guilty would deter him from implicating a person other than the true culprit. Jurisprudence recognizes that victims of criminal violence, such as Jose Roño, III himself, have a penchant for seeing the faces and features of their attackers and remembering them. We have no reason to disturb the trial court's finding that the testimonies of the prosecution witnesses are credible, and that their identification of the appellants as the perpetrators of the crime has been reliably established. (Citations omitted.)

The Court highlights that both accused-appellants admitted being present at the scene of the crime at the time it took place. Accused-appellant Diu even admitted before the RTC that he had physical contact with Perlie, only, he claimed that he embraced and pushed Perlie away to protect her from De la Cruz. It is highly suspicious though that after all his purported bravado and attempts to save Perlie, accused-appellant Diu merely walked away from the crime scene the night of October 3, 2003 and made no effort to report what happened to the police or inquire as to Perlie's condition. He even went to Manila for two days. Accused-appellant Dayaon's testimony is riddled with inconsistencies within itself and in comparison with accused-appellant Diu's, revealing the former's obvious attempt to minimize his involvement in what happened on Colorado Street the night of October 3, 2003. The testimonies of defense witnesses Eduardo and Esther hardly help accused-appellants' case. It is difficult to believe that De la Cruz would so readily and publicly admit to Eduardo that he killed a girl. Also significant is Esther's acknowledgment that De la Cruz made no statement that he committed the killing alone, thus, De la Cruz's admission to the commission of the crime did not necessarily exclude accused-appellants' participation therein.

As to the lighting condition along Colorado Street the night of October 3, 2003, the RTC and the Court of Appeals both believed Perlie's recollection that there were many streetlamps with light as bright as sun rays. In fact, it was bright enough that Perlie was able to see and describe not only the facial features of accused-appellants, but their facial expressions as

well. In contrast, accused-appellant Dayaon's testimony that it was very dark and that there was only one streetlamp along Colorado Street the night of October 3, 2003, was inconsistent and unreliable. At first, accused-appellant Dayaon testified that it was so dark that he could not see anything at all; subsequently, he claimed that he saw De la Cruz from 15 meters away approaching people he could not see well enough to tell if they were girls; and even later, he stated that he saw the two girls walking on the other side of the street, as the girls were closer to his and accused-appellant Dayaon's position than De la Cruz.

The Court though agrees that, as the following quoted testimony will show, Perlie's identification of the knife purportedly used in the stabbing of her sister Nely is doubtful:

Q* You said these two persons were armed with a knife, will you please describe the knife?

A* It is this long and it is double bladed.

MS. GENEROSO: (Interpreter)

Witness demonstrated a length of about 7 inches.

PROS. HILARIO: (to witness)

Q* How were you able to identify that knife you were being embraced by the other person?

A* Because I saw it at the police station when the police was bringing it when the knife was recovered.

Q* That knife you saw at the police station what is your basis in telling us that the knife you have seen was the same knife used in stabbing your sister?

A* I asked the policeman and they said that "this is the knife that they used to your sister."

Q* In your personal knowledge did you believe the police?

A* Yes, sir, because they gave the knife to the Prosecutor.

Q* That knife that you saw used by the two assailants against your sister as compared with the knife at the police station on that statement alone could you tell this Court that you

are very sure that this is the very knife, it could have been another knife.

A* It looks exactly the same as the knife that was used on my sister.[45]

Perlie's certainty that the knife shown to her at the police station and during trial was the very same knife used in the stabbing of Nely was wholly dependent on the police officer's representation to her that it was such. Nevertheless, failure of the prosecution to present the weapon used in Nely's stabbing is not fatal to its case. Presentation of the knife used is not essential to prove homicide. The fact and manner of Nely's death were duly established by evidence on record. Perlie saw accused-appellant Dayaon and De la Cruz embrace Nely, then stab Nely with a double-edged knife that was approximately seven inches long. Nely was declared dead on arrival at the hospital due to multiple stab wounds. As the Court had pronounced in *People v. Fernandez*:[46]

Considering the evidence and the arguments presented by the appellant and appellee, the records show that the victim died from multiple stab wounds. This is consistent with Mrs. Bates' declaration that she saw appellant stab Danilo several times at the dead end of an alley in Davila Street, Navotas. Her testimony is thus materially corroborated by the autopsy conducted on the deceased. It having been established that the victim died from multiple stab wounds, the failure of Mrs. Bates to identify or describe the weapon used is of no consequence and cannot diminish her credibility. For one, witnesses are not expected to remember every single detail of an incident with perfect or total recall. For another, what is vital in her testimony is not her knowledge of the weapon used, but that she saw appellant stabbing the victim. The presentation of the murder weapon is not indispensable to the prosecution of an accused. The non-identification or non-presentation of the weapon used is not fatal to the prosecution's cause where the accused was positively identified. (Citations omitted.)

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[45] TSN, February 24, 2004, pp. 12-13.

[46] 434 Phil. 224, 231-232 (2002).

It is irrelevant that the police was originally investigating only Nely's homicide. Nothing precludes the police, depending on the leads that they followed and evidence that they uncovered, from subsequently expanding its investigation to include the other crimes accused-appellants might have also committed. Furthermore, prosecutors have a wide range of discretion in determining whether, what, and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors.[47] In this case, the City Prosecutor of Angeles City, in a valid exercise of his discretion, and after evaluation of the evidence turned over by the police, resolved that there was probable cause to charge accused-appellants and De la Cruz with the crime of Robbery with Homicide, not merely homicide.

In *People v. De Jesus,*[48] the Court explained extensively the nature of the complex crime of Robbery with Homicide:

For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements:

(1) the taking of personal property is committed with violence or intimidation against persons;

(2) the property taken belongs to another;

(3) the taking is *animo lucrandi*; and

(4) by reason of the robbery or on the occasion thereof, homicide is committed.

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence.

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[47] *Webb v. De Leon*, 317 Phil. 758, 800 (1995).

[48] 473 Phil. 405, 426-428 (2004).

The constitutive elements of the crime, namely, robbery and homicide, must be consummated.

It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.

Intent to rob is an internal act but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of the robbery is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner. The prosecution is not burdened to prove the actual value of the property stolen or amount stolen from the victim. Whether the robber knew the actual amount in the possession of the victim is of no moment because the motive for robbery can exist regardless of the exact amount or value involved.

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.

If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.

Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed to (a) facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or, (d) to eliminate witnesses in the commission of the crime. As long as there is a nexus between the robbery and the homicide, the latter crime may be committed in a place other than the *situs* of the robbery. (Emphases supplied; citations omitted.)

Accused-appellants maintain that there was no sufficient proof that robbery took place, the only evidence of robbery submitted by the prosecution was Perlie's self-serving statement that accused-appellant Diu took her bag containing ₱1,800.00.

Once more, accused-appellants are challenging Perlie's credibility. Time and again, the Court has held that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward, and worthy of credence by the trial court,[49] as in the case of Perlie's testimony. The trustworthiness of Perlie's testimony is further bolstered by its consistency and details. In her Sworn Statement[50] executed on October 4, 2003, only a day after the incident, Perlie already mentioned that she and her sister were victims of a "hold-up" and that her shoulder bag, containing ₱1,800.00 cash and her work uniform, was taken. On the witness stand, under oath, she retold how after embracing her, accused-appellant Diu grabbed her shoulder bag with the ₱1,800.00 cash, her work uniform, and her other personal belongings. The ₱1,800.00 cash was not some random amount that Perlie conjured, but it was her salary from the hotel.[51]

Accused-appellants' attempt at disputing the finding of conspiracy by both the RTC and the Court of Appeals is just as futile.

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[49] *Lumanog v. People*, G.R. Nos. 182555, 185123, and 187745, September 7, 2010, 630 SCRA 42, 120.

[50] Records, p. 13.

[51] TSN, February 24, 2004, p. 20.

Based on Perlie's testimony, as she and Nely were walking along Colorado Street, accused-appellants and De la Cruz were all facing the wall, appearing to be urinating. When Perlie and Nely had passed them by, accused-appellants and De la Cruz accosted them at the same time, with accused-appellant Diu embracing Perlie and taking her bag, and accused-appellant Dayaon and De la Cruz holding on to Nely and stabbing her as she fought back. The actuations of accused-appellants and De la Cruz were clearly coordinated and complementary to one another. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility.[52] As the RTC declared, "[t]he actions of the three accused, from the deprivation of the eyewitness [Perlie] of her personal belongings by accused Diu to the stabbing of the victim Nely by accused Dayaon and De la Cruz, Jr., are clear and indubitable proofs of a concerted effort to deprive [Perlie] and Nely of their personal belongings, and that by reason or on the occasion of the said robbery, stabbed and killed victim Nely Salvador."[53] The absence of proof that accused-appellants attempted to stop Nely's killing, plus the finding of conspiracy, make accused-appellants liable as principals for the crime of Robbery with Homicide.

Lastly, nothing on record shows that accused-appellants questioned the legality of their arrests prior to entering their pleas of "not guilty" during their arraignment. Hence, applicable herein is the following pronouncements of the Court in *Rebellion v. People*:[54]

> Petitioner's claim that his warrantless arrest is illegal lacks merit. We note that nowhere in the records did we find any objection interposed by petitioner to the irregularity of his arrest prior to his arraignment. It has been consistently ruled that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this

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[52] *People v. Orias*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 434.

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

[54] G.R. No. 175700, July 5, 2010, 623 SCRA 343, 348.

issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. In this case, petitioner was duly arraigned, entered a negative plea and actively participated during the trial. Thus, he is deemed to have waived any perceived defect in his arrest and effectively submitted himself to the jurisdiction of the court trying his case. At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused. (Citations omitted.)

Indeed, in the more recent case of *People v. Trestiza*,[55] the Court pronounced that "[t]he fatal flaw of an invalid warrantless arrest becomes moot in view of a credible eyewitness account."

The special complex crime of robbery with homicide is punishable under Article 294 of the Revised Penal Code, as amended, by *reclusion perpetua* to death. Article 63 of the same Code states that when the law prescribes a penalty consisting of two indivisible penalties, and the crime is neither attended by mitigating nor aggravating circumstances, the lesser penalty shall be imposed.[56] In the present case, the Court of Appeals correctly refused to consider the aggravating circumstance of night time since it was not alleged in the Information. In the absence of any aggravating or mitigating circumstance, the penalty of *reclusion perpetua* was appropriately imposed upon accused-appellants as principals in the crime of Robbery with Homicide.

The Court modifies the damages awarded to the victims, keeping in mind that the imposable penalty upon accused-appellants is *reclusion perpetua*, and not death which was merely lowered to *reclusion perpetua* pursuant to Republic Act No. 9346.

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[55] G.R. No. 193833, November 16, 2011, 660 SCRA 407, 444.

[56] *People v. Uy*, G.R. No. 174660, May 30, 2011, 649 SCRA 236, 260.

In line with recent jurisprudence,[57] accused-appellants are ordered to pay Nely's heirs the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages. Accused-appellants are further ordered to pay Perlie ₱50,000.00 as moral damages and ₱1,800.00 as restitution for the cash taken from her. The award for exemplary damages is deleted in view of the absence of any aggravating circumstance.

WHEREFORE, the appeal is **DENIED**. The Decision dated March 11, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03785 is **AFFIRMED**. Accused-appellants Welvin Diu *y* Kotsesa and Dennis Dayaon *y* Tupit are found **GUILTY** beyond reasonable doubt of the crime of Robbery with Homicide and are sentenced to suffer the penalty of *reclusion perpetua.* Accused-appellants Welvin Diu *y* Kotsesa and Dennis Dayaon *y* Tupit are further ordered to pay jointly and severally (a) the heirs of Nely P. Salvador the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages; and (b) Perlie P. Salvador ₱50,000.00 as moral damages and ₱1,800.00 as restitution for the cash taken from her, plus legal interest on all damages thus awarded at the legal rate of 6% per annum from the date of finality of this Decision.

SO ORDERED.

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

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[57] *People v. Uy*, *id.*; *People v. Labagala*, G.R. No. 184603, August 2, 2010, 626 SCRA 267, 279; *People v. De Leon*, G.R. No. 179943, June 26, 2009, 591 SCRA 178, 202; *People v. Buduhan*, G.R. No. 178196, August 6, 2008, 561 SCRA 337, 367-368.

THIRD DIVISION

[A.M. No. P-12-3044. April 8, 2013]
(Formerly A.M. OCA I.P.I. No. 09-3267-P)

JUDGE ANASTACIO C. RUFON, *complainant, vs.* **MANUELITO P. GENITA, Legal Researcher II, Regional Trial Court, Branch 52, Bacolod City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MEMORANDUM CIRCULAR NO. 41, SERIES OF 1998; APPROVAL OF THE APPLICATION FOR SICK LEAVE IS MANDATORY AS LONG AS PROOF OF SICKNESS OR DISABILITY IS ATTACHED TO THE APPLICATION; NOT ESTABLISHED IN CASE AT BAR.—** The rules on application for sick leave are laid down in Memorandum Circular No. 41, Series of 1998. Well settled is the rule that approval of application for sick leave, whether with pay or without pay, is mandatory as long as proof of sickness or disability is attached to the application. In this case, respondent filed his application for sick leave for June 11 to 30, 2009 supported by a medical certificate dated June 24, 2009 signed by the attending physician stating that respondent consulted him on June 15, 2009 and was diagnosed and treated for diabetes mellitus and hypertension; and that on June 24, respondent again consulted him with the following diagnoses: *diabetes mellitus*, *hypertension*, and *hypercholesterolemia*. The statements made by the attending physician only indicate respondent's consultation on June 15 and 24 and no other. Nowhere in said certificate did the attending physician recommend that respondent needed to rest for the period he claimed to be sick or that he needed to be at the hospital for treatment. Thus, the medical certificate presented by respondent is insufficient to support his application for sick leave for a period of more than two weeks. Judge Rufon is, therefore, justified in disapproving his application for sick leave making his absence during those days unauthorized.

2. **ID.; ID.; ID.; FALSIFICATION OF TIME RECORDS CONSTITUTES DISHONESTY; DISHONESTY, DEFINED.—** Falsification of time records constitutes dishonesty. Dishonesty has been defined as "the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.

3. **ID.; ID.; ID.; DISHONESTY OR SERIOUS MISCONDUCT; LIBERALITY IN THE IMPOSITION OF PENALTY, SUSTAINED CASE AT BAR.—** Under the schedule of penalties adopted by the Civil Service, gross dishonesty or serious misconduct is classified as a grave offense and the penalty imposable is dismissal. However, such an extreme penalty cannot be inflicted on an erring employee, especially in cases where there exist mitigating circumstances which could alleviate his or her culpability. Factors such as length of service, acknowledgment of respondent's infractions and feeling of remorse, and family circumstances, among other things, have had varying significance in the Court's determination of the imposable penalty. Inasmuch as this is respondent's first offense, it is considered a mitigating circumstance in his favor. Moreover, under Section 53 (a) of the Uniform Rules on Administrative Cases in the Civil Service, the physical fitness or unfitness of respondent may be considered a mitigating circumstance in the determination of the penalties to be imposed. Records show that respondent already availed of optional retirement and he is in need of financial assistance for his medication for his recurring illness and we deem it proper to exercise liberality in the imposition of penalty. Taking into consideration the circumstances that mitigate respondent's liability, we adopt the OCA 's recommendation to impose the penalty of fine equivalent to his salary for three (3) months to be deducted from his retirement benefits.

DECISION

PERALTA, *J*.:

This administrative case stemmed from the Letters of Judge Anastacio C. Rufon[1] (Judge Rufon), dated July 16, 2009, and Mr. Gary G. Garcia[2] (Mr. Garcia), dated August 3, 2009, relative to respondent Manuelito P. Genita's daily time record (DTR) and application for leave for the month of June 2009, addressed to then Court Administrator Jose P. Perez, now a member of this Court. Judge Rufon was the Presiding Judge of the Regional Trial Court (RTC), Branch 52, Bacolod City; Mr. Garcia was the Officer-in-Charge (OIC); while respondent was the Legal Researcher II, same court.

In his July 16, 2009 letter, Judge Rufon forwarded respondent's DTR together with his application for leave and medical certificate attached thereto for the month of June 2009, and explained that he did not sign it because the entries in the DTR were not reflective of the true and correct entries appearing in the logbook for the said month. He claimed that while respondent presented a medical certificate showing that he consulted a doctor on the 15th of June where he was diagnosed and treated for diabetes mellitus, hypertension and hypercholesterolemia and was an out-patient, respondent failed to report for work from June 11 to 30, 2009. He, likewise, stated that his application for leave failed to disclose whether respondent was applying for vacation or sick leave.[3]

Mr. Garcia, on the other hand, claimed that upon verification, respondent had not been reporting for work but when confronted, he already filed an application for terminal leave. Echoing Judge Rufon, Mr. Garcia explained that while respondent presented a medical certificate to support his application for leave for June 11 to 30, there was no recommendation for an admission to a

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[1] *Rollo*, p. 29.

[2] *Id.* at 3.

[3] *Id.* at 29.

hospital or to rest for a number of days, causing the disapproval of his application for leave. He also stated that the entries in respondent's DTR were not reflective of the correct entries as appearing in the office logbook.[4]

On October 16, 2009, respondent was directed to Comment on the letters within ten (10) days from receipt, but he failed to comply. A trace letter was sent to him with the same directive, but still no such comment.[5]

In a Resolution[6] dated December 15, 2010, the Court required respondent to show cause why he should not be administratively dealt with for refusing to submit his comment despite the OCA's directive. Respondent was also directed to submit the required Comment within a non-extendible period of five (5) days from receipt with a warning that his failure to comply would compel the Court to decide the complaint against him on the basis of the records at hand. The Court also ordered that another notice be sent to respondent's residence.

In compliance with the said directive, respondent submitted a letter explanation dated February 21, 2011 stating that he had already submitted his comment first to Deputy Court Administrator Reuben P. Dela Cruz, dated June 7, 2009,[7] and second to then Court Administrator Jose P. Perez.[8] Respondent denied that he falsified his DTR. He explained that he indeed consulted his doctor and insisted that he had a recurring sickness that needed medication, but he chose to be an out-patient to save time, money and effort. He claimed that he could not report for work because he was very sick. He admitted that there was a disparity in the entries in his DTR compared to those appearing in the office logbook, but claimed that it was understandable because

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[4] Letter dated August 3, 2009, *id.* at 3.

[5] Memorandum dated November 13, 2011 of Court Administrator Jose Midas Marquez to Hon. Justice Antonio T. Carpio, *id.* at 78.

[6] *Rollo*, pp. 49-50.

[7] *Id.* at 53.

[8] *Id.* at 54-55.

of the time difference in signing them. He also contended that the case against him is moot and academic, since he already forwarded his DTR to the Court from January 2008 until December 2009 as he already filed his terminal leave; the same had been signed, authenticated and certified by the RTC of Negros Occidental. He also pointed out that he had written Mr. Randy Sanchez of the Leave Section, Office of the Administrative Services, OCA explaining the reasons why complainants did not sign his DTR. He claimed that the complaint was a mere afterthought and filed merely to harass him as he was suspected to be behind a certain Gideon Daga, who filed several administrative cases against complainants.[9]

In its Report, the OCA found that respondent's DTR was spurious as he made it appear that he was present from June 1 to 10, 2009, when in fact he was absent as shown by the notation in the logbook made by Mr. Garcia that he did not report for work on those dates. Assuming that he was present, still, with respondent's admission, there were discrepancies in the times entered in the DTR as opposed to those appearing in the logbook.[10] The OCA also found that though respondent indeed applied for sick leave from June 11 to 30, 2009, the same was disapproved because such application was not supported by the medical certificate presented.[11] Hence, the disapproval of his application for sick leave was justified. These acts, according to the OCA, constitute gross dishonesty or serious misconduct punishable by dismissal from the service.[12] Considering, however, that this is respondent's first offense, and considering further that he is already retired from the service and needs the necessary finances to defray his medical expenses, the OCA recommended that he be meted the penalty of fine equivalent to his three (3) month's salary, to be deducted from his retirement benefits.[13]

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[9] Memorandum dated November 13, 2011 of Court Administrator Jose Midas Marquez to Hon. Justice Antonio T. Carpio, *id.* at 78.

[10] *Rollo*, p. 79.

[11] *Id.* at 80.

[12] *Id.* at 81.

[13] *Id.* at 81-82.

The OCA's findings are well taken.

At the outset, we determine the propriety of Judge Rufon's disapproval of respondent's application for sick leave for June 11 to 30, 2009. Although the disapproval *per se* does not make respondent liable for any administrative offense, the same would make his absences during the aforesaid dates unauthorized.

The rules on application for sick leave are laid down in Memorandum Circular No. 41, Series of 1998, to wit:

> Section 53. *Applications for sick leave.* - All applications for sick leave of absence for one full day or more shall be on the prescribed form and shall be filed immediately upon the employee's return from such leave. Notice of absence, however, should be sent to the immediate supervisor and/or to the agency head. Application for sick leave in excess of five (5) successive days shall be accompanied by a proper medical certificate.
>
> Sick leave may be applied for in advance in cases where the official or employee will undergo medical examination or operation, or be advised to rest in view of ill health duly supported by a medical certificate.
>
> In ordinary application for sick leave already taken not exceeding five days, the head of department or agency concerned may duly determine whether or not the granting of sick leave is proper under the circumstances. In case of doubt, a medical certificate may be required.[14]

Well settled is the rule that approval of application for sick leave, whether with pay or without pay, is mandatory as long as proof of sickness or disability is attached to the application.[15]

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[14] *Re: Habitual Absenteeism of Ms. Eva Rowena J. Ypil, Court Legal Researcher II, Regional Trial Court, Branch 143, Makati City,* A.M. No. 07-2-92-RTC, July 24, 2007, 528 SCRA 1, 6-7; *Re: Unauthorized Absences of Karen R. Cuenca, Clerk II, Property Division-Office of Administrative Services*, A.M. No. 2005-03-SC, March 15, 2005, 453 SCRA 403, 408.

[15] *Re: Habitual Absenteeism of Ms. Eva Rowena J. Ypil, Court Legal Researcher II, Regional Trial Court, Branch 143, Makati City, supra,* at 7; *Re: Unauthorized Absences of Karen R. Cuenca, Clerk II, Property Division-Office of Administrative Services*, *supra*, at 408.

In this case, respondent filed his application for sick leave for June 11 to 30, 2009 supported by a medical certificate dated June 24, 2009 signed by the attending physician stating that respondent consulted him on June 15, 2009 and was diagnosed and treated for diabetes mellitus and hypertension; and that on June 24, respondent again consulted him with the following diagnoses: *diabetes mellitus, hypertension, and hypercholesterolemia*.[16] The statements made by the attending physician only indicate respondent's consultation on June 15 and 24 and no other. Nowhere in said certificate did the attending physician recommend that respondent needed to rest for the period he claimed to be sick or that he needed to be at the hospital for treatment. Thus, the medical certificate presented by respondent is insufficient to support his application for sick leave for a period of more than two weeks. Judge Rufon is, therefore, justified in disapproving his application for sick leave making his absence during those days unauthorized.

Now on the main issue of whether respondent indeed falsified his DTR for the month of June. Attached to the complaints of Judge Rufon and Mr. Garcia are the office logbook,[17] respondent's DTR[18] and application for leave,[19] and medical certificate.[20]

Per respondent's June 2009 DTR, he claimed that he reported for work on June 1-5 and 8-10, but was on sick leave on June 11 to 30, 2009. Mr. Garcia, who was then the OIC, however, noted in the logbook that respondent did not report for work on the days the latter claimed he was present.

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[16] *Rollo*, pp. 31-32.

[17] *Id.* at 4-26.

[18] *Id.* at 30.

[19] *Id.* at 32.

[20] *Id.* at 31.

We cannot rely with particularity on the office logbook as basis to determine the accuracy of respondent's entries in his DTR, because the employees were identified therein by their signatures without their complete name. Neither did the complainants nor respondent pointed to the contested entries. The only clear entry therein was the notation of Mr. Garcia that respondent did not report for work on those dates. In making it appear that he was present from June 1 to 10 but in fact he was not, respondent clearly falsified his DTR. Assuming that he was present on those contested dates, a perusal of the entries made in the logbook and respondent's DTR would show that the time stated in the DTR did not correspond to any of the times entered therein by any of the employees. This leads to no other conclusion than that respondent did not make truthful entries in his DTR.

We take judicial notice of the fact that in government offices where there are no bundy clocks, it is a matter of practice for employees of these offices that upon arrival at work and before proceeding to their respective workstations, they first sign their names at the attendance logbook and at the end of each month, the employees fill up their DTR reflecting therein the entries earlier made in the logbook.[21]

Falsification of time records constitutes dishonesty.[22] Dishonesty has been defined as "the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[23]

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[21] *Judge How v. Ruiz*, 491 Phil. 501, 508-509 (2005).

[22] *Office of the Court Administrator v. Isip*, A.M. No. P-07-2390, August 19, 2009, 596 SCRA 407, 412.

[23] *Leave Division, Office of Administrative Services, Office of the Court Administrator v. Gutierrez III*, A.M. No. P-11-2951, February 15, 2012, 666 SCRA 29, 35.

Under the schedule of penalties adopted by the Civil Service, gross dishonesty or serious misconduct is classified as a grave offense and the penalty imposable is dismissal.[24] However, such an extreme penalty cannot be inflicted on an erring employee, especially in cases[25] where there exist mitigating circumstances which could alleviate his or her culpability.[26] Factors such as length of service, acknowledgment of respondent's infractions and feeling of remorse, and family circumstances, among other things, have had varying significance in the Court's determination of the imposable penalty.[27]

Inasmuch as this is respondent's first offense, it is considered a mitigating circumstance in his favor.[28] Moreover, under Section 53 (a) of the Uniform Rules on Administrative Cases in the Civil Service, the physical fitness or unfitness of respondent may be considered a mitigating circumstance in the determination of the penalties to be imposed.[29] Records show that respondent already availed of optional retirement and he is in need of financial

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[24] *Re: Alleged Tampering of the Daily Time Records (DTR) of Sherry B. Cervantes, Court Stenographer III, Br. 18, RTC, Manila*, Adm. Matter No. 03-8-463-RTC, May 20, 2004, 428 SCRA 572, 576.

[25] *Leave Division, Office of Administrative Services, Office of the Court Administrator v. Gutierrez III*, *supra* note 23; *Office of the Court Administrator v. Isip*, *supra* note 22; *Re: Falsification of Daily Time Records of Maria Fe Brooks*, 510 Phil. 262 (2005); *Re: Alleged Tampering of the Daily Time Records (DTR) of Sherry B. Cervantes, Court Stenographer III, Br. 18, RTC, Manila*, *supra* note 24.

[26] *Re: Falsification of Daily Time Records of Maria Fe Brooks*, *supra* note 25, at 267.

[27] *Office of the Court Administrator v. Isip*, *supra* note 22, at 412.

[28] *Re: Alleged Tampering of the Daily Time Records (DTR) of Sherry B. Cervantes, Court Stenographer III, Br. 18, RTC, Manila*, *supra* note 24, at 576.

[29] *Re: Frequent Unauthorized Absences of Ms. Nahren D. Hernaez*, A.M. No. 2008-05-SC, August 6, 2008, 561 SCRA 1, 12-13.

assistance for his medication for his recurring illness and we deem it proper to exercise liberality in the imposition of penalty. Taking into consideration the circumstances that mitigate respondent's liability, we adopt the OCA's recommendation to impose the penalty of fine equivalent to his salary for three (3) months to be deducted from his retirement benefits.

One final note.

> x x x We have repeatedly emphasized that the conduct of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice, which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.[30]

WHEREFORE, premises considered, respondent **MANUELITO P. GENITA** is **GUILTY** of **DISHONESTY** and is meted the penalty of **FINE** equivalent to his three (3) months salary to be deducted from his retirement benefits.

SO ORDERED.

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

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[30] *Re: Falsification of Daily Time Records of Maria Fe Brooks*, *supra* note 25, at 266-267.

FIRST DIVISION

[A.M. No. RTJ-10-2217. April 8, 2013]

SONIA C. DECENA and REY C. DECENA, *petitioners, vs.* **JUDGE NILO A. MALANYAON, Regional Trial Court, Branch 32, in Pili, CAMARINES SUR,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; DUE PROCESS IN ADMINISTRATIVE CASES IS SATISFIED WHEN THE PARTIES ARE AFFORDED THE FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN THEIR SIDE OF THE CONTROVERSY.—** In administrative cases, the requirement of due process is satisfied whenever the parties are afforded the fair and reasonable opportunity to explain their side of the controversy, either through oral arguments or through pleadings.

2. **LEGAL ETHICS; PRACTICE OF LAW; THE RULES EXPRESSLY PROHIBITS A SITTING JUDGE FROM ENGAGING IN PRIVATE PRACTICE OF LAW OR GIVING PROFESSIONAL ADVICE TO CLIENTS; VIOLATION IN CASE AT BAR.—** Section 35 of Rule 138 of the Rules of Court expressly prohibits sitting judges like Judge Malanyaon from engaging in the private practice of law or giving professional advice to clients. Section 11, Canon 4 (*Propriety*), of the *New Code of Judicial Conduct* and Rule 5.07 of the *Code of Judicial Conduct* reiterate the prohibition from engaging in the private practice of law or giving professional advice to clients. The prohibition is based on sound reasons of public policy, considering that the rights, duties, privileges and functions of the office of an attorney are inherently incompatible with the high official functions, duties, powers, discretion and privileges of a sitting judge. It also aims to ensure that judges give their full time and attention to their judicial duties, prevent them from extending favors to their own private interests, and assure the public of their impartiality in the performance of their functions. These objectives are dictated by a sense of moral decency and desire to promote

the public interest. Thus, an attorney who accepts an appointment to the Bench must accept that his right to practice law as a member of the Philippine Bar is thereby suspended, and it shall continue to be so suspended for the entire period of his incumbency as a judge. The term *practice of law* is not limited to the conduct of cases in court or to participation in court proceedings, but extends to the preparation of pleadings or papers in anticipation of a litigation, the giving of legal advice to clients or persons needing the same, the preparation of legal instruments and contracts by which legal rights are secured, and the preparation of papers incident to actions and special proceedings. To the Court, then, Judge Malanyaon engaged in the private practice of law by assisting his daughter at his wife's administrative case, coaching his daughter in making manifestations or posing motions to the hearing officer, and preparing the questions that he prompted to his daughter in order to demand that Atty. Eduardo Loria, collaborating counsel of the complainants' principal counsel, should produce his privilege tax receipt. Judge Malanyaon did so voluntarily and knowingly, in light of his unhesitating announcement during the hearing that he was the counsel for Atty. Katrina Malanyaon, the counsel of the respondent, as his response to the query by the opposing counsel why he was seated next to Atty. Malanyaon thereat.

3. **REMEDIAL LAW; DISCIPLINE OF JUDGES; NATURE OF ADMINISTRATIVE SANCTIONS IS AKIN TO LIABILITIES IN CRIMINAL CASES; EFFECT THEREOF ON THE IMPOSABLE PENALTY, EXPLAINED.—** Judge Malanyaon had been previously sanctioned by the Court on the following three occasions, namely: (*a*) A.M. No. RTJ-93-1090, with admonition for gross ignorance of the law and unreasonable delay in resolving motions; (*b*) A.M. No. RTJ-99-1444, with reprimand for failure to resolve motions; and (*c*) A.M. No. RTJ-02-1669, with a fine of ₱20,000.00 (coupled with a stern warning that a repetition of the same or similar act would be dealt with more severely) for conduct unbecoming of a judge. He had other administrative cases that were dismissed. Of the three administrative cases that merited sanctions, however, only the third should be considered as aggravating herein because it involved the similar offense of conduct unbecoming of a judge for which he had been given the stern warning of a more

severe penalty upon a repetition. However, our uniform treatment of administrative sanctions as having the nature of liabilities akin to those in criminal cases now brings us to offset such aggravating circumstance with the apparent fact that the actuations of Judge Malanyaon complained of had not been motivated by bad faith, or by any malice towards another. Indeed, he did not intend to thereby cause acted from a sincere, albeit and proper to mitigate the fine of ₱50,000.00 recommended by the Court Administrator by imposing on Judge Malanyaon a fine of ₱40,000.00. With his disability retirement from the Judiciary having been earlier granted by the Court, the fine shall be deducted from his remaining retirement benefits.

APPEARANCES OF COUNSEL

Francisco A. Sanchez III for petitioners.
Jose Anelito B. Bulao for respondent.

D E C I S I O N

BERSAMIN, *J.*:

A judge may not involve himself in any activity that is an aspect of the private practice of law. His acceptance of an appointment to the Bench inhibits him from engaging in the private practice of law, regardless of the beneficiary of the activity being a member of his immediate family. He is guilty of conduct unbecoming of a judge otherwise.

Antecedents

The complainants have lodged an administrative complaint for conduct unbecoming a judge against Hon. Nilo A. Malanyaon, the Presiding Judge of the Regional Trial Court, Branch 32, in Pili, Camarines Sur.[1]

In their joint complaint-affidavit dated April 10, 2007,[2] the complainants averred that complainant Rey C. Decena had

[1] *Rollo*, pp. 4-17.

[2] *Id.*

brought an administrative case in Regional Office No. V of the Civil Service Commission in Legaspi City, Albay against Judge Malanyaon's wife, Dr. Amelita C. Malanyaon (Dr. Amelita), then the Assistant Provincial Health Officer of the Province of Camarines Sur; that during the hearing of the administrative case on May 4, 2006, Judge Malanyaon sat beside his daughter, Atty. Ma. Kristina C. Malanyaon, the counsel of Dr. Amelita in the case; and that the events that then transpired were as recounted in the joint complaint-affidavit, to wit:

3. During the early stage of the hearing when the hearing officer, Atty. Dennis Masinas Nieves, brought up the matter regarding Dr. Malanyaon's manifestation or motion (to dismiss the case for lack of jurisdiction), Judge Malanyaon coached her daughter in making manifestations/motions before the hearing officer, by scribbling on some piece of paper and giving the same to the former, thus prompting her daughter to rise from her seat and/or ask permission from the officer to speak, and then make some manifestations while reading or glancing on the paper given by Judge Malanyaon. At one point, Judge Malanyaon even prompted her daughter to demand that Atty. Eduardo Loria, the collaborating counsel of our principal counsel, Atty. Mary Ailyne Zamora, be required to produce his PTR number.

4. When our principal counsel, Atty. Zamora, arrived and took over from Atty. Loria, she inquired regarding the personality of Judge Malanyaon, being seated at the lawyer's bench beside Atty. Malanyaon, Judge Malanyaon then proudly introduced himself and manifested that he was the "counsel of the respondent's counsel". Atty. Zamora proceeded to raise the propriety of Judge Malanyaon's sitting with and assisting his daughter in that hearing, being a member of the judiciary, to which Judge Malanyaon loudly retorted that he be shown any particular rule that prohibits him from sitting with his daughter at the lawyers' bench. He insisted that he was merely "assisting" her daughter, who "just passed the bar", defend the respondent, and was likewise helping the latter defend herself. Pertinent portion of the records of the proceedings are as follows:

x x x x x x x x x

Atty. Nieves : First, she has to enter her appearance. Okay?

Atty. Zamora	:	Anyway, … I don't think, I do not memorize my PTR number, I don't remember my PTR number, but aside from that Your Honor, I think this Honorable Hearing Officer could take judicial notice that Atty. Ed Loria is indeed a lawyer in good standing in IBP. And moreover, Your Honor, I would like to inquire as to the personality of the gentleman next to the lawyer of the defendant or respondent, Your Honor?
Judge Malanyaon:		**I am the counsel of the complainant, ah, of the respondent's counsel, I am Judge Malanyaon. I am assisting her. And so what?!!**
Atty. Zamora	:	Ah, you are the counsel of the … (interrupted)
Atty. Nieves	:	There's no need to be belligerent… let's calm down…
Atty. Zamora	:	Your Honor, Your Honor, we all do not know each other, and with due respect to the judge, there is also a hearing officer here Your Honor, and I think Your Honor the Hearing Officer here deserves due respect. I mean, the word "So what?!", I don't think that would be proper Your Honor in this Court.
Judge Malanyaon	:	I am sorry your Honor, because the … is out of turn, out of turn.
Atty. Nieves	:	This is not necessary, actually, this is not necessary. So we might as well proceed with our hearing today. I've already made a ruling regarding the, the query regarding PTR. Okay, at this stage it is not proper considering that Atty. Loria only entered his appearance during the start of the hearing. Okay. So, we have to proceed now.

Atty. Zamora	:	I am accepting Your Honor the delegation again of Atty. Loria. I am entering my appearance as the lead counsel for this case, Your Honor, as counsel for the complainant.
Atty. Nieves	:	Okay.
Atty. Zamora	:	And may I be clear that the judge will be the collaborating counsel for the respondent or the counsel of record of the respondent?
Atty. Nieves	:	… of the judge is … I'm sorry?
Atty. Zamora	:	He manifested Your Honor that he is the counsel of the respondent.
Atty. Malanyaon	:	**No, the counsel of the counsel of the respondent.**
Atty. Nieves	:	He has not, he has not entered his appearance in this case.
Atty. Zamora	:	Would that be proper for him Your Honor, considering that he is a judge Your Honor? Would that, ah, there will be undue influence, or whatever, Your Honor? We are just trying to avoid any bias or undue influence in this court, Your Honor.
Atty. Nieves	:	Okay, it will not, considering the fact that he has not entered his appearance for the respondent.
Judge Malanyaon	:	**If Your Honor, please, the respondent is my wife. Counsel for the respondent is my daughter. She just passed the bar! I'm assisting her. Is it not my right, my duty to assist my daughter? And to assist my wife defend herself? I am only sitting with my daughter! I'm not acting for the respondent!**

Atty. Zamora	:	I don't think Your Honor under the rule, the counsel needs a counsel. Only the one charged or the one being charged needs a counsel.
Atty. Nieves	:	Okay, let's settle this now. Judge Malanyaon has not entered his appearance. It will not in any way …

x x x x x x x x x

The complainants averred that the actuations of Judge Malanyaon during the hearing of his wife's administrative case in the Civil Service Commission constituted violations of the *New Code of Judicial Conduct for the Philippines Judiciary*.

On June 21, 2007, then Court Administrator Christopher O. Lock required Judge Malanyaon to comment on the complaint.[3]

On July 15, 2007, Judge Malanyaon filed his comment, refuting the allegations of the complaint thusly:

1. Complainants are the sister and nephew of my wife, Amelita C. Malanyaon, there is bad blood between them arising from divergent political loyalties and family differences;
2. There is no reason for complainants to take offense at my sitting beside my daughter Ma. Kristina, when she appeared for my wife in the first hearing of the administrative case Rey C. Decena filed against my wife; the hearing officer himself could cite no rule disallowing me from sitting beside my daughter, in the counsel's table, and he did not ask me to vacate where I sat beside my daughter; the transcript does not support complainants' claim;
3. It is true I snapped at Atty. Zamora, when she asked about my personality – but she was speaking out of turn as all I was doing was sitting beside my daughter when she came as the transcript will show, I apologized to the hearing officer, who graciously let the matter pass;
4. My daughter is a new practitioner; her law partner and lead counsel could not make it on time, and as her consultant, I did

[3] *Id.* at 18.

not speak, nor enter my appearance for my wife – to lend a helping hand to a neophyte lawyer, defending her mother in an administrative case, is not unethical, nor does it constitute the proscribed practice of law;

5. It is petty for my sister-in-law and for my nephew to complain of my presence during the hearing; it is my filial duty to lend my wife and daughter, moral and legal support in their time of need; indeed, it is strange for complainants to take offense at my presence and accuse me of practicing law during my stint as a judge when before the bad blood between my wife and her sibling and nephew erupted, I helped them out with their legal problems *gratis et amore* and they did not complain of my practicing law on their behalf, indeed, one of the crosses a judge must carry is the cross of base ingratitude.[4]

On March 27, 2008, then Court Administrator Zenaida N. Elepaño recommended to the Court that: (*a*) the complaint be re-docketed as a regular administrative matter; (*b*) Judge Malanyaon be found guilty of gross misconduct; and (*c*) Judge Malanyaon be fined ₱50,000.00.[5]

On September 16, 2009, the Court required the parties to manifest within 10 days from notice if they were willing to submit the case for resolution on the basis of the records or pleadings filed.[6]

The complainants complied on November 13, 2009, stating their willingness to submit the case for resolution after a formal investigation or hearing was conducted, and after they were given time to file their respective position papers or memoranda.[7]

On January 11, 2010, the Court resolved: (*a*) to re-docket the administrative case as a regular administrative matter; (*b*) to await Judge Malanyaon's compliance with the September 16,

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[4] *Rollo*, pp. 19-20.

[5] *Id.* at 3.

[6] *Id.* at 38.

[7] *Id.* at 39.

2009 resolution; and (*c*) to refer the administrative matter to the OCA for evaluation, report and recommendation.[8]

After Judge Malanyaon did not submit any compliance with the September 16, 2009 resolution, the Court ordered him on February 10, 2010 to show cause why he should not be disciplinarily dealt with or held in contempt for such failure, and further directed him to still comply with the resolution.[9]

On February 15, 2010, Judge Malanyaon's counsel informed the Court that Judge Malanyaon had meanwhile suffered a massive stroke on September 2, 2009 that had affected his mental faculties and made him unfit to defend himself here; and prayed for the suspension of the proceedings until Judge Malanyaon would have been found competent to comprehend and stand the rigors of the investigation.[10]

On April 12, 2010, the Court deferred action on the case, and required Judge Malanyaon to submit a medical certificate.[11]

Judge Malanyaon submitted a medical certificate dated May 27, 2010, issued by the Philippine General Hospital, certifying that he had been confined thereaft from September 2, 2009 to October 19, 2009 for the following reason, to wit:

> Cerebro Vascular disease, Hypertension Intra Cerebral Hematoma Left Thalamus with obstructive Hydrocephalus; DM type II, Chronic Obstructive Pulmonary disease; Pneumonia; lleus (resolved); Neurogenic bladder, Benign Prostatic Hypertrophy; Grave's disease; Arthritis.
>
> OPERATION PERFORMED:
> Bilateral tube ventriculostomy[12]

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[8] *Id.* at 42.

[9] *Id.* at 44.

[10] *Id.* at 45-47.

[11] *Id.* at 48.

[12] *Id.* at 50-52.

Judge Malanyaon submitted two more medical certificates, the first dated October 5, 2010,[13] certifying that, among others, he was undergoing regular check-up, and the other, dated January 24, 2011,[14] certifying that his functional and mental status had been assessed as follows:

The severity and location of the hemorrage in the brain resulted in residual epoliptogenic focus (**Post**-gliotic seizures) and significant impairment of cognition, memory judgment behavior (**Vascular** Dementia). He has problems with memory recall, analysis of information, events and situations which may make defending himself difficult, if necessary. Although he is independent on ambulation, he requires assistance even in basic activities of daily living.[15]

The Court required the complainants to comment on Judge Malanyaon's medical certification dated October 5, 2010.

On July 18, 2011, however, Dr. Amelita submitted a manifestation and urgent motion to dismiss, seeking the dismissal of the administrative case against Judge Malanyaon upon the following grounds, to wit:

x x x x x x x x x

2. Unfortunately, in a "Medical Certification" dated June 15, 2011 the original of which is attached hereto as Annex "1", the attending neurologist of my husband has pronounced him permanently mentally impaired. x x x.

x x x x x x x x x

3. As a consequence, my husband has permanently lost the capacity to understand the nature and object of the administrative proceedings against him. He cannot intelligently appoint his counsel or communicate coherently with him. He cannot testify in his own behalf, and confront and cross-examine opposing witnesses. Indeed, he cannot properly avail himself of his rights in an adversarial administrative investigation;

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[13] *Id.* at 58.

[14] *Id.* at 65.

[15] *Id.*

4. Given the progressive mental impairment afflicting my husband, he has permanently lost the capacity to defend himself. Thus, to continue the administrative investigation against my husband who is no longer in any position to defend himself would constitute a denial of his right to be heard (Baikong Akang Camsa vs. Judge Aurelio Rendon, A.M. No. MTJ-02-1395 dated 19 February 2002).[16]

Even so, on September 26, 2011, we required the complainants to comment on the manifestation and motion of Dr. Amelita.[17]

Subsequently, Dr. Amelita submitted another motion dated January 23, 2012,[18] praying for the dismissal of the case against Judge Malanyaon.

On February 6, 2012, Court Administrator Jose Midas P. Marquez reiterated the recommendation made on March 27, 2008 by then Court Administrator Elepaño by recommending that: (*a*) the administrative case be re-docketed as a regular administrative matter; and (*b*) Judge Malanyaon be found guilty of gross misconduct and fined ₱50,000.00.[19]

On May 3, 2012, the Court received the complainants' compliance dated February 1, 2012,[20] as their response to the show cause order issued in relation to their failure to submit the comment the Court had required on September 26, 2011.[21]

On September 4, 2012, the Court received from Dr. Amelita an urgent *ex parte* motion for immediate resolution, praying that the motion to dismiss dated July 18, 2011 be already resolved.[22]

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[16] *Id.* at 70-73.

[17] *Id.* at 74-75.

[18] *Id.* at 82-84.

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

[20] *Id.* at 90-100.

[21] *Id.* at 81.

[22] *Id.* at 105-108.

Issues

For consideration and resolution are the following issues, namely: (*a*) whether or not Judge Malanyaon would be denied due process if the administrative case was not dismissed; (*b*) whether the actuations of Judge Malanyaon complained of constituted conduct unbecoming of a judge; and (*c*) if Judge Malanyaon was guilty of conduct unbecoming of a judge, what should be the correct sanction.

Ruling

We now discuss and resolve the issues accordingly.

1.
Respondent's right to due process is not violated by resolution of the case

In her manifestation with urgent motion to dismiss,[23] Dr. Amelita stressed that proceeding against Judge Malanyaon despite his present medical state would violate his right to due process. She stated:

> 3. As a consequence, my husband has permanently lost the capacity to understand the nature and object of the administrative proceedings against him. He cannot intelligently appoint his counsel or communicate coherently with him. He cannot testify in his own behalf, and confront and cross-examine opposing witnesses. Indeed, he cannot properly avail himself of his rights in an adversarial administrative investigation.[24]

Opposing, the complainants argued that Dr. Amelita's concern was unfounded considering that Judge Malanyaon had not only been given the opportunity to be heard, but had been actually heard on their complaint.

The complainants' argument is well taken.

On August 3, 2007, or prior to his suffering the massive stroke that impaired his mental faculty, Judge Malanyaon already

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[23] *Id.* at 70.

[24] *Id.* at 71.

submitted his comment containing his explanations and refutations of the charge against him. His comment asserted that during the hearing of the administrative case of his wife in the Regional Office of the Civil Service Commission, the hearing officer did not even cite any rule that prohibited him from sitting beside his daughter who was then acting as the counsel of Dr. Amelita therein, or that inhibited him from assisting his daughter in the defense of his wife. He pointed out that although he had then lost his temper after the opposing counsel had inquired about his personality in that hearing, he had ultimately apologized to the hearing officer, who had in turn graciously let the matter pass.

Under the circumstances, Judge Malanyaon was accorded due process. In administrative cases, the requirement of due process is satisfied whenever the parties are afforded the fair and reasonable opportunity to explain their side of the controversy,[25] either through oral arguments or through pleadings.[26] That is what happened herein. Accordingly, Dr. Amelita's motion was bereft of basis, and should be denied.

2.
Actuations of Judge Malanyaon rendered him guilty of conduct unbecoming of a judge

The following actuations of Judge Malanyaon constituted conduct unbecoming of a judge upon the reasons set forth below.

First was Judge Malanyaon's occupying a seat beside his daughter that was reserved for the lawyers during the hearing. Such act displayed his presumptuousness, and probably even his clear intention to thereby exert his influence as a judge of

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[25] *Sahali v. COMELEC*, G.R. No. 201796, January 15, 2013; *Heirs of Jolly R. Bugarin v. Republic,* G.R. No. 174431, August 6, 2012, 678 SCRA 209, 225.

[26] *National Association of Electricity Consumers for Reforms, Inc. (NASECORE) v. Energy Regulatory Commission (ERC)*, G.R. No. 190795, July 6, 2011, 653 SCRA 642, 654.

the Regional Trial Court on the hearing officer in order for the latter to favor his wife's cause. That impression was definitely adverse against the Judiciary, whose every judicial officer was presumed to be a subject of strict scrutiny by the public. Being an incumbent RTC Judge, he always represented the Judiciary, and should have acted with greater circumspection and self-restraint, simply because the administrative hearing was unavoidably one in which he could not but be partisan. Simple prudence should have counselled him to avoid any form of suspicion of his motives, or to suppress any impression of impropriety on his part as an RTC judge by not going to the hearing himself.

Second was Judge Malanyaon's admission that his presence in that hearing was to advise his daughter on what to do and say during the hearing, to the point of coaching his daughter. In the process, he unabashedly introduced himself as the "counsel of the respondent's counsel" upon his presence being challenged by the adverse counsel, stating that his daughter was still inexperienced for having just passed her Bar Examinations. Such excuse, seemingly grounded on a "filial" duty towards his wife and his daughter, did not furnish enough reason for him to forsake the ethical conduct expected of him as a sitting judge. He ought to have restrained himself from sitting at that hearing, being all too aware that his sitting would have him cross the line beyond which was the private practice of law.

Section 35[27] of Rule 138 of the *Rules of Court* expressly prohibits sitting judges like Judge Malanyaon from engaging in the private practice of law or giving professional advice to clients. Section 11,[28] Canon 4 (*Propriety*),[29] of the *New Code of Judicial*

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[27] Section 35. *Certain attorneys not to practice.* - No judge or other official or employee of the superior courts or of the Office of the Solicitor General, shall engage in private practice as a member of the bar or give professional advice to clients.

[28] Section 11. Judges shall not practice law while the holder of judicial office.

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

Conduct and Rule 5.07[30] of the *Code of Judicial Conduct* reiterate the prohibition from engaging in the private practice of law or giving professional advice to clients. The prohibition is based on sound reasons of public policy, considering that the rights, duties, privileges and functions of the office of an attorney are inherently incompatible with the high official functions, duties, powers, discretion and privileges of a sitting judge. It also aims to ensure that judges give their full time and attention to their judicial duties, prevent them from extending favors to their own private interests, and assure the public of their impartiality in the performance of their functions. These objectives are dictated by a sense of moral decency and desire to promote the public interest.[31]

Thus, an attorney who accepts an appointment to the Bench must accept that his right to practice law as a member of the Philippine Bar is thereby suspended, and it shall continue to be so suspended for the entire period of his incumbency as a judge.

The term *practice of law* is not limited to the conduct of cases in court or to participation in court proceedings, but extends to the preparation of pleadings or papers in anticipation of a litigation, the giving of legal advice to clients or persons needing the same, the preparation of legal instruments and contracts by which legal rights are secured, and the preparation of papers incident to actions and special proceedings.[32] To the Court, then, Judge Malanyaon engaged in the private practice of law by assisting his daughter at his wife's administrative case, coaching his daughter in making manifestations or posing motions to the

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[30] RULE 5.07 - A judge shall not engage in the private practice of law. Unless prohibited by the Constitution or law, a judge may engage in the practice of any other profession provided that such practice will not conflict or tend to conflict with judicial functions.

[31] *Omico Mining And Industrial Corporation v. Vallejos*, 63 SCRA 285, 299; also, *Carual v. Brusola,* A.M. No. RTJ-99-1500, October 20, 1999, 317 SCRA 54, 66.

[32] *Ziga v. Arejola,* A.M. No. MTJ-99-1203, June 10, 2003, 403 SCRA 361, 368.

hearing officer, and preparing the questions that he prompted to his daughter in order to demand that Atty. Eduardo Loria, collaborating counsel of the complainants' principal counsel, should produce his privilege tax receipt. Judge Malanyaon did so voluntarily and knowingly, in light of his unhesitating announcement during the hearing that he was the counsel for Atty. Katrina Malanyaon, the counsel of the respondent, as his response to the query by the opposing counsel why he was seated next to Atty. Malanyaon thereat.

Third was Judge Malanyaon's admission that he had already engaged in the private practice of law even before the incident now the subject of this case by his statement in his comment that "it is strange for complainants to take offense at my presence and accuse me of practicing law during my stint as a judge when before the bad blood between my wife and her sibling and nephew erupted, I helped them out with their legal problems *gratis et amore* and they did not complain of my practicing law on their behalf."[33] He thereby manifested his tendencies to disregard the prohibition against the private practice of law during his incumbency on the Bench.

Any propensity on the part of a magistrate to ignore the ethical injunction to conduct himself in a manner that would give no ground for reproach is always worthy of condemnation.[34] We should abhor any impropriety on the part of judges, whether committed in or out of their courthouses, for they are not judges only occasionally. The Court has fittingly emphasized in *Castillo v. Calanog, Jr.*: [35]

> The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala and as a private individual. There is no dichotomy of morality;

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[33] *Rollo*, p. 20.

[34] *Naval v. Panday*, A.M. No. RTJ-95-1283, December 21, 1999, 321 SCRA 290, 303.

[35] A.M. No. RTJ-90-447, July 12, 1991, 199 SCRA 75, 83-84.

a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have very recently explained, a judge's official life cannot simply be detached or separated from his personal existence. Thus:

> Being a subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.
>
> A judge should personify judicial integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of official duties and in private life should be above suspicion.

Fourth was Judge Malanyaon's display of arrogance during the hearing, as reflected by his reaction to the opposing counsel's query on his personality to sit at the counsel table at the hearing, to wit:

> I am the counsel of the complainant, ah, of the respondent's counsel, I am Judge Malanyaon. I am assisting her. **And so what?!!**

Judge Malanyaon's uttering "And so what?" towards the opposing counsel evinced his instant resentment towards the adverse parties' counsel for rightly challenging his right to be sitting on a place reserved for counsel of the parties. The utterance, for being made in an arrogant tone just after he had introduced himself as a judge, was unbecoming of the judge that he was, and tainted the good image of the Judiciary that he should uphold at all times.[36] It is true that the challenge of the opposing counsel might have slighted him, but that was not enough to cause him to forget that he was still a judge expected to act with utmost sobriety and to speak with self-restraint. He thereby ignored the presence of the hearing officer, appearing to project that he could forsake the decorum that the time and the occasion rightly called for from him and the others just because he was a judge and the other side was not. He should not forget that a judge

[36] *Seludo v. Fineza*, RTJ-04-1864, December 16, 2004, 447 SCRA 73, 82.

like himself should be the last person to be perceived by others as a petty and sharp-tongued tyrant.

Judge Malanyaon has insisted that his actuations were excused by his filial obligation to assist his daughter, then only a neophyte in the Legal Profession. We would easily understand his insistence in the light of our culture to be always solicitous of the wellbeing of our family members and other close kin, even risking our own safety and lives in their defense. But the situation of Judge Malanyaon was different, for he was a judicial officer who came under the stricture that uniformly applied to all judges of all levels of the judicial hierarchy, forbidding him from engaging in the private practice of law during his incumbency, regardless of whether the beneficiary was his wife or daughter or other members of his own family.

3.
What is the proper penalty?

Judge Malanyaon had been previously sanctioned by the Court on the following three occasions, namely: (*a*) A.M. No. RTJ-93-1090, with admonition for gross ignorance of the law and unreasonable delay in resolving motions;[37] (*b*) A.M. No. RTJ-99-1444, with reprimand for failure to resolve motions;[38] and (*c*) A.M. No. RTJ-02-1669, with a fine of ₱20,000.00 (coupled with a stern warning that a repetition of the same or similar act would be dealt with more severely) for conduct unbecoming of a judge.[39] He had other administrative cases that were dismissed.[40]

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[37] *Cuadro v. Malanyaon*, A.M. No. RTJ-93-1090, June 6, 1994.

[38] *Tolentino v. Malanyaon*, A.M. No. RTJ-99-1444, August 3, 2000, 337 SCRA 162.

[39] *Decena v. Malanyaon,* A.M. No. RTJ-02-1669, April 14, 2004, 427 SCRA 153.

[40] Specifically, the following charges against Judge Malanyaon were dismissed, to wit: (*a*) 95-10-RTJ - conspiracy to commit oppression, manifest bias and partiality; (*b*) 977-322-RTJ – issuing a falsified decision; (*c*) 02-1554-RTJ – ignorance of the law; (*d*) 09-3078-RTJ – rendering unjust judgment; (*e*) 09-3090-RTJ – violations of the Constitution, the Rules of Court and the Code of Judicial Conduct; (*f*) 09-3310-RTJ – gross ignorance of the law,

Of the three administrative cases that merited sanctions, however, only the third should be considered as aggravating herein because it involved the similar offense of conduct unbecoming of a judge for which he had been given the stern warning of a more severe penalty upon a repetition.

However, our uniform treatment of administrative sanctions as having the nature of liabilities akin to those in criminal cases now brings us to offset such aggravating circumstance with the apparent fact that the actuations of Judge Malanyaon complained of had not been motivated by bad faith, or by any malice towards another. Indeed, he did not intend to thereby cause any prejudice to another, having so acted from a sincere, albeit misplaced, desire to go to the help of his wife and daughter.

Accordingly, the Court deems it condign and proper to mitigate the fine of ₱50,000.00 recommended by the Court Administrator by imposing on Judge Malanyaon a fine of ₱40,000.00. With his disability retirement from the Judiciary having been earlier granted by the Court, the fine shall be deducted from his remaining retirement benefits.

WHEREFORE, the Court finds and pronounces **JUDGE NILO A. MALANYAON**, Presiding Judge of Branch 32 of the Regional Trial Court in Pili, Camarines Sur, administratively liable for conduct unbecoming of a Judge, and penalizes him with a fine of ₱40,000.00.

SO ORDERED.

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

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grave abuse of discretion and violation of due process; and (*g*) 10-3346-RTJ – grave misconduct, gross ignorance of the law, violation of the constitution and knowingly rendering unjust judgment.

SECOND DIVISION

[G.R. No. 141809. April 8, 2013]

JOSEFINA F. INGLES, JOSE F. INGLES, JR., HECTOR F. INGLES, JOSEFINA I. ESTRADA, and TERESITA I. BIRON, *petitioners, vs.* **HON. ESTRELLA T. ESTRADA, in her capacity as former EXECUTIVE JUDGE, Regional Trial Court of QUEZON CITY, and CHARLES J. ESTEBAN,** *respondents.*

[G.R. No. 147186. April 8, 2013]

JOSEFINA F. INGLES, JOSE F. INGLES, JR., HECTOR F. INGLES, JOSEFINA I. ESTRADA and TERESITA I. BIRON, *petitioners, vs.* **HON. ARSENIO J. MAGPALE, Judge, Presiding over Branch 225, Regional Trial Court, QUEZON CITY, and CHARLES J. ESTEBAN,** *respondents.*

[G.R. No. 173641. April 8, 2013]

JOSEFINA F. INGLES, JOSE F. INGLES, JR., HECTOR INGLES, JOSEFINA I. ESTRADA and TERESITA I. BIRON, *petitioners, vs.* **CHARLES J. ESTEBAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; DEFINED AND CONSTRUED.— *"Civil Actions"* are suits filed in court involving either the enforcement or protection of a right, or the prevention or redress of a wrong. They are commenced by the filing of an original complaint before an appropriate court and their proceedings are governed by the provisions of the Rules on Court on ordinary or special civil actions. Civil actions are adversarial in nature; presupposing the existence of disputes defined by the parties that are, in

turn, submitted before the court for disposition. Issuances made therein, including and most especially judgments, final orders or resolutions, are therefore rendered by courts in the exercise of their judicial function.

2. **MERCANTILE LAW; ACT NO. 3135 (REAL ESTATE MORTGAGE LAW); EXTRAJUDICIAL FORECLOSURE OF MORTGAGES; THE PROCEEDINGS THEREOF IS NOT ADVERSARIAL AS THE EXECUTIVE JUDGE MERELY PERFORMS HIS ADMINISTRATIVE FUNCTION; SUSTAINED.—** Proceedings for the extrajudicial foreclosure of mortgages, as the name already suggests, are not suits filed in a court. They are commenced not by the filing of a complaint, but by submitting an application before an executive judge who, in turn, receives the same neither in a judicial capacity nor on behalf of the court. The conduct of such proceedings is not governed by the rules on ordinary or special civil actions, but by Act No. 3135, as amended, and by special administrative orders issued by this Court. Proceedings for the extrajudicial foreclosure of mortgages are also not adversarial; as the executive judge merely performs therein an administrative function to ensure that all requirements for the extrajudicial foreclosure of a mortgage are satisfied before the clerk of court, as the *ex-officio* sheriff, goes ahead with the public auction of the mortgaged property. Necessarily, the orders of the executive judge in such proceedings, whether they be to allow or disallow the extrajudicial foreclosure of the mortgage, are not issued in the exercise of a judicial function but, in the words of ***First Marbella Condominium Association, Inc. v. Gatmaytan:*** **x x x** issued by the RTC Executive Judge in the exercise of his **administrative function to supervise the ministerial duty of the Clerk of Court as *Ex Officio* Sheriff in the conduct of an extrajudicial foreclosure sale x x x.** An executive judge has the administrative duty in such proceedings to ensure that all the conditions of the law have been complied with before authorizing the public auction of any mortgaged property and this duty, by *necessity*, includes facially examining the mortgage agreement as to whether it adequately identified the land to be auctioned or whether it contains sufficient authorization on the part of the mortgagee to push forth with an extrajudicial sale. Of course, an executive

judge may *err* in the exercise of such administrative function and, as a result, may improvidently sanction an extrajudicial sale based on a faulty construction of a mortgage agreement—but those are not errors of jurisdiction inasmuch as they relate only to the *exercise* of jurisdiction.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PLEADINGS ARE REQUIRED TO BE BOTH VERIFIED AND ACCOMPANIED BY A CERTIFICATION AGAINST FORUM SHOPPING; SUBSTANTIAL COMPLIANCE FOR THE TWO REQUIREMENTS, DISTINGUISHED.— A *certiorari* petition under Rule 65 of the Rules of Court is one where the pleadings required to be both verified and accompanied by a certification against forum shopping when filed before a court. While both verification and certification against forum shopping are concurring requirements in a *certiorari* petition, one requirement is distinct from the other in terms of nature and purpose. In the seminal case of ***Altres v. Empleo,*** this Court laid out guiding principles that synthesized the various jurisprudential pronouncements regarding non-compliance with the requirements on, or submission of a defective, verification and certification against forum shopping. x x x 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby. 3) **Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.** 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons." 5) **the certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign**

will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

4. **ID.; ID.; ID.; VERIFICATION; WHEN SIGNATURE OF ONLY ONE OF THE SEVERAL PETITIONERS OR PLAINTIFFS IS ALREADY A SUBSTANTIAL COMPLIANCE OF THE REQUIREMENT; APPLICATION IN CASE AT BAR.—** The Ingleses' *certiorari* petition was properly verified even though not all of them were able to sign the same. As related by ***Altres,*** the requirement of verification is deemed substantially complied with if "***one*** *who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been in good faith or are true and correct."* The pronouncement in ***Altres*** is based on the recognition that the purpose of verifying a petition or complaint, *i.e.,* to assure the court that such petition or complaint was filed in good faith; and that the allegations therein are true and correct and not the product of the imagination or a matter of speculation, can sufficiently be achieved even if only one of the several petitioners or plaintiffs signs the verification. As long the signatory of the verification is competent, there is already substantial compliance with the requirement. Verily, the signatures of *all* of the Ingleses were not required to validly verify their *certiorari* petition. It suffices, according to ***Altres,*** that the verification was signed by at least one of the Ingleses who was competent to do so.

5. **ID.; ID.; ID.; CERTIFICATION AGAINST FORUM SHOPPING; WHEN THE FAILURE OF SOME OF THE PARTIES TO SIGN THE CERTIFICATION SHALL NOT BE A VALID GROUND TO DISMISS THE *CERTIORARI* PETITION; PRESENT IN CASE AT BAR.—** The mere fact that only some and not all of the Ingleses signed the certification against forum shopping attached to their *certiorari* petition—is not a valid ground for the outright dismissal of such petition as to *all* of the Ingleses. As ***Altres*** elucidates, the most that the Court of

Appeals could have done in such a case is to dismiss the *certiorari* petition only with respect to the Ingleses who were not able to sign. Nevertheless, the *certiorari* petition should be sustained as to *all* of the Ingleses since substantial compliance with the requirement of a certification against forum shopping may be appreciated in their favor. Jurisprudence clearly recognizes that "*under reasonable or justifiable circumstances x x x as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense*" the rule requiring all such petitioners or plaintiffs to sign the certification against forum shopping may be relaxed. In this case, the "*reasonable or justifiable circumstance*" that would warrant a relaxation of the rule on the certification against forum shopping consists in the undeniable fact that Ingleses are immediate relatives of each other espousing but only one cause in their *certiorari* petition. A circumstance similar to that of the Ingleses was already recognized as valid by this Court in cases such as ***Traveno v. Bobongon Banana Growers Multi-Purpose Cooperative*** and in ***Cavile v. Heirs of Cavile***, just to name a few.

6. **MERCANTILE LAW; ACT NO. 3135 (REAL ESTATE MORTGAGE LAW); WRIT OF POSSESSION; AS A RULE, ISSUANCE THEREOF MAY NOT BE CONSOLIDATED WITH ANY OTHER ORDINARY ACTION; EXCEPTION; NOT APPLICABLE IN CASE AT BAR.—** As a rule, a petition for the issuance of a writ possession may not be consolidated with any other ordinary action. It is well-settled that a petition for the issuance of a writ of possession is *ex-parte*, summary and non-litigious by nature; which nature would be rendered nugatory if such petition was to be consolidated with any other ordinary civil action. The exception to the foregoing rule is the case of ***Active Wood Products, Co., Inc. vs. Court of Appeals.*** In ***Active Wood,*** this Court allowed the consolidation of a petition for the issuance of a writ of possession with an ordinary action for the annulment of mortgage. x x x The unbridled construction of ***Active Wood***, however, led to a deplorable practice where mortgagors aggrieved by the result of an extrajudicial foreclosure would prevent possession by the successful purchaser by simply filing an action contesting the latter's "*presumed right of ownership*" either by an

annulment of mortgage or of the extrajudicial sale, and then asking the court for their consolidation with the petition for the issuance of a writ of possession. x x x Hence, in ***Sps. De Vera v. Hon. Agloro,*** this Court held that the consolidation of an action for the annulment of mortgage and extrajudicial sale with a petition for the issuance of a writ of possession, is not mandatory but still rests within the discretion of the trial court to allow. x x x In ***Philippine National Bank,*** this Court held that consolidation of an action for annulment of extrajudicial sale and a petition for the issuance of a writ of possession should not be allowed when doing so would actually lead to more delay in the proceedings ad thus "*defeat the very rationale of consolidation*." x x x But perhaps the most crucial refinement of ***Active Wood*** was in the case of ***Espinoza v. United Overseas Bank Phils***. x x x ***Espinoza*** invalidated the consolidation of an action for the annulment of the extrajudicial sale with a petition for the issuance of a writ of possession after finding that the latter petition was filed *after* the expiration of the one-year redemption period and *after* the purchaser had already consolidated his title over the auctioned property. x x x The ruling in ***Espinoza*** applies. x x x At that time, Charles was already the absolute owner of the ten (10) lots and, as such, his right to possess the same becomes a matter of right on his part. Charles' claim of possession is no longer merely based on a "*presumed right of ownership*" as the Ingleses have evidently failed to exercise their right of redemption within the period provided by law. By then, the consolidation of Charles' application for a writ of possession with the Ingleses' action for the annulment of mortgage had already lost its basis and, therefore, ceased to become proper. Consequently, no grave abuse of discretion may be imputed on the part of the RTC in allowing Charles to present *ex-parte* evidence in support of his application for the issuance of a writ of possession.

APPEARANCES OF COUNSEL

Ibuyan Garcia Ibuyan Law Offices for petitioners except Hector F. Ingles.

Rodrigo Berenguer & Guno for private respondent.

D E C I S I O N

PEREZ, *J*.:

For decision are the following petitions for review on *certiorari*:[1]

1. **G.R. No. 141809**, which assails the Resolutions[2] dated 28 December 1999 and 28 January 2000 of the Court of Appeals in CA-G.R. SP. No. 56292;

2. **G.R. No. 147186**, which assails the Resolutions[3] dated 29 November 2000 and 16 February 2001 of the Court of Appeals in CA-G.R. SP No. 58790; and

3. **G.R. No. 173641**, which assails the Decision[4] dated 31 March 2006 and Resolution[5] dated 19 July 2006 of the Court of Appeals in CA-G.R. SP No. 84738.

These petitions share the same facts:

The Land, Loan and Mortgage

Jose D. Ingles, Sr. (Jose) and his wife, petitioner Josefina F. Ingles (Josefina), were the registered owners of a 2,265 square meter parcel of land in Quezon City per Transfer Certificate of Title (TCT)

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[1] All under Rule 45 of the Rules of Court.

[2] The Resolutions were penned by Associate Justice Ma. Alicia Austria-Martinez (now a retired Justice of the Supreme Court) for the Special Sixth Division of the Court of Appeals with Associate Justices Martin S. Villarama, Jr. (now a Justice of the Supreme Court) and Justice Andres B. Reyes, Jr. concurring. *Rollo* (G.R. No. 141809), pp. 26-27 and pp. 29-31.

[3] The Resolutions were penned by Associate Justice Eliezer R. De Los Santos for the Special Seventh Division of the Court of Appeals with Associate Justices Buenaventura J. Guerrero and Jose L. Sabio, Jr. concurring. *Rollo* (G.R. No. 147186), p. 31 and pp. 33-35.

[4] The Decision was penned by Associate Justice Edgardo F. Sundiam for the Eighth Division of the Court of Appeals with Associate Justices Martin S. Villarama, Jr. (now a Justice of the Supreme Court) and Japar B. Dimaampao, concurring. *Rollo* (G.R. No. 173641), pp. 64-88.

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

No. 125341 PR-17485.[6] TCT No. 125341 PR-17485 contains the following *technical description* of the land of Jose and Josefina:[7]

> A parcel of land (lot 13, block W-35 of the subd. [p]lan Psd-7365-D, being a portion of Lot R.P. 3-D-2-B of Plan BSD-7365-D, G.L.R.O. Rec. No. 7681) situated in the District of Diliman, Quezon City. Bounded on the NW., along line 1-2 by lot 14, block W-35[;] on the NE., along line 2-3-4-5-6, by R-285; on the SE., along line 6-7-8-9, by R-283; on the SW., along line 9-10 by lot 13, block Q-35; and on the NW., along line 10-1 by lot 15 block W-35; all of the subd. [p]lan x x x beginning, containing an area of TWO THOUSAND TWO HUNDRED SIXTY FIVE (2,265) SQUARE METERS, more or less.

On 14 April 1993, Jose and Josefina obtained a loan in the amount of ₱6,200,000.00 from respondent Charles J. Esteban (Charles). As collateral for such loan, Jose and Josefina mortgaged their above-described land in favor of Charles. A *Promissory Note*[8] and a *Deed of Real Estate Mortgage*,[9] evidencing both such loan and mortgage, were accordingly executed between Jose, Josefina and Charles on the same day.

The *Deed of Real Estate Mortgage*, the mortgaged land was mistakenly referred to as being covered by TCT No. 125**1**41 PR-17485 instead of TCT No. 125**3**41 PR-17485.[10] Nevertheless, the deed identified the mortgaged land exactly in accordance with the *technical description* of TCT No. 125**3**41 PR-17485.[11] The pertinent part of the *Deed of Real Estate Mortgage* thus read:[12]

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[6] Records (LRC Case No. Q-10766 [98]), Volume II, pp. 546-547.

[7] *Id.* at 546.

[8] *Rollo* (G.R. No. 173641), p. 214.

[9] *Id.* at 213.

[10] *Id.*

[11] *Id.*

[12] *Id.*

For and in consideration of a loan in the amount of SIX MILLION TWO HUNDRED THOUSAND PESOS (₱6,200,000.00), Philippine Currency, in hand given by the MORTGAGEE [Charles] to the MORTGAGOR/S [Jose and Josefina], the receipt, of the said amount is hereby acknowledged and confessed x x x, the MORTGAGOR/S [Jose and Josefina] hereby cede, transfer and convey, BY WAY OF FIRST MORTGAGE, unto and favor of the MORTGAGEE [Charles], his heirs, successors and assigns, a parcel of land located at ____________, together with the residential house constructed on the said land, which is more particularly described in **Transfer Certificate of Title No. 125<u>1</u>41 PR-17485**, Registry of Deeds of __________ as follows:

> **A parcel of land (lot 13, block W-35 of the subd. plan Psd-7365-D, being a portion of Lot R.P. 3-D-2-B of Plan Bsd-7365-D, G.L.R.O. Rec. [N]o. 7681) situated in District of Diliman, Quezon City. Bounded on the NW., along line 1-2 by lot 14, block W-35; on the NE., along line 2-3-4-5-6, by R-285; on the SE., along line 6-7-8-9, by R-283; on the SW., along line 9-10 by lot 13, block W-35; and on the NW., along line 10-1 by lot 15, block W-35; all of the subd. plan x x x beginning, containing an area of TWO THOUSAND TWO HUNDRED SIXTY FIVE (2,265) SQUARE METERS, more or less**. (Emphasis and underscoring supplied).

Moreover, the *Deed of Real Estate Mortgage* contained the following stipulation: "*upon the failure of the MORTGAGOR/S* [Jose and Josefina] *to pay* [their loan] *at maturity date* x x x *the MORTGAGOR/S* [Jose and Josefina] *may elect or choose to foreclose* [the] *mortgage judicially or extrajudicially* x x x."[13] The deed provided further that: "*in the event of extrajudicial foreclosure of* [the] *mortgage* x x x *the MORTGAGOR/S* [Jose and Josefina] *name, constitute and appoint the MORTGAGEE* [Charles] *as attorney-in-fact without further formality, with full power and authority to dispose the mortgaged property in accordance with the provision of Act 3135 as amended*."[14]

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[13] *Id.*

[14] *Id.*

On 26 April 1993, Jose and Josefina requested the Register of Deeds of Quezon City for the division of their land into ten (10) lots.[15] The request eventually led to the cancellation of TCT No. 125**3**41 PR-17485 and the issuance of separate *Torrens* titles for each of the 10 lots, namely, TCT Nos. 85825-34.[16]

Upon maturity of their loan on 29 May 1993, Jose and Josefina issued to Charles a check for ₱6,200,000.00 as payment. Unfortunately, that check bounced.[17]

On 30 October 1993, Jose died.[18] He was survived by Josefina and herein petitioners Jose F. Ingles, Jr., Hector Ingles, Josefina I. Estrada and Teresita Biron (collectively, the Ingleses).

On 13 July 1994, Charles sent to Josefina a letter demanding for the payment of her and her late husband's loan. Charles, in the same letter, also threatened to foreclose the mortgage in his favor should Josefina fail to heed the demand for payment within ten (10) days from her receipt of the letter.[19] To these, Josefina responded with her own letter asking Charles for an extension of time, *i.e.,* until 30 October 1994, within which to pay for all of her obligations.[20] Despite the extension, however, Josefina still failed to pay.[21]

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[15] *Via* a Letter dated 26 April 1993. Records (LRC Case No. 10766), Volume II, p. 548.

[16] *Id.* at 549-558.

[17] Josefina and Jose issued Bank of the Philippine Islands check no. 052161. The said check was subsequently presented by Charles to the United Coconut Planters Bank for deposit. The check, however, was dishonored for being drawn against insufficient funds (DAIF). *Id.* at 533.

[18] *Rollo* (G.R. No. 173641), p. 66.

[19] Records (LRC Case No. 10766), Volume II, p. 534.

[20] *Id.* at 535.

[21] *Rollo* (G.R. No. 173641), p. 66.

The Extrajudicial Foreclosure

On 12 July 1997, Charles petitioned[22] Executive Judge Estrella T. Estrada (Executive Judge Estrada) of the Regional Trial Court (RTC) of Quezon City for the *extrajudicial* foreclosure of the mortgage in his favor. Invoking the provisions of Act No. 3135[23] and the *Deed of Real Estate Mortgage*, Charles sought for the sale at public auction of the ten (10) lots originally subsumed in TCT No. 125**3**41 PR-17485 but which are now separately covered by TCT Nos. 85825-34 in the names of Josefina and her late husband.

On 8 October 1997, Executive Judge Estrada issued an *Order*[24] directing Atty. Mercedes Gatmaytan (Atty. Gatmaytan), the Clerk of Court and *Ex-Officio* Sheriff of the Quezon City RTC, to proceed with the extrajudicial sale of the ten (10) lots covered by TCT Nos. 85825-34.[25] Against such *Order*, the Ingleses filed a motion for reconsideration on 13 October 1997. On 20 November 2007, however, Executive Judge Estrada issued an *Order*[26] denying such motion for reconsideration.

On 1 December 1997, Atty. Gatmaytan issued a Notice of Sale[27] setting the public auction on 6 January 1998.

At the public auction, Charles was declared the highest bidder for all of the ten (10) lots. On 7 January 1998, Atty. Gatmaytan issued to Charles a corresponding Certificate of Sale.[28]

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[22] Records (LRC Case No. 10766), Volume II, pp. 536-540.

[23] Entitled, "*An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages*." Act No. 3135 was amended by Act No. 4118.

[24] *Rollo* (G.R. No. 141809), pp. 57-60.

[25] On 13 October 1997, the Ingleses filed a motion for reconsideration of the 8 October 1997 Order. In her Order dated 20 November 2007, however, Executive Judge Estrada merely noted the said motion. *Rollo* (G.R. No. 173641), pp. 67-68.

[26] *Rollo* (G.R. No. 141809), pp. 61-62.

[27] Records (LRC Case No. Q-10766 [98]), Volume I, p. 398.

[28] *Id.* at 7.

The Legal Challenges of the Ingleses and the Petition for the Issuance of Writ of Possession of Charles

On 23 January 1998, the Ingleses filed with the Quezon City RTC a complaint for the *Annulment of the Deed of Real Estate Mortgage*[29] against Charles. In this complaint, the Ingleses claim that Jose and Josefina never actually consented to any mortgage on their land and that their signatures in the *Deed of Real Estate Mortgage* were obtained thru Charles' deception.[30] The Ingleses allege that Charles had deceived Jose and Josefina into signing blank documents, one of which eventually becoming the *Deed of Real Estate Mortgage* and another becoming the *Promissory Note*, on the pretense that such documents were required in a business venture that they had.[31] This complaint was docketed as **Civil Case No. Q-98-33277**[32] and was raffled to Branch 225.

On 24 July 1998, Charles registered his Certificate of Sale with the Register of Deeds of Quezon City.[33]

On 15 September 1998, Charles filed an *Ex-Parte Petition for Issuance of a Writ of Possession*[34] before the Quezon City RTC,[35] wherein he asked to immediately be placed in possession of the ten (10) lots foreclosed in his favor *in lieu* of their current

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[29] Records (LRC Case No. 10766), Volume II, pp. 711-725.

[30] *Id.*

[31] *Id.*

[32] This complaint was actually a "re-filed" complaint. The first complaint filed by the Ingleses for the annulment of the *Deed of Real Estate Mortgage* was filed on 6 December 1994 and was docketed as **Civil Case No. Q-94-22332**. This first complaint, however, was dismissed without prejudice *See* Records (LRC Case No. Q-10766 [98]), Volume I, p. 38.

[33] *Id.* at 7

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

[35] In support of this petition, Charles also posted a bond of ₱240,000.00 representing the amount equivalent to the use of the ten (10) lots for a period of twelve (12) months. (*See* Section 7 of Act No. 3135.)

possessors, the Ingleses.[36] This petition was docketed as **LRC Case No. Q-10766 (98)** and was raffled to Branch 92.

On 23 February 1999, Branch 92 of the Quezon City RTC issued an *Order*[37] directing **LRC Case No. Q-10766 (98)** to be consolidated with **Civil Case No. Q-98-33277**[38] under Branch 225. As a consequence of the consolidation, the records of **LRC Case No. Q-10766 (98)** were transferred to Branch 225.

On 17 December 1999, on the other hand, the Ingleses filed before the Court of Appeals a petition for *Annulment of Final Orders*[39] pursuant to Rule 47 of the Rules of Court. In it, the Ingleses sought the nullification of the *Orders* dated 8 October 1997, 20 November 1997 and 27 July 1998[40] of Executive Judge Estrada, which allowed Charles to extrajudicially foreclose the mortgage on the ten (10) lots as well as to register the resulting Certificate of Sale. The Ingleses argue that Executive Judge

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[36] Records (LRC Case No. Q-10766 [98]), Volume I, pp. 2-6.

[37] *Id.* at 130-132.

[38] The *Order* actually ordered the consolidation of LRC Case No. Q-10766 (98) with **Civil Case No. 94-2232** (*Id.* at 130-132). Later, by another order dated 9 March 1999, Branch 92 of the Quezon City RTC rectified the docket number of the civil case to which LRC Case No. Q-10766 (98) is to be consolidated with, from **Civil Case No. 94-2232** to **Civil Case No. 94-22332,** *see* Records (LRC Case No. Q-10766 [98]), Volume I, p. 133. However, at the time the *Order* was issued, there was no longer a **Civil Case No. 94-22332** to speak of, as the same had already been dismissed, albeit without prejudice, as of 10 October 1997, *see* Records (LRC Case No. Q-10766 [98]), p. 38. What the *Order* could have meant was the consolidation of LRC Case No. Q-10766 (98) with **Civil Case No. Q-98-33277**—which is the new docket number assigned to the "re-filed" complaint first dismissed without prejudice in **Civil Case No. 94-22332** and the only case pending in Branch 225 of the Quezon City RTC dealing with a similar set of facts. At any rate, LRC Case No. Q-10766 (98) was *in actuality* consolidated with **Civil Case No. Q-98-33277** under Branch 225. The *Order* also denied the *Motion to Dismiss and Opposition to the Petition* filed by the Ingleses *contra* Charles' petition for the issuance of a writ of possession.

[39] *Rollo* (G.R. No. 141809), pp. 32-56.

[40] The *Order* dated 27 July 2008 of Executive Judge Estrada, in effect, required the Register of Deeds of Quezon City to complete the registration of Charles' Certificate of Sale. *Id.* at 63-65.

Estrada was bereft of any jurisdiction to issue the assailed *Orders* in light of the provisions in the *Deed of Real Estate Mortgage*: (a) referring to the mortgaged property as being covered by TCT No. 125**1**41 PR-17485 rather than TCT No. 125**3**41 PR-17485, and (b) giving to Jose and Josefina, not to Charles, the right to choose whether the mortgage may be extrajudicially foreclosed or not.[41] In issuing the assailed *Orders*, therefore, the Ingleses accuse Executive Judge Estrada of "*amending*," "*altering,*" and "*revising*" the terms of the *Deed of Real Estate Mortgage* that could not be done in a mere extrajudicial proceeding.[42] This petition was docketed as **CA-G.R. SP No. 56292**.

CA-G.R. SP No. 56292: Annulment of Final Orders

On 28 December 1999, the Court of Appeals in **CA-G.R. SP. No. 56292** issued a *Resolution*[43] dismissing the petition for *Annulment of Final Orders* on grounds of non-compliance with Section 4, Rule 47[44] and Section 3, Rule 46[45] of the Rules of Court. The Ingleses filed a motion for reconsideration.

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[41] *Id.* at 32-56.

[42] *Id.*

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

[44] Section 4 of Rule 47 states:

Sec. 4. *Filing and contents of petition.* – The action shall be commenced by filing a **verified** petition alleging therein with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.

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The petitioner shall also submit together with the petition affidavits of witnesses or documents supporting the cause of action or defense and a **sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same, and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom**. (Emphasis supplied).

[45] Section 3 of Rule 46 provides:

On 28 January 2000, the Court of Appeals issued a *Resolution*[46] denying the motion for reconsideration. In this later *Resolution*, however, the Court of Appeals used a different, albeit a more fundamental *rationale* to maintain its dismissal of the petition for *Annulment of Final Orders*.

In the later *Resolution*, the Court of Appeals dismissed the petition for *Annulment of Final Orders* on the ground of lack of jurisdiction. According to the Court of Appeals, it cannot take original cognizance of the Ingleses' petition as the same does not qualify either as an action under Rule 47 or, for that matter, as any other case that would fall within its original jurisdiction under Rule 46 of the Rules of Court.[47] The Court of Appeals pointed out that the petition for *Annulment of Final Orders* assails orders issued by an executive judge in a proceeding merely for the extrajudicial foreclosure of a mortgage whereas the Rules of Court[48] clearly prescribes that only judgments, final orders and resolutions issued by a "*Regional Trial Court*" in "*civil actions"* may be the subject of annulment

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Sec. 3. *Contents and filing of petition; effect of non-compliance with requirements*. –

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The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

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The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied).

[46] *Rollo* (G.R. No. 141809), pp. 29-31.

[47] *Id.*

[48] Section 1 of Rule 47.

under Rule 47.[49] The Court of Appeals further added that, at any rate, the principle of hierarchy of courts dictates that the Ingleses should have first challenged the validity of the *Orders* of Executive Judge Estrada in an appropriate case before the RTC instead of resorting to a direct action before it.[50]

Unconvinced, the Ingleses appealed[51] both *Resolutions* of the Court of Appeals before this Court in what would be the first of the three petitions consolidated herein. This appeal by *certiorari* is currently **G.R. No. 141809**.

The Proceedings in Quezon City RTC, Branch 225

Meanwhile, as **LRC Case No. Q-10766 (98)** had already been consolidated with **Civil Case No. Q-98-33277**, Charles filed a *Motion for Issuance of [a] Writ of Possession*[52] before Branch 225 of the Quezon City RTC on 9 September 1999. Branch 225 was then presided by Judge Arsenio J. Magpale (Judge Magpale).

In his *Motion for Issuance of [a] Writ of Possession*, Charles reiterated his plea to be put in possession of the ten (10) lots.[53] But in order to show all the more his entitlement to a writ of possession, Charles also raised therein the fact that he now had consolidated title over the ten (10) lots as a consequence of the failure of the Ingleses to exercise their right of redemption within the period allowed by law.[54]

On 19 November 1999, the RTC denied for lack of merit Charles' *Motion for Issuance of [a] Writ of Possession*. Four days after, Charles filed a motion for reconsideration.

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[49] *Rollo* (G.R. No. 141809), pp. 29-31.

[50] *Id.*

[51] *Id.* at 9-23.

[52] Records (LRC Case No. Q-10766 [98]), Volume I, pp. 139-143.

[53] *Id.*

[54] On 2 February 2000, TCT Nos. N-210004 to 13 were issued in favor of Charles. *Id.* at 573-582.

On 7 February 2000, the RTC issued a resolution[55] on granting Charles' motion for reconsideration. The dispositive portion of the resolution allowed Charles to present *ex parte* evidence in support of his application for a writ of possession before the Branch Clerk of Court, *viz*:

> IN VIEW OF THE FOREGOING, petitioner Charles J. Esteban's Motion for Reconsideration is GRANTED. For this purpose, the petitioner is hereby directed to present evidence *ex-parte* before Atty. Arlene V. Mancao, Branch Clerk of Court, the appointed commissioner within five (5) days from receipt of this order and for the said commissioner to submit to the Court her report as soon as the presentation of ex-parte evidence is through.[56]

On 29 February 2000, the Ingleses filed a motion for reconsideration against the 7 February 2000 resolution of the RTC.

On 1 March 2000, the Branch Clerk of Court received, in an *ex-parte* hearing, the testimony of Charles in support of his application for a writ of possession.[57] After which, Charles submitted a *Formal Offer of Evidence*[58] for his documentary exhibits.

On 10 May 2000, the RTC denied the Ingleses' motion for reconsideration.

Aggrieved, the Ingleses filed a *certiorari* petition[59] before the Court of Appeals contesting the 7 February 2000 resolution and 10 May 2000 order of the RTC. In the said petition, the Ingleses argue that the RTC gravely abused its discretion in allowing Charles to present *ex-parte* evidence on his application for a writ of possession despite the consolidation of **LRC Case No. Q-10766 (98)** with **Civil Case No. Q-98-33277**.[60] The

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[55] *Id.* at 438-439.

[56] *Id.* at 439.

[57] *Id.* at 583-591.

[58] *Id.* at 501-505.

[59] *Rollo* (G.R. No. 147186), pp. 36-67.

[60] *Id.*

Ingleses posit that the consolidation of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** effectively tied the resolution of Charles' application for a writ of possession with the resolution of their action for annulment of mortgage.[61] For the Ingleses then, the RTC cannot simply allow Charles to present *ex-parte* evidence on his application for a writ possession without first laying to rest, in a judicial proceeding for that purpose, other related issues raised in **Civil Case No. Q-98-33277**.[62] This *certiorari* petition, which was accompanied by a prayer for a temporary restraining order, was docketed before the Court of Appeals as **CA-G.R. SP No. 58790**.

On account of the pendency of CA-G.R. SP No. 58790, the RTC issued another resolution[63] on 10 July 2000 holding in abeyance any action and resolution on Charles' *Motion for Issuance of a Writ of Possession*.

Subsequently, however, Judge Magpale inhibited himself from further hearing **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277**.[64] The two (2) consolidated cases were thus re-raffled and were eventually assigned to Branch 97 of the Quezon City RTC, which was then presided by Judge Oscar L. Leviste (Judge Leviste).[65]

CA-G.R. SP No. 58790: Certiorari Petition

In **CA-G.R. SP No. 58790**, on the other hand, the Court of Appeals issued a *Resolution*[66] on 29 November 2000

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[61] *Id.*

[62] *Id.*

[63] Records (LRC Case No. Q-10766 [98]), Volume III, p. 1106. This resolution was challenged Charles thru a petition for *certiorari* and *mandamus* before the Court of Appeals, which was docketed as CA-G.R. SP No. 61381, Records (LRC Case No. Q-10766 [98]), Volume III, pp. 1108-1129. On 26 September 2001, however, the Court of Appeals dismissed this petition for mootness in view of 12 July 2001 order of the RTC directing the issuance of a writ of possession in favor of Charles. *See Rollo* (G.R. No. 173641), pp. 77-78.

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

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

[66] *Rollo* (G.R. No. 147186), p. 31 and pp. 33-35.

dismissing outright the *certiorari* petition of the Ingleses on the ground of non-compliance with Section 1 of Rule 65[67] in relation to Section 3 of Rule 46[68] of the Rules of Court. The Court of Appeals condemned the *certiorari* petition as its verification and certificate against forum shopping[69] was signed by only two (2) out of its five (5) named petitioners. As it turns out, only Josefina and Hector F. Ingles signed the

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[67] Section 1 of Rule 65 states:

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.

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

[68] Section 3 of Rule 46 provides:

Sec. 3. *Contents and filing of petition; effect of non-compliance with requirements*. –

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The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

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The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied)

[69] *Rollo* (G.R. No. 147186), pp. 65-67.

verification and certificate of non-forum shopping, while Jose F. Ingles, Jr., Josefina I. Estrada and Teresita Biron did not.[70]

On 11 December 2000, the Ingleses filed before the Court of Appeals a motion for reconsideration. On 16 February 2001, the Court of Appeals issued a *Resolution*[71] denying the Ingleses' motion for reconsideration.

The denial of their motion for reconsideration prompted the Ingleses to lodge an appeal[72] before this Court that, in turn, became the second of three petitions consolidated herein. This appeal by *certiorari* is currently **G.R. No. 147186**.

The Proceedings in Quezon City RTC, Branch 97 and 98

Back in Branch 97 of the Quezon City RTC, proceedings in **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** continued. On 2 April 2001, the RTC issued an Order[73] requiring Charles to submit a memorandum in support of his application for a writ of possession. The same order also required the Ingleses to file a comment on Charles' memorandum.

On 12 July 2001, after evaluating Charles' memorandum and the Ingleses' comment thereon, the RTC issued an Order[74] granting the *Ex Parte Petition for Issuance of a Writ of Possession*. The order directed the issuance of a writ of possession in favor of Charles.[75]

On 19 July 2001, the Ingleses filed a *Motion For Reconsideration*[76] from the above order. The Ingleses also submitted a *Supplemental Motion For Reconsideration*[77] on 23 July 2001.

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[70] *Id.* at 31.

[71] *Id.* at 33-35.

[72] *Id.* at 9-28.

[73] Records (LRC Case No. Q-10766 [98]), Volume V, p. 1659.

[74] *Id.* at 2190.

[75] *Id.*

[76] *Id.* at 2191-2197.

[77] *Id.* at 2198-2201.

On 24 July 2001, the RTC issued an Order[78] directing Charles: (1) to submit an opposition to the Ingleses' *Motion for Reconsideration* and *Supplemental Motion for Reconsideration* within ten (10) days from receipt of the order, and (2) should the Ingleses find it necessary to file a reply in response to his opposition, to submit a rejoinder within ten (10) days from his receipt of such reply.[79]

On 24 July 2001, Charles filed his Opposition[80] to the Ingleses' *Motion For Reconsideration* and *Supplemental Motion For Reconsideration*. On 2 August 2001, the Ingleses filed their Reply[81] to Charles' opposition.

On 26 September 2001, the Ingleses also filed a *Motion To Dismiss*[82] asking for the dismissal of the *Ex-Parte Petition for Issuance of a Writ of Possession*. For his part, Charles filed an Opposition[83] to the *Motion To Dismiss*.

Unfortunately, at about that time, Judge Leviste retired without being able to resolve the Ingleses' *Motion For Reconsideration*, *Supplemental Motion For Reconsideration* and *Motion To Dismiss*.[84] The retirement of Judge Leviste eventually[85] led to

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[78] *Id.* at 2214.

[79] *Id.*

[80] *Id.* at 2215-2225.

[81] *Id.* at 2241-2253.

[82] *Id.* at 2273-2275.

[83] *Id.* at 2278-2285.

[84] *Rollo* (G.R. No. 173641), p. 78.

[85] Before LRC Case No. Q-10766 (98) and Civil Case No. Q-98-33277 were re-raffled, the resolution of the Ingleses' *Motion For Reconsideration*, *Supplemental Motion For Reconsideration* and *Motion To Dismiss* was initially brought before the sala of Judge Lucas P. Bersamin (who, at that time, was Presiding Judge of Branch 96 of the Quezon City, RTC, but is now an Associate Justice of this Court) in his capacity as pairing Judge of Branch 97. Then Judge Bersamin, in an Order dated 22 March of 2002, however, declined to resolve the Ingleses' *Motion For Reconsideration*, *Supplemental Motion For Reconsideration* and *Motion To Dismiss* citing as his reason:

a re-raffle of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** on 16 January 2003 that transferred the two (2) consolidated cases to Branch 98—presided by Judge Evelyn Corpuz-Cabochan (Judge Corpuz-Cabochan).[86]

On 23 June 2004, or more than a year after **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** were raffled to Branch 98, Charles filed a *mandamus* petition[87] before the Court of Appeals. In it, Charles asked the Court of Appeals to compel Judge Corpuz-Cabochan to rule on the Ingleses' *Motion For Reconsideration*, *Supplemental Motion For Reconsideration* and *Motion To Dismiss* that have remained unresolved well beyond the period prescribed for its resolution under Supreme Court Administrative Circular No. 01-28.[88] This petition was docketed before the Court of Appeals as **CA-G.R. SP No. 84738**.

During the pendecy of CA-G.R. SP No. 84738, the RTC (thru an 18 June 2004 Order[89] signed by Judge Corpuz-Cabochan) suspended the proceedings in **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277**. As *rationale* for the suspension, the RTC cited the pendency of **G.R. Nos. 141809** and **147186** before this Court, to wit:

> WHEREFORE, premises considered, it is hereby ordered that the proceedings in these consolidated cases are suspended until after the Honorable Supreme Court shall have resolved the pending petitions before it, docketed as G.R. No. (sic) 141809 and 147186.[90]

"*the pendency of enumerable incidents attendant in these cases, thus, the interest of the parties will be better served if these cases will be heard by the regular judge*." Records (LRC Case No. Q-10766 [98]), Volume V, p. 2328.

[86] Raffle dated 16 January 2003. *Rollo* (G.R. No. 176341), pp. 78-79.

[87] *Id.* at 93-103.

[88] *Id.*

[89] *Id.* at 79-80.

[90] *Id.*

As a response to the issuance of the above order, Charles filed a supplemental petition[91] to his *mandamus* petition.

CA-G.R. SP No. 84738: Mandamus Petition

On 31 March 2006, the Court of Appeals rendered a *Decision*[92] granting Charles' *mandamus* petition. The Court of Appeals thus disposed:

> WHEREFORE, above premises all considered, the petition is hereby GRANTED. Public respondent Judge [Judge Corpuz-Cabochan] is hereby DIRECTED to resolve with dispatch the pending incidents in LRC Case No. Q-10766 (98), *i.e. Motion for Reconsideration* dated July 19, 2001, *Supplemental Motion for Reconsideration* dated July 23, 2001 and *Motion to Dismiss*, dated September 21, 2001.[93]

In its *Decision*, the Court of Appeals found that the Ingleses' *Motion For Reconsideration*, *Supplemental Motion For Reconsideration* and *Motion To Dismiss* were already due to be resolved pursuant to Section 15, Article VIII of the 1987 Constitution[94] and Supreme Court Administrative Circular No. 01-28,[95] which mandates trial courts to decide or resolve all cases or matters pending before them within three (3) months from the time they were submitted for decision or resolution.[96]

Moreover, the Court of Appeals held that no justifiable reason exists why the Ingleses' *Motion For Reconsideration*, *Supplemental Motion For Reconsideration* and *Motion To*

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[91] *Id.* at 104-125.

[92] *Id.* at 64-88.

[93] *Id.* at 87.

[94] Section 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and **three months for all other lower courts**. (Emphasis supplied).

[95] Dated 28 January 1998.

[96] *Rollo* (G.R. No. 173641), pp. 64-88.

Dismiss should remain unresolved.[97] The Court of Appeals was not convinced that either the consolidation of **LRC Case No. Q-10766 (98)** with **Civil Case No. Q-98-33277** or the pendency of **G.R. Nos. 141809** and **147186** may be used as a valid excuse to delay resolution of the subject motions.[98]

The Ingleses filed a motion for reconsideration, but the Court Appeals remained steadfast in its *Resolution*[99] dated 19 July 2006.

Feeling slighted, the Ingleses filed an appeal[100] before this Court—the third of three petitions consolidated herein. This appeal by *certiorari* is currently **G.R. No. 173641**.

OUR RULING

We deny all three petitions.

G.R. No. 141809

The sole issue presented in **G.R. No. 141809** was whether the Court of Appeals erred in dismissing the Ingleses' petition for *Annulment of Final Orders*.[101]

The Ingleses would have us answer in the affirmative; adamant that their petition for *Annulment of Final Orders* is an action validly instituted under Rule 47 of the Rules of Court.[102] They argue that the Court of Appeals could have still taken cognizance of their petition even though the orders assailed therein were issued merely by an executive judge in an extrajudicial foreclosure proceeding.[103] The Ingleses posit that the assailed *Orders* dated 8 October 1997, 20 November 1997 and 27 July 1998 of Executive

[97] *Id.*

[98] *Id.*

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

[100] *Id.* at 14-60.

[101] *Rollo* (G.R. No. 141809), p. 18.

[102] *Id.* at 9-23.

[103] *Id.*

Judge Estrada may, in view of their peculiar nature, be treated as final orders issued in a "*civil action"* by a "*Regional Trial Court*" itself.[104]

On that note, the Ingleses claim that the assailed *Orders* of Executive Judge Estrada are not the usual orders issued in proceedings for extrajudicial foreclosure of mortgages.[105] According to the Ingleses, Executive Judge Estrada had to practically assume and exercise powers otherwise reserved only to an RTC judge presiding over a civil action when she issued the assailed *Orders*.[106] As the Ingleses further explain:

1. The assailed *Orders* allowed the extrajudicial foreclosure on their ten (10) lots despite the express provision in the *Deed of Real Estate Mortgage* referring to the mortgaged property as being covered by TCT No. 125**1**41 PR-17485 and not by TCT No. 125**3**41 PR-17485 *i.e.*, the mother title of the ten (10) lots.[107] In issuing the assailed *Orders*, therefore, Executive Judge Estrada acted as if she was a judge in an action for *Reformation of Contract* by interpreting that what the *Deed of Real Estate Mortgage* really meant was that the mortgaged property was covered by TCT No. 125**3**41 PR-17485.[108]

2. The assailed *Orders* also allowed the extrajudicial foreclosure on their ten (10) lots even though Jose and Josefina never exercised their prerogative under the *Deed of Real Estate Mortgage* to have the mortgage on their property extrajudicially foreclosed.[109] In issuing the assailed *Orders*, therefore, Executive Judge Estrada acted as if she was a judge in some justiciable case by essentially setting aside the above prerogative of Jose and Josefina under the *Deed of Real Estate Mortgage.*[110]

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[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] *Id.*

[110] *Id.*

Hence, the Ingleses conclude, the assailed *Orders* of Executive Judge Estrada are basically as good as a final orders issued in a "*civil action*" by a "*Regional Trial Court.*"[111]

We disagree.

The Exclusive Original Jurisdiction of the Court of Appeals and Rule 47

Section 9(2) of *Batas Pambansa Blg*. 129 or the *Judiciary Reorganization Act of 1980*, vests the Court of Appeals with exclusive original jurisdiction over actions for "*annulment of judgments of Regional Trial Courts*." The remedy by which such jurisdiction may be invoked is provided under Rule 47 of the Rules of Court.

Conformably, Rule 47 sanctions the filing of a petition for the *Annulment of Judgments, Final Orders and Resolutions* before the Court of Appeals. Section 1 of Rule 47, however, defines the scope and nature of this petition:

RULE 47

ANNULMENT OF JUDGMENTS OR FINAL ORDERS AND RESOLUTIONS

SECTION 1. *Coverage.*—This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in **civil actions** of **Regional Trial Courts** for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. (Emphasis supplied)

The above-quoted section sets forth in no unclear terms that only judgments, final orders and resolutions in "*civil actions*" of "*Regional Trial Courts*" may be the subject of a petition for annulment before the Court of Appeals. Against this premise, it becomes apparent why the Ingleses' petition for *Annulment of Final Orders* must fail. We substantiate:

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[111] *Id.*

Proceedings for the Extrajudicial Foreclosure of Mortgages are not Civil Actions

The subject of the Ingleses' petition for *Annulment of Final Orders* are not the proper subjects of a petition for annulment before the Court of Appeals. The assailed *Orders* dated 8 October 1997, 20 November 1997 and 27 July 1998 of Executive Judge Estrada are not the final orders in "*civil actions*" of "*Regional Trial Courts*" that may be the subject of annulment by the Court of Appeals under Rule 47. There is a clear-cut difference between issuances made in a "*civil action*" on one hand and orders rendered in a proceeding for the extrajudicial foreclosure of a mortgage on the other.

"*Civil actions*" are suits filed in court involving either the enforcement or protection of a right, or the prevention or redress of a wrong.[112] They are commenced by the filing of an original complaint before an appropriate court[113] and their proceedings are governed by the provisions of the Rules on Court on ordinary or special civil actions.[114] Civil actions are adversarial in nature; presupposing the existence of disputes defined by the parties that are, in turn, submitted before the court for disposition. Issuances made therein, including and most especially judgments, final orders or resolutions, are therefore rendered by courts in the exercise of their judicial function.

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[112] Section 3(a) of Rule 1 of the Rules of Court gives the following definition of a *civil action*:

a) A civil action is one by which a **party sues another** for the enforcement or protection of a right, or the prevention or redress of a wrong.

A civil action may either be ordinary or special. **Both are governed by the rules for ordinary civil actions**, subject to the specific rules prescribed for a special civil action. (Emphasis supplied)

[113] Section 5 of Rule 1 of the Rules of Court provides that "*a civil action is commenced by the filing of the original complaint in court*."

[114] Section 3(a) of Rule 1 of the Rules of Court.

In contrast, proceedings for the extrajudicial foreclosure of mortgages, as the name already suggests, are not suits filed in a court.[115] They are commenced not by the filing of a complaint, but by submitting an application before an executive judge[116] who, in turn, receives the same neither in a judicial capacity nor on behalf of the court.[117] The conduct of such proceedings is not governed by the rules on ordinary or special civil actions, but by Act No. 3135, as amended, and by special administrative orders issued by this Court.[118] Proceedings for the extrajudicial foreclosure of mortgages are also not adversarial; as the executive judge merely performs therein an administrative function to ensure that all requirements for the extrajudicial foreclosure of a mortgage are satisfied before the clerk of court, as the *ex-officio* sheriff,[119] goes ahead with the public auction of the mortgaged property.[120] Necessarily, the orders of the executive judge in such proceedings, whether they be to allow or disallow the extrajudicial foreclosure of the mortgage, are not issued in the exercise of a judicial function but, in the words of ***First Marbella Condominium Association, Inc. v. Gatmaytan***:

x x x issued by the RTC Executive Judge in the exercise of his **administrative function to supervise the ministerial duty of the**

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[115] *Ochoa v. China Banking Corporation*, G.R. No. 192877, 23 March 2011, 646 SCRA 414, 419.

[116] Thru the Clerk of Court. *See* Supreme Court Administrative Order No. 3 dated 19 October 1984 and Section 1 of Administrative Matter No. 99-10-05-0 *Re: Procedure in Extrajudicial Foreclosure of Mortgage* dated 14 December 1999.

[117] *Ochoa v. China Banking Corporation, supra* note 115 at 419; *Supena v. Dela Rosa*, RTJ-93-1031, 28 January 1997, 267 SCRA 1, 14.

[118] *See* Supreme Court Administrative Order No. 3 dated 19 October 1984 and Section 1 of Administrative Matter No. 99-10-05-0 *Re: Procedure in Extrajudicial Foreclosure of Mortgage* dated 14 December 1999.

[119] *Id.*

[120] *First Marbella Condominium Association, Inc. v. Gatmaytan*, G.R. No. 163196, 4 July 2008, 557 SCRA 155, 160-161.

Clerk of Court as *Ex Officio* Sheriff in the conduct of an extrajudicial foreclsoure sale x x x.[121] (Emphasis supplied)

Verily, the *Orders* dated 8 October 1997, 20 November 1997 and 27 July 1998 of Executive Judge Estrada cannot be the subject of a petition for annulment before the Court of Appeals. Such orders, issued as they were by an executive judge in connection with a proceeding for the extrajudicial foreclosure of a mortgage, evidently do not fall within the type of issuances so carefully identified under Section 1 of Rule 47. The Court of Appeals was, therefore, correct in postulating that the annulment of the assailed *Orders* is not within their exclusive original jurisdiction per Section 9(2) of *Batas Pambansa Blg*. 129.

Allegation that the Assailed Orders were Rendered Without Jurisdiction is Immaterial, Baseless

The allegation of the Ingleses that Executive Judge Estrada overstepped her jurisdiction in issuing the assailed *Orders* is immaterial to the issue of whether the Court of Appeals may assume jurisdiction over their petition. Assuming *arguendo* that Executive Judge Estrada did exceed her jurisdiction in issuing the assailed *Orders*, the nature of such orders and the circumstances under which they were issued would still remain the same. The mere fact, nay, the mere allegation, that the assailed *Orders* have been issued without jurisdiction do not make them, even by the limits of either the strongest reasoning or the most colourful imagination, final orders in a "*civil action*" by a "*Regional Trial Court.*" Clearly, a petition under Rule 47 even then would still not be a viable remedy.

At any rate, this Court finds that Executive Judge Estrada did not actually "exceed" her jurisdiction when she issued the assailed *Orders*. All that Executive Judge Estrada did was to render an interpretation of the *Deed of Real Estate Mortgage* on its face—which is something that she is lawfully entitled, if

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[121] *Id.* at 160.

not obliged, to do in an extrajudicial foreclosure proceeding. After all, an executive judge has the administrative duty in such proceedings to ensure that all the conditions of the law have been complied with before authorizing the public auction of any mortgaged property[122] and this duty, by *necessity*, includes facially examining the mortgage agreement as to whether it adequately identified the land to be auctioned or whether it contains sufficient authorization on the part of the mortgagee to push forth with an extrajudicial sale. Of course, an executive judge may *err* in the exercise of such administrative function and, as a result, may improvidently sanction an extrajudicial sale based on a faulty construction of a mortgage agreement—but those are not errors of jurisdiction inasmuch as they relate only to the *exercise* of jurisdiction.

In fine, therefore, We see no reversible error on the part of the Court of Appeals in dismissing the Ingleses' petition for *Annulment of Final Orders*.

G.R. No. 147186

At the core of **G.R. No. 147186**, on the other hand, is the solitary issue of whether the Court of Appeals erred in dismissing the Ingleses' *certiorari* petition.

The Ingleses submit that the Court of Appeals erred. They contend that the failure of some of them to sign the subject verification and certification of non-forum shopping may be excused given the fact that all of them are members of only one family and, as such, share but a common interest in the cause of their petition.[123] The Ingleses point out that the two (2) of them who were actually able to sign the verification and certificate against forum shopping, *i.e.*, Josefina and Hector F. Ingles, are mother and brother, respectively, to the rest of them who were unable to sign.[124] Hence, the Ingleses argue, the signatures of

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[122] *Id.* at 164.

[123] *Rollo* (G.R. No. 147186), pp. 9-28.

[124] *Id.*

only two (2) of them in the verification and certification of non-forum shopping ought to be enough to be considered as substantial compliance with the requirements thereon per Section 1 of Rule 65 and Section 3 of Rule 46.[125]

We find that the Court of Appeals did err in dismissing the Ingleses' *certiorari* petition on the ground of non-compliance with the requirements on verification and certification against forum shopping. The Court of Appeals ought to have given due course to the *certiorari* petition because there was, in this case, substantial compliance with the said requirements by the Ingleses.

However, instead of remanding the Ingleses' *certiorari* petition to the Court of Appeals, this Court opted to exercise its sound discretion to herein resolve the merits of the same. This was done for the sole purpose of finally putting an end to a pervading issue responsible for delaying the proceedings in **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277,** *i.e.*, the effect of the consolidation of the two cases to Charles' entitlement to a writ of possession.

On that end, We find that the Ingleses' *certiorari* petition to be without merit. Ultimately, We deny **G.R. No. 147186**.

I

We begin with the Court of Appeals' erroneous dismissal based on techicality.

The Requirements of Verification and Certification Against Forum Shopping and the Altres[126] Ruling

A *certiorari* petition under Rule 65 of the Rules of Court is one where the pleadings required to be both verified and accompanied by a certification against forum shopping when filed before a court.[127] While both verification and certification

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[125] *Id.*

[126] *Altres v. Empleo,* G.R. No. 180986, 10 December 2008, 573 SCRA 583.

[127] Section 1 of Rule 65 of the Rules of Court.

against forum shopping are concurring requirements in a *certiorari* petition, one requirement is distinct from the other in terms of nature and purpose.

In the seminal case of ***Altres v. Empleo***, this Court laid out guiding principles that synthesized the various jurisprudential pronouncements regarding non-compliance with the requirements on, or submission of a defective, verification and certification against forum shopping. We quote them at length:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.[128]

3) **Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct**.[129]

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."[130]

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[128] *Supra* note 126 at 596 citing *Sari-Sari Group of Companies, Inc. v. Piglas Kamao (Sari-Sari Chapter)*, G.R. No. 164624, 11 August 2008, 561 SCRA 569, 579-580.

[129] *Altres v. Empleo*, *id.* at 597 citing *Rombe Eximtrade (Phils.), Inc. v. Asiatrust Development Bank*, G.R. No. 164479, 13 February 2008, 545 SCRA 253, 259-260.

[130] *Id.* citing *Chinese Young Men's Christian Association of the Philippine*

5) **The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case;**[131] **otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule**.[132]

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel.[133] If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney [citation omitted] designating his counsel of record to sign on his behalf.[134] (Emphasis and underscoring supplied)

Guided by the ***Altres*** precedent, We find that the dismissal by the RTC of the Ingleses' *certiorari* petition on the ground of a defective verification and certification against forum shopping to be incorrect. We substantiate:

The Ingleses Substantially Complied with the Requirement of Verification

The Ingleses' *certiorari* petition was properly verified even though not all of them were able to sign the same. As related by ***Altres***, the requirement of verification is deemed substantially complied with if *"**one** who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct."*

The pronouncement in ***Altres*** is based on the recognition

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Islands v. Remington Steel Corporation, G.R. No. 159422, 28 March 2008, 550 SCRA 180, 190-191.

[131] *Id.* citing *Juaban v. Espina*, G.R. No. 170049, 14 March 2008, 548 SCRA 588, 603.

[132] *Id.* citing *Pacquing v. Coca-Cola Philippines, Inc.*, G.R. No. 157966, 31 January 2008, 543 SCRA 344, 353-354.

[133] *Id.* citing *Marcopper Mining Corporation v. Solidbank Corporation*, 476 Phil. 415, 447 (2004).

[134] *Id.* at 596-598.

that the purpose of verifying a petition or complaint, *i.e.*, to assure the court that such petition or complaint was filed in good faith; and that the allegations therein are true and correct and not the product of the imagination or a matter of speculation,[135] can sufficiently be achieved even if only one of the several petitioners or plaintiffs signs the verification.[136] As long the signatory of the verification is competent, there is already substantial compliance with the requirement.

Verily, the signatures of *all* of the Ingleses were not required to validly verify their *certiorari* petition. It suffices, according to ***Altres***, that the verification was signed by at least one of the Ingleses who was competent to do so. In this case, the *certiorari* petition was verified by Josefina and Hector F. Ingles—both of whom this Court finds competent to attest to the truth of the allegations of their petition, considering that they are unquestionably principal parties-in-interest to their *certiorari* petition.[137] Hence, their *certiorari* petition contains a substantially valid verification.

The Ingleses Substantially Complied with the Requirement of Certification Against Forum Shopping

The Ingleses' *certiorari* petition likewise contains a substantially complaint certificate against forum shopping. ***Altres*** articulates the rule where a certification against forum shopping is required to be attached in a petition or complaint that names several petitioners or plaintiffs, as follows:

5) **The certification against forum shopping must be signed by <u>all</u>**

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[135] *Tan v. Ballena*, G.R. No. 168111, 4 July 2008, 557 SCRA 229, 248-249.

[136] *Altres vs. Empleo*, *supra* note 126 at 595.

[137] *Torres v. Specialized Packaging Development Corporation*, G.R. No. 149634, 6 July 2004, 433 SCRA 455, 463-464.

the plaintiffs or petitioners in a case;[138] **otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule**.[139] (Emphasis and underscoring supplied).

The rule exposes the fault of the Court of Appeals:

First. To begin with, the mere fact that only some and not all of the Ingleses signed the certification against forum shopping attached to their *certiorari* petition—is not a valid ground for the outright dismissal of such petition as to *all* of the Ingleses.[140] As ***Altres*** elucidates, the most that the Court of Appeals could have done in such a case is to dismiss the *certiorari* petition only with respect to the Ingleses who were not able to sign.

Second. Nevertheless, the *certiorari* petition should be sustained as to *all* of the Ingleses since substantial compliance with the requirement of a certification against forum shopping may be appreciated in their favor. Jurisprudence clearly recognizes that "*under reasonable or justifiable circumstances x x x as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense*" the rule requiring all such petitioners or plaintiffs to sign the certification against forum shopping may be relaxed.[141]

In this case, the "*reasonable or justifiable circumstance*" that would warrant a relaxation of the rule on the certification against forum shopping consists in the undeniable fact that Ingleses are immediate relatives of each other espousing but only one cause in their *certiorari* petition. A circumstance

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[138] *Altres v. Empleo*, *supra* note 126 at 597 citing *Juaban v. Espina*, *supra* note 131 at 603.

[139] *Id.* at 597 citing *Pacquing v. Coca-Cola Philippines, Inc.*, *supra* note 132 at 353-354.

[140] *Id.* at 597 citing *Juaban v. Espina*, *supra* note 131.

[141] *Id.* citing *Pacquing v. Coca-Cola Philippines, Inc.*, *supra* note 132.

similar to that of the Ingleses was already recognized as valid by this Court in cases such as ***Traveno v. Bobongon Banana Growers Multi-Purpose Cooperative***[142] and in ***Cavile v. Heirs of Cavile***,[143] just to name a few.

Given the above, no other conclusion can be had other than that the Court of Appeals erred in dismissing the Ingleses' *certiorari* petition based on technicality.

II

Rather than remanding the Ingleses' *certiorari* petition to the Court of Appeals, however, this Court chooses to herein resolve the merits of the same. This Court finds that a prompt resolution of the issue raised in the Ingleses' *certiorari* petition is necessary, for it will ultimately determine the progress of the proceedings in **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277**. Hence, to avoid any further delay and to prevent the possibility of conflicting decisions between the Court of Appeals and the RTC, We resolve the Ingleses' *certiorari* petition.

The pivotal issue in the Ingleses' *certiorari* petition is whether the RTC, thru Judge Magpale, committed grave abuse of discretion in allowing Charles to present *ex-parte* evidence in support of his application for the issuance of a writ of possession despite the consolidation of **LRC Case No. Q-10766 (98)** with **Civil Case No. Q-98-33277**.

The Ingleses submit an affirmative stance. The Ingleses posit that the consolidation of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** effectively tied the resolution of Charles' application for a writ of possession with the resolution of their action for annulment of mortgage.[144] For the Ingleses then, the RTC cannot simply allow Charles to present *ex-parte*

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[142] G.R. No. 164205, 3 September 2009, 598 SCRA 27.

[143] 448 Phil. 303 (2003).

[144] *Rollo* (G.R. No. 147186), pp. 36-67.

evidence on his application for a writ possession without first laying to rest, in a judicial proceeding for that purpose, other related issues raised in **Civil Case No. Q-98-33277**.[145]

We deny the petition. The entire stance of the Ingleses hinges on the propriety of the consolidation of **LRC Case No. Q-10766 (98)** with **Civil Case No. Q-98-33277**. On that, this Court does not agree.

Consolidation of a Petition for the Issuance of a Writ of Possession with an Ordinary Civil Action, the Active Woods Doctrine and Subsequent Cases

As a rule, a petition for the issuance of a writ possession may not be consolidated with any other ordinary action. It is well-settled that a petition for the issuance of a writ of possession is *ex-parte*, summary and non-litigious by nature; which nature would be rendered nugatory if such petition was to be consolidated with any other ordinary civil action.[146]

The exception to the foregoing rule is the case of ***Active Wood Products, Co., Inc. vs. Court of Appeals***.[147] In ***Active Wood***, this Court allowed the consolidation of a petition for the issuance of a writ of possession with an ordinary action for the annulment of mortgage. In doing so, ***Active Wood*** justified such consolidation as follows:

> It is true that a petition for a writ of possession is made *ex-parte* to facilitate proceedings, being founded on a presumed right of ownership. **Be that as it may, when this presumed right of ownership is contested and made the basis of another action, then the proceedings for writ of possession would also become**

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[145] *Id.*

[146] *Espinoza v. United Overseas Bank Phils*., G.R. No. 175380, 22 March 2010, 616 SCRA 353, 358.

[147] 260 Phil. 825, 829 (1990). The ruling in *Active Wood* was reiterated in *Philippine Savings Bank v. Sps. Mañalac, Jr.,* 496 Phil. 671 (2005).

seemingly groundless. The entire case must be litigated and if need be as in the case at bar, must be consolidated with a related case so as to thresh out thoroughly all related issues. (Emphasis supplied).

The unbridled construction of ***Active Wood***, however, led to a deplorable practice where mortgagors aggrieved by the result of an extrajudicial foreclosure would prevent possession by the successful purchaser by simply filing an action contesting the latter's "*presumed right of ownership*" either by an annulment of mortgage or of the extrajudicial sale, and then asking the court for their consolidation with the petition for the issuance of a writ of possession. Needless to state, this abusive practice have reached the attention of this Court that, in turn, led to subsequent decisions refining the application of the ***Active Wood*** doctrine.

Hence, in ***Sps. De Vera v. Hon. Agloro***,[148] this Court held that the consolidation of an action for the annulment of mortgage and extrajudicial sale with a petition for the issuance of a writ of possession, is not mandatory but still rests within the discretion of the trial court to allow. ***De Vera*** opined that "*when the rights of [a purchaser in an extrajudicial foreclosure sale] would be prejudiced x x x especially since [the latter] already adduced its evidence [in support of his application for a writ of possession]*" consolidation of the two cases may rightfully be denied.[149]

Amplifying further on ***Sps. De Vera*** is the case of ***Philippine National Bank v. Gotesco Tyan Ming Development, Inc.***[150] In ***Philippine National Bank***, this Court held that consolidation of an action for annulment of extrajudicial sale and a petition for the issuance of a writ of possession should not be allowed when doing so would actually lead to more delay in the proceedings and thus "*defeat the very rationale of consolidation*."[151] In the same case, this Court even ordered the separation of the

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[148] 489 Phil. 185 (2005).

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

[150] G.R. No. 183211, 5 June 2009, 588 SCRA 798.

then already consolidated action for the annulment of extrajudicial sale and petition for the issuance of a writ of possession.[152]

But perhaps the most crucial refinement of ***Active Wood*** was in the case of ***Espinoza v. United Overseas Bank Phils.***[153] ***Espinoza*** declared that the mere fact that the purchaser's "*presumed right of ownership is contested and made the basis of another action*" does not mean that such action ought to be consolidated with the petition for the issuance of a writ of possession.[154] For ***Espinoza***, the application of the ***Active Wood*** doctrine must be limited only to cases with the same factual circumstances under which the latter was rendered.

Espinoza called attention to the fact that in ***Active Wood*** the petition for the issuance of a writ of possession was "*filed before the expiration of the one-year redemption period*" and that "*the litigated property had not been consolidated in the name of the mortgagee*."[155] Hence, ***Espinoza*** invalidated the consolidation of an action for the annulment of the extrajudicial sale with a petition for the issuance of a writ of possession after finding that the latter petition was filed *after* the expiration of the one-year redemption period and *after* the purchaser had already consolidated his title over the auctioned property. This must be, ***Espinoza*** explained, because when:

x x x **title to the litigated property had already been consolidated in the name of respondent**, x x x **the issuance of a writ of possession [becomes] a matter of right**. Consequently, the consolidation of the petition for the issuance of a writ of possession with the proceedings for nullification of foreclosure would be highly improper. Otherwise, not only will the very purpose of consolidation (which is to avoid unnecessary delay) be defeated but **the procedural matter of consolidation will also adversely**

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[151] *Id.* at 806-807.

[152] *Id.* at 805-806.

[153] *Supra* note 146.

[154] *Id.* at 359.

[155] *Id.* at 360.

affect the substantive right of possession as an incident of ownership.[156] (Emphasis supplied).

Applying the foregoing judicial pronouncements to the case at bar, this Court discerns that the consolidation of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** had already ceased to become proper by the time the RTC allowed him to present *ex-parte* evidence in support of his application for the issuance of a writ of possession. Separation of the two cases is moreover warranted. We substantiate:

Charles Has Already Consolidated His Title Over the Mortgaged Lots; No Grave Abuse of Discretion in Allowing Charles to Present Ex-Parte Evidence

The ruling in ***Espinoza*** applies. It is uncontested that by the time he filed his *Motion for Issuance of a Writ of Possession*, which was before the RTC allowed him to present *ex-parte* evidence in support of his application for the issuance of a writ of possession, Charles had already consolidated his title over the ten (10) lots.[157] At that time, Charles was already the absolute owner of the ten (10) lots and, as such, his right to possess the same becomes a matter of right on his part.[158] Charles' claim

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[156] *Id.* at 361.

[157] Pertinent facts are these: Charles was able to register his Certificate of Sale on 24 July 1998 (Records of LRC Case No. Q-10766 [98], Volume I, p. 7). Under Section 6 of Act No. 3135, the Ingleses have one (1) year from that time within which to exercise their right of redemption. **The Ingleses, however, were unable to**. On 9 September 1999, Charles filed his *Motion for the Issuance of a Writ of Possession* (Records of LRC Case No. Q-10766 [98], Volume I, pp. 139-143). On 7 February 2000, the RTC allowed Charles to present *ex-parte* evidence in support of his application for a writ of possession (Records of LRC Case No. Q-10766 [98], Volume I, pp. 438-439). Eventually on 2 February 2000, TCT Nos. 85825-34 of the Ingleses were cancelled and, in their stead, TCT Nos. N-210004 to 13 were issued in favor of Charles. (Records of LRC Case No. Q-10766 [98]), Volume II, pp. 573-582.

of possession is no longer merely based on a "*presumed right of ownership*" as the Ingleses have evidently failed to exercise their right of redemption within the period provided by law. By then, the consolidation of Charles' application for a writ of possession with the Ingleses' action for the annulment of mortgage had already lost its basis and, therefore, ceased to become proper. Consequently, no grave abuse of discretion may be imputed on the part of the RTC in allowing Charles to present *ex-parte* evidence in support of his application for the issuance of a writ of possession.

Even though Charles filed his original *Ex-Parte Petition for Issuance of a Writ Possession* still within the redemption period, ***Espinoza*** would nevertheless apply. Charles' subsequent filing of his *Motion for Issuance of a Writ of Possession* at a time that he was already absolute owner of the auctioned lots supplemented his earlier *Ex-Parte Petition for Issuance of a Writ Possession*—thus making his application for a writ of possession similar to that in the ***Espinoza*** case.

All in all, the Ingleses *certiorari* petition must therefore be dismissed.

Consolidation of LRC Case No. Q-10766 (98) and Civil Case No. Q-98-33277 Delayed Rather Than Expedited Resolution of Both Cases; Separation of Both Cases In Order

In addition, this Court finds that the consolidation of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** had actually been counter-productive for the resolution of the two cases. It may not be amiss to point out that from the time **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** were consolidated[159] up to time the RTC ordered a halt to their proceedings on 18 July 2004, more than four (4) years have

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[158] *Sps. De Vera v. Agloro*, *supra* note 147 at 197-198.

[159] The two cases were ordered consolidated on 23 February 1999. Records (LRC Case No. Q-10766 [98]), Volume I, pp. 130-132.

already lapsed. Yet in all those years, the records were still silent as to whether presentation of the evidence on the Ingleses' annulment of the *Deed of Real Estate Mortgage* had already started. This circumstance alone casts immense doubt as to just how effective the consolidation of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** was, in terms of finding an expeditious resolution for both cases. This Court cannot sanction such kind of procedure.

Considering that the consolidation of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** serves no other useful purpose, this Court finds their separation to be in order.

G.R. No. 173641

We thus come to **G.R. No. 173641**, which poses the lone issue of whether the Court of Appeals erred in granting Charles' *mandamus* petition praying for the immediate resolution by the RTC of the Ingleses' *Motion For Reconsideration*,[160] *Supplemental Motion For Reconsideration*[161] and *Motion To Dismiss*.[162]

The Ingleses argue in the affirmative and goes even further by saying that a suspension of the entire proceedings in **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** is called for.[163] The Ingleses stand behind the 18 July 2004 *Order* of the RTC, thru Judge Corpuz-Cabochan, which ordered the suspension of the proceedings in view of the pendency of **G.R. Nos. 141809** and **147186** before this Court.[164]

In view of our above discussions in **G.R. Nos. 141809** and **147186**, there is no longer any legal reason on which the suspension of the proceedings before the RTC in **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** may be

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[160] *Id.*, Volume V, pp. 2191-2197.

[161] *Id.* at 2198-2201.

[162] *Id.* at 2273-2275.

[163] *Rollo* (G.R. No. 173641), pp. 14-60.

[164] *Id.*

anchored on. The two cases are ordered deconsolidated. **Civil Case No. Q-98-33277** should proceed and be resolved with dispatch. **In LRC Case No. Q-10766 (98)**, the Writ of Possession in favor of Charles J. Esteban should be issued immediately. This is line with the order issued on 12 July 2001 by the Regional Trial Court granting the *Ex Parte* Petition for Issuance of a Writ of Possession after evaluating Charles' Memorandum and the Ingleses' comment thereon.

Hence, We deny this petition.

WHEREFORE, premises considered, the consolidated petitions are hereby **DENIED**. Accordingly, We hereby render a Decision:

1. **AFFIRMING** the Resolutions dated 28 December 1999 and 28 January 2000 of the Court of Appeals in CA-G.R. SP. No. 56292;

2. **AFFIRMING** the Resolutions dated 29 November 2000 and 16 February 2001 of the Court of Appeals in CA-G.R. SP No. 58790, insofar as they effectively dismissed the Ingleses' *certiorari* petition;

3. **AFFIRMING** the Decision dated 31 March 2006 and Resolution dated 19 July 2006 of the Court of Appeals in CA-G.R. SP No. 84738; *and*

4. **ORDERING** the deconsolidation of **Civil Case No. Q-98-33277** and **LRC Case No. Q-10766 (98)**; the resolution of **Civil Case No. Q-98-33277** with dispatch; and the issuance of the Writ of Possession in favor of private respondent Charles J. Esteban in **LRC Case No. Q-10766 (98).**

Costs against petitioners.

SO ORDERED.

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

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[*] Per Special Order No. 1437 dated 25 March 2013.

SECOND DIVISION

[G.R. No. 176289. April 8, 2013]

MOLDEX REALTY, INC., *petitioner, vs.* **FLORA A. SABERON,** *respondent.*

SYLLABUS

1.CIVIL LAW; PRESIDENTIAL DECREE NO. 957 (THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE); THE ABSENCE OF A LICENSE TO SELL ON THE PART OF THE SUBDIVISION DEVELOPER WILL NOT RESULT TO THE INVALIDITY OF THE CONTRACT TO SELL IT ENTERED INTO WITH A BUYER; APPLICATION IN CASE AT BAR.— In *Spouses Co Chien v. Sta. Lucia Realty and Development Corporation, Inc.* this Court has already ruled that the lack of a certificate of registration and a license to sell on the part of a subdivision developer does not result to the nullification or invalidation of the contract to sell it entered into with a buyer. The contract to sell remains valid and subsisting. In said case, the Court upheld the validity of the contract to sell notwithstanding violations by the developer of the provisions of PD 957. We held that nothing in PD 957 provides for the nullity of a contract validly entered into in cases of violation of any of its provisions such as the lack of a license to sell. x x x The *Co Chien* ruling has been reiterated in several cases and remains to be the prevailing jurisprudence on the matter. Thus, the contract to sell entered into between Flora and Moldex remains valid despite the lack of license to sell on the part of the latter at the time the contract was entered into. x x x Extrapolating the *ratio decidendi* in *Co Chien*, thus, non-registration of an instrument of conveyance will not affect the validity of a contract to sell. It will remain valid and effective between the parties thereto as under PD 1529 or The Property Registration Decree, registration merely serves as a constructive notice to the whole world to bind third parties.

2. ID.; REPUBLIC ACT NO. 6552 (REALTY INSTALLMENT BUYER ACT); RIGHT OF THE DEFAULTING BUYER

UNDER THE MACEDA LAW, APPLIED.— Under the Maceda Law, the defaulting buyer who has paid at least two years of installments has the right of either to avail of the grace period to pay or, the cash surrender value of the payments made. x x x It is on record that Flora had already paid more than two years of installments (from March 11, 1992 to July 19, 1996) in the aggregate amount of ₱375,295.49. Her last payment was made on July 19, 1996. It is also shown that Flora has defaulted in her succeeding payments. Thereafter, Moldex sent notices to Flora to update her account but to no avail. She could thus no longer avail of the option provided in Section 3(a) of the Maceda Law which is to pay her unpaid installments within the grace period. Besides, Moldex already sent Flora a Notarized Notice of Cancellation of Reservation Application and/or Contract to Sell. Hence, the only option available is Section 3(b) whereby the seller, in this, case, Moldex shall refund to the buyer, Flora, the cash surrender value of the payments on the property equivalent to 50% of the total payments made, or ₱187,647.75.

APPEARANCES OF COUNSEL

Macavinta and Sta. Ana Law Office for petitioner.
Purita Hontanosa-Cortes for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The lack of a license to sell or the failure on the part of a subdivision developer to register the contract to sell or deed of conveyance with the Register of Deeds does not result to the nullification or invalidation of the contract to sell it entered into with a buyer. The contract to sell remains valid and subsisting.

Petitioner Moldex Realty, Inc. (Moldex) comes to this Court *via* a Petition for Review on *Certiorari*[1] to assail the October 31,

[1] *Rollo*, pp. 23-45.

2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 79651, which denied due course and dismissed the Petition for Review[3] it filed therewith. Also assailed is the January 23, 2007 Resolution[4] of the CA which denied Moldex's Motion for Reconsideration[5] of the said Decision.

Factual Antecedents

Interested in acquiring a 180-square meter lot known as Lot 2, Block 1 of Metrogate Subdivision in Dasmariñas, Cavite, respondent Flora A. Saberon (Flora) asked Moldex, the developer, to reserve the lot for her as shown by a Reservation Application[6] dated April 11, 1992. While the cash purchase price for the land is ₱396,000.00, the price if payment is made on installment basis is ₱583,498.20 at monthly amortizations of ₱8,140.97 payable in five years with 21% interest *per annum* based on the balance and an additional 5% surcharge for every month of delay on the monthly installment due. Flora opted to pay on installment and began making aperiodical payments from 1992 to 1996[7] in the total amount of ₱375,295.49.

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[2] CA *rollo*, pp. 311-319, penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Mario L. Guariña III and Lucenito N. Tagle.

[3] *Id.* at 14-44.

[4] *Id.* at 352-353.

[5] *Id.* at 320-332.

[6] *Id.* at 86.

[7] *Id.* at 54-70, as follows:

4/11/92	— Php5,000.00	7/14/94	— Php8,140.97
4/26/92	— Php10,000.00	10/12/94	— Php8,140.97
5/27/92	— Php25,000.00	2/3/95	— Php10,000.00
6/23/92	— Php15,000.00	3/7/95	— Php10,000.00
8/8/92	— Php21,000.00	4/6/95	— Php10,000.00
12/9/92	— Php19,040.00	5/12/95	— Php10,000.00
1/14/93	— Php8,140.96	6/14/95	— Php10,000.00
2/15/93	— Php16,281.92	12/12/95	— Php8,140.97
5/14/93	— Php16,281.94	2/20/96	— Php10,000.00
11/10/93	— Php8,140.97	3/14/96	— Php10,000.00

In April, August, and October 1996,[8] Moldex sent Flora notices reminding her to update her account. Upon inquiry, however, Flora was shocked to find out that as of July 1996, she owed Moldex ₱247,969.10. In November 1996, the amount ballooned to ₱491,265.91.

Moldex thus suggested to Flora to execute a written authorization for the sale of the subject lot to a new buyer and a written request for refund so that she can get half of all payments she made. However, Flora never made a written request for refund.

As of April 1997, Moldex computed Flora's unpaid account at ₱576,569.89. It then sent Flora a Notarized Notice of Cancellation of Reservation Application and/or Contract to Sell.[9] Flora, on the other hand, filed before the Housing and Land Use Regulatory Board (HLURB) Regional Field Office IV a Complaint[10] for the annulment of the contract to sell, recovery of all her payments with interests, damages, and the cancellation of Moldex's license to sell.

Aside from imputing bad faith on the part of Moldex in bloating her unpaid balance, Flora alleged that the contract to sell between her and Moldex is void from its inception. According to Flora, Moldex violated Section 5 of Presidential Decree (PD) No. 957[11] when it sold the subject lot to her on April 11, 1992 or before it was issued a license to sell on September 8, 1992.[12] Flora

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12/14/93	— Php8,140.97	5/13/96	— Php10,000.00
1/14/94	— Php8,140.97	7/15/96	— Php20,000.00
2/14/94	— Php8,140.97	7/18/96	— Php10,000.00
3/14/94	— Php8,140.97	7/18/96	— Php10,000.00
4/14/94	— Php8,140.97	7/18/96	— Php10,000.00
5/13/94	— Php8,140.97	7/18/96	— Php10,000.00
6/14/94	— Php8,140.97	7/19/96	— Php10,000.00

[8] *Id.* at 87-89.

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

[10] *Id.* at 45-53; Docketed as HLRB Case No. RIV-041497-0722.

[11] Known as "The Subdivision and Condominium Buyers' Protective Decree."

[12] CA *rollo*, p. 190.

likewise claimed that Moldex violated Section 17 of the same law because it failed to register the contract to sell in the Registry of Deeds.[13]

In its defense, Moldex averred that Flora was only able to pay ₱228,201.03 and thereafter defaulted in her in payment from April 1994 to May 1997. Hence, Flora's subsequent payments were applied to her delinquencies. As regards the alleged bloating, Moldex explained that the amount reflected in Flora's Statement of Account included the arrears and surcharges incurred due to her non-payment of the monthly installments. And since Flora was not able to settle her account, Moldex exercised its right under Republic Act (RA) No. 6552,[14] or the Maceda Law, by cancelling the reservation Agreement/Contract to Sell and forfeiting all payments made. Finally, Moldex alleged that since Flora was at fault, the latter cannot be heard to make an issue out of Moldex's lack of license or demand relief from it.

Ruling of the Housing and Land Use Regulatory Board Regional Field Office IV

In a Decision[15] dated June 2, 1998, the HLURB Arbiter declared as void the Contract to Sell entered into by the parties because Moldex lacked the required license to sell at the time of the contract's perfection, in violation of Section 5 of PD 957, which provides, *viz*:

Section 5. *License to sell.* Such owner or dealer to whom has been issued a registration certificate shall not, however, be authorized to sell any subdivision lot or condominium unit in the registered project unless he shall have first obtained a license to sell the project within two weeks from the registration of such project.

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[13] *Id.* at 227-229, wherein the instrument evidencing the contract to sell was not annotated on the certificate of title.

[14] Also known as the "Realty Installment Buyer Act."

[15] CA *rollo*, pp. 120-123; penned by Housing and Land Use Arbiter Atty. Gerardo L. Dean.

The Authority, upon proper application therefor, shall issue to such owner or dealer of a registered project a license to sell the project if, after an examination of the registration statement filed by said owner or dealer and all the pertinent documents attached thereto, he is convinced that the owner or dealer is of good repute, that his business is financially stable, and that the proposed sale of the subdivision lots or condominium units to the public would not be fraudulent.

Hence, Moldex was ordered to refund everything Flora had paid, plus legal interest, and to pay attorney's fees. Moreover, Moldex was ordered to pay a fine for its violation of the above provision of PD 957, in accordance with Section 38[16] of the said law. Thus:

WHEREFORE, judgment is hereby rendered declaring the subject Contract to Sell null and void and ordering Respondent to:

1. Reimburse to Complainant the amount of THREE HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED NINETY-FIVE PESOS and 47/100 (₱375,295.47) plus interest thereon at the legal rate to be computed from the time payment was actually received by Respondent;

2. Pay to this Board the sum of TEN THOUSAND PESOS (₱10,000.00) as Administrative Fine for violation of Section 38, in relation to Section 5 of PD 957;

3. Pay to Complainant the sum of FIVE THOUSAND PESOS (₱5,000.00) as attorney's fees.

IT IS SO ORDERED.[17]

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[16] **Section 38.** *Administrative Fines.* The Authority may prescribe and impose fines not exceeding ten thousand pesos for violations of the provisions of this Decree or of any rule or regulation thereunder. Fines shall be payable to the Authority and enforceable through writs of execution in accordance with the provisions of the Rules of Court.

[17] CA *rollo*, pp. 122-123.

Ruling of the Board of Commissioners of the Housing and Land Use Regulatory Board

In its Petition for Review[18] before the HLURB Board of Commissioners (HLURB Board), Moldex argued that the absence of license at the time of the contract's perfection does not render it void. Otherwise, a subdivision or condominium developer may use it as a convenient excuse if it wants to back out from a contract.

Moldex also asserted that the purpose of the law in requiring a license is to ensure that the buying public will be dealing with HLURB-recognized subdivision and condominium developers. Here, Moldex has substantially complied with the said requirement of the law because at the time the contract to sell was perfected, its application for a license was already pending and subsequently granted.

Moldex likewise claimed that it was slapped with administrative fine without due process as it was not given the opportunity to defend itself anent its alleged violation of Section 5 of PD 957. Moreover, since the case was not an administrative complaint, the Arbiter has no power to impose an administrative fine. Finally, Moldex asserted that the award of attorney's fees in favor of Flora lacked basis.

Rejecting Moldex contentions, the HLURB Board, in a Decision[19] dated July 29, 1999, dismissed the petition and affirmed *in toto* the Arbiter's Decision. It held that the law is clear on the prerequisite of a license to sell before a developer can sell lots. Since Moldex did not have a license to sell at the time it contracted to sell the subject lot to Flora, the Board agreed with the Arbiter in declaring the contract invalid and in ordering the refund of Flora's payments. The Board also found nothing wrong with the Arbiter's imposition of administrative fine and award of attorney's fees.

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[18] *Id.* at 124-137; Docketed as HLURB Case No. REM-A-980730-0099.

[19] *Id.* at 151-153; issued by Commissioners Romulo Q. Fabul, Teresita A. Desierto, and Francisco L. Dagnalan.

Moldex then appealed to the Office of the President (OP).[20]

Ruling of the Office of the President

In its June 30, 2003 Decision[21] and September 22, 2003 Order,[22] the OP affirmed the finding that the contract to sell was a nullity. Citing Article 5 of the Civil Code, it held that acts executed against the provisions of mandatory or prohibitory laws, like Section 5 of PD 957, are void.

As regards the administrative fine, the OP decreed that Section 38 of PD 957 does not require the filing of an administrative complaint before a fine may be imposed. Also, the requirement of notice and hearing is not a condition *sine qua non* in the HLURB's exercise of its administrative power. Lastly, the OP agreed with the award of attorney's fees in favor of Flora as she was compelled to litigate.

Moldex thus sought relief with the CA *via* a Petition for Review.[23]

Ruling of the Court of Appeals

In its Decision[24] of October 31, 2006, the CA agreed with the findings of the tribunals below. It ratiocinated that Moldex's non-observance of the mandatory provision of Section 5 of PD 957 rendered the contract to sell void, notwithstanding Flora's payments and her knowledge that Moldex did not at that time have the requisite license to sell. It also held that the subsequent issuance by the HLURB of a license to sell in Moldex's favor did not cure the defect or result to the ratification of the contract. The CA also affirmed the imposition of administrative fine, holding that Moldex was never denied due process, having been afforded the opportunity to be heard. The dispositive portion of the CA Decision reads:

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[20] *Id.* at 154-170.

[21] *Id.* at 6-9; rendered by then Executive Secretary Alberto G. Romulo.

[22] *Id.* at 10.

[23] *Id.* at 14-44.

[24] *Id.* at 311-319.

WHEREFORE, finding no reversible error, the instant petition is DENIED DUE COURSE and accordingly DISMISSED.

SO ORDERED.[25]

With the denial of its plea for reconsideration in a Resolution[26] dated January 23, 2007, Moldex elevated the case to this Court through this Petition for Review on *Certiorari*.

Issue

Moldex only raises the matter of the validity of the contract to sell it entered with Flora, contending that the same remains valid and binding.

Our Ruling

We grant the Petition.

The intrinsic validity of the contract to sell is not affected by the developer's violation of Section 5 of PD 957.

In *Spouses Co Chien v. Sta. Lucia Realty and Development Corporation, Inc.*[27] this Court has already ruled that the lack of a certificate of registration and a license to sell on the part of a subdivision developer does not result to the nullification or invalidation of the contract to sell it entered into with a buyer. The contract to sell remains valid and subsisting. In said case, the Court upheld the validity of the contract to sell notwithstanding violations by the developer of the provisions of PD 957. We held that nothing in PD 957 provides for the nullity of a contract validly entered into in cases of violation of any of its provisions such as the lack of a license to sell. Thus:

A review of the relevant provisions of P.D. 957 reveals that while the law penalizes the selling of subdivision lots and condominium

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[25] *Id.* at 318.

[26] *Id.* at 352-353.

[27] 542 Phil. 558 (2007).

units without prior issuance of a Certificate of Registration and License to Sell by the HLURB, it does not provide that the absence thereof will automatically render a contract, otherwise validly entered, void. The penalty imposed by the decree is the general penalty provided for the violation of any of its provisions. It is well-settled in this jurisdiction that the clear language of the law shall prevail. This principle particularly enjoins strict compliance with provisions of law which are penal in nature, or when a penalty is provided for the violation thereof. With regard to P.D. 957, nothing therein provides for the nullification of a contract to sell in the event that the seller, at the time the contract was entered into, did not possess a certificate of registration and license to sell. Absent any specific sanction pertaining to the violation of the questioned provisions (Secs. 4 and 5), the general penalties provided in the law shall be applied. The general penalties for the violation of any provisions in P.D. 957 are provided for in Sections 38 and 39. As can clearly be seen in the aforequoted provisions, the same do not include the nullification of contracts that are otherwise validly entered.[28]

The *Co Chien* ruling has been reiterated in several cases and remains to be the prevailing jurisprudence on the matter.[29] Thus, the contract to sell entered into between Flora and Moldex remains valid despite the lack of license to sell on the part of the latter at the time the contract was entered into.

Moreover, Flora claims that the contract she entered into with Moldex is void because of the latter's failure to register the contract to sell/document of conveyance with the Register of Deeds, in violation of Section 17[30] of PD 957. However,

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[28] *Id.* at 566-567.

[29] *Cantemprate v. CRS Realty Development Corporation*, G.R. No. 171399, May 8, 2009, 587 SCRA 492, 510-511; *G.G. Sportswear Manufacturing Corporation v. World Class Properties, Inc*., G.R. No. 182720, March 2, 2010, 614 SCRA 75, 92-93.

[30] Section 17. *Registration*. All contracts to sell, deeds of sale and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units, whether or not the purchase price is paid in full, shall be registered by the seller in the Office of the Register of Deeds of the province or city where the property is situated.

just like in Section 5 which did not penalize the lack of a license to sell with the nullification of the contract, Section 17 similarly did not mention that the developer's or Moldex's failure to register the contract to sell or deed of conveyance with the Register of Deeds resulted to the nullification or invalidity of the said contract or deed. Extrapolating the *ratio decidendi* in *Co Chien*, thus, non-registration of an instrument of conveyance will not affect the validity of a contract to sell. It will remain valid and effective between the parties thereto as under PD 1529 or The Property Registration Decree, registration merely serves as a constructive notice to the whole world to bind third parties.[31]

Respondent is nevertheless entitled to a 50% refund under the Maceda Law.

Under the Maceda Law, the defaulting buyer who has paid at least two years of installments has the right of either to avail of the grace period to pay or, the cash surrender value of the payments made:

Whenever a subdivision plan duly approved in accordance with Section 4 hereof, together with the corresponding owner's duplicate certificate of title, is presented to the Register of Deeds for registration, the Register of Deeds shall register the same in accordance with the provisions of the Land Registration Act, as amended x x x

[31] Section 51. *Conveyance and other dealings by registered owner*. – An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the Office of the Register of Deeds for the province or city where the land lies. (Emphasis supplied)

Section 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight Hundred Forty-four, as amended by Republic Act Numbered Sixty-three Hundred Eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

> (a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.
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> (b) If the contract is canceled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made, and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: Provided, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.

It is on record that Flora had already paid more than two years of installments (from March 11, 1992 to July 19, 1996)[32] in the aggregate amount of ₱375,295.49. Her last payment was made on July 19, 1996. It is also shown that Flora has defaulted in her succeeding payments. Thereafter, Moldex sent notices to Flora to update her account but to no avail. She could thus no longer avail of the option provided in Section 3(a) of the Maceda Law which is to pay her unpaid installments

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[32] See note 7.

within the grace period. Besides, Moldex already sent Flora a Notarized Notice of Cancellation of Reservation Application and/or Contract to Sell. Hence, the only option available is Section 3(b) whereby the seller, in this case, Moldex shall refund to the buyer, Flora, the cash surrender value of the payments on the property equivalent to 50% of the total payments made, or ₱187,647.75.[33]

WHEREFORE, the Petition is **GRANTED**. The assailed October 31, 2006 Decision and January 23, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 79651 are hereby **ANNULLED and SET ASIDE**. The contract to sell between petitioner Moldex Realty, Inc. and respondent Flora A. Saberon is declared **CANCELLED** and petitioner Moldex Realty, Inc. is ordered to **REFUND** to respondent Flora A. Saberon the cash surrender value of the amortizations she made equivalent to ₱187,647.75 pursuant to Section 3(b) of Republic Act No. 6552 within 15 days from date of finality of this Decision.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Brion,* and *Perez, JJ.,* concur.

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[33] *Active Realty and Development Corporation v. Daroya*, 431 Phil. 753 (2002).

[*] Per Special Order No. 1437 dated March 25, 2013.

THIRD DIVISION

[G.R. No. 201816. April 8, 2013]

HEIRS OF FAUSTINO MESINA and GENOVEVA S. MESINA, rep. by NORMAN MESINA, *petitioners, vs.* **HEIRS OF DOMINGO FIAN, SR., rep. by THERESA FIAN YRAY, *ET AL.*,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION; ELEMENTS.—** Failure to state a cause of action refers to the insufficiency of the pleading. A complaint states a cause of action if it avers the existence of the three essential elements of a cause of action, namely: (a) The legal right of the plaintiff; (b) The correlative obligation of the defendant; and (c) The act or omission of the defendant in violation of said right.

2. **ID.; ID.; ID.; PARTIES; NON-JOINDER OF INDISPENSABLE PARTIES; WHEN NOT A PROPER GROUND FOR THE DISMISSAL OF ACTION; PRESENT IN CASE AT BAR.—** Non-joinder means the "failure to bring a person who is a necessary party [or in this case an indispensable party] into a lawsuit." An indispensable party, on the other hand, is a party-in-interest without whom no final determination can be had of the action, and who shall be joined either as plaintiff or defendant. As such, this is properly a non-joinder of indispensable party, the indispensable parties who were not included in the complaint being the other heirs of Fian, and not a failure of the complaint to state a cause of action. Having settled that, Our pronouncement in *Pamplona Plantation Company, Inc. v. Tinghil* is instructive as regards the proper course of action on the part of the courts in cases of non-joinder of indispensable parties, *viz*: **The non-joinder of indispensable parties is not a ground for the dismissal of an action.** At any stage of a judicial proceeding and/or at such times as are just, parties may be added on the motion of a party or on the initiative of the tribunal concerned. x x x What the trial court should have done is to direct petitioner Norman

Mesina to implead all the heirs of Domingo Fian, Sr. as defendants within a reasonable time from notice with a warning that his failure to do so shall mean dismissal of the complaint.

3. **ID.; ID.; ID.; PLEADINGS; VERIFICATION; A FORMAL REQUIREMENT AND NOT JURISDICTIONAL; EXPLAINED.—** That the verification of the complaint does not include the phrase "or based on authentic records" does not make the verification defective. Notably, the provision used the disjunctive word "or." The word "or" is a disjunctive article indicating an **alternative**. As such, "personal knowledge" and "authentic records" need not concur in a verification as they are to be taken separately. Also, verification, like in most cases required by the rules of procedure, is a formal requirement, not jurisdictional. It is mainly intended to secure an assurance that matters which are alleged are done in good faith or are true and correct and not of mere speculation. Thus, when circumstances so warrant, as in the case at hand, "the court may simply order the correction of unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may thereby be served."

APPEARANCES OF COUNSEL

Evangelista Law Office for petitioners.
Escalon & Escalon Law Office for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before Us is a Petition for Review under Rule 45 of the Decision[1] dated April 29, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 01366 and its Resolution dated April 12, 2012 denying reconsideration.

[1] Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Gabrial T. Ingles and Victoria Isabel A. Paredes.

The Facts

The late spouses Faustino and Genoveva Mesina (spouses Mesina), during their lifetime, bought from the spouses Domingo Fian Sr. and Maria Fian (spouses Fian) two parcels of land on installment. The properties may be described as follows:

Parcel 1 – A parcel of land, Cadastral Lot No. 6791-Rem, situated in the Brgy. of Gungab, Poblacion, Albuera, Leyte. x x x Containing an area of ONE THOUSAND SIX HUNDRED THIRTY TWO (1,632) SQUARE METERS x x x.

Parcel 2 – A parcel of land, Cadastral Lot No. 6737-Rem, situated in the Brgy. of Gungab, Poblacion, Albuera, Leyte. x x x Containing an area of THREE THOUSAND SEVEN HUNDRED THIRTY (3,730) SQUARE METERS x x x.[2]

Upon the death of the spouses Fian, their heirs—whose names do not appear on the records, claiming ownership of the parcels of land and taking possession of them—refused to acknowledge the payments for the lots and denied that their late parents sold the property to the spouses Mesina. Meanwhile, the spouses Mesina passed away.

Notwithstanding repeated demands, the Heirs of Fian refused to vacate the lots and to turn possession over to the heirs of the spouses Mesina, namely: Norman S. Mesina (Norman), Victor S. Mesina (Victor), Maria Divina S. Mesina (Maria) and Lorna Mesina-Barte (Lorna). Thus, on August 8, 2005, Norman, as attorney-in-fact of his siblings Victor, Maria and Lorna, filed an action for quieting of title and damages before the Regional Trial Court (RTC), Branch 14 in Baybay, Leyte against the Heirs of Fian, naming only Theresa Fian Yray (Theresa) as the representative of the Heirs of Fian. The case, entitled *Heirs of Sps. Faustino S. Mesina & Genoveva S. Mesina, represented by Norman Mesina v. Heirs of Domingo Fian, Sr., represented by Theresa Fian Yray*, was docketed as Civil Case No. B-05-08-20. The allegations of the Complaint on the parties read:

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[2] *Rollo*, p. 8.

1. Plaintiffs are the HEIRS OF SPS. FAUSTINO S. MESINO and GENOVEVA S. MESINA, and represented in this instance by NORMAN MESINA as shown by the Special Power of Attorneys x x x, of legal age, married, Filipino, and a resident of Poblacion Albuera, Leyte, where he may be served with court orders, notices, and other processes, while defendants are the HEIRS OF DOMINGO FIAN, SR., likewise of legal ages, Filipinos, and residents of Poblacion Albuera, Leyte, and respresented in this instance of THERESA FIAN YRAY, where she may be served with summons, court orders, notices, and other processes.[3]

Thereafter, or on September 5, 2005, respondent Theresa filed a Motion to Dismiss the complaint, arguing that the complaint states no cause of action and that the case should be dismissed for gross violation of Sections 1 and 2, Rule 3 of the Rules of Court, which state in part:

Section 1. *Who may be parties; plaintiff and defendant*. – Only natural or juridical persons, or entities authorized by law may be parties in a civil action. x x x

Section 2. *Parties in interest*. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. x x x

She claims that the "**Heirs of Mesina**" could not be considered as a juridical person or entity authorized by law to file a civil action. Neither could the "**Heirs of Fian**" be made as defendant, not being a juridical person as well. She added that since the names of all the heirs of the late spouses Mesina and spouses Fian were not individually named, the complaint is infirmed, warranting its dismissal.

On November 24, 2005, petitioners filed their Opposition to the Motion to Dismiss.

Ruling of the RTC

Finding merit in the motion to dismiss, the RTC, on November 22, 2005, granted the motion and dismissed the complaint, ruling

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[3] *Id.* at 50.

that the Rules of Court is explicit that only natural or juridical persons or entities authorized by law may be parties in a civil action. Also, nowhere in the complaint are the Heirs of Fian individually named. The RTC Order reads:

> Anent the Motion to Dismiss filed by defendant, Theresa Fian Yray through counsel, finding merit in such motion, the same is **granted**.
>
> The Rules of Court is explicit that only natural or juridical persons or entities authorized by law may be parties in a civil action (Section 1, Rule 3, Revised Rules of Court). Certainly, the Heirs of Faurstino s. Mesina and Genoveva S. Mesina, represented by Norman Mesina as plaintiffs as well as Heirs of Domingo Fian, Sr. represented by Theresa Fian Yray as defendants, do not fall within the category as natural or juridical persons as contemplated by law to institute or defend civil actions. Said heirs not having been individually named could not be the real parties in interest. Hence, the complaint states no cause of action.
>
> Accordingly, the case is hereby **dismissed**.
>
> SO ORDERED.[4]

On December 27, 2005, petitioners moved for reconsideration of the November 22, 2005 Order of the RTC. The next day, or on December 28, 2005, respondent Theresa filed her Vehement Opposition to the motion for reconsideration.

On February 29, 2006, the RTC issued its Resolution denying the motion for reconsideration. The dispositive portion of the Resolution reads:

> WHEREFORE, the motion prayed for must necessary fail.
>
> SO ORDERED.[5]

Aggrieved, petitioners appealed to the CA.

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[4] Records, p. 76. Penned by Judge Absalon U. Fulache.

[5] *Id.* at 98.

Ruling of the CA

In affirming the RTC, the CA, on April 29, 2011, rendered its Decision, ruling that all the heirs of the spouses Fian are indispensable parties and should have been impleaded in the complaint. The appellate court explained that this failure to implead the other heirs of the late spouses Fian is a legal obstacle to the trial court's exercise of judicial power over the case and any order or judgment that would be rendered is a nullity in view of the absence of indispensable parties. The CA further held that the RTC correctly dismissed the complaint for being improperly verified. The CA disposed of the appeal in this wise:

> WHEREFORE, in view of all the foregoing, the appeal of [petitioners] is **DENIED** for lack of merit. The assailed November 22, 2005 Order and February 28, 2006 Resolution both issued by the Regional Trial Court, Branch 14 of Baybay, Leyte are **AFFIRMED.**
>
> **SO ORDERED.**[6]

Petitioners filed their Motion for Reconsideration, which was denied by the CA in its Resolution dated April 12, 2012.

Hence, this petition.

Assignment of Errors

Petitioner now comes before this Court, presenting the following assigned errors, to wit:

> A. THE [CA] ERRED IN AFFIRMING THE ORDER AND RESOLUTION X X X OF RTC, BAYBAY, LEYTE IN DISMISSING THE CASE ON THE GROUND THAT THE COMPLAINT STATES NO CAUSE OF ACTION;
>
> B. [PETITIONERS] HAVE SUBSTANTIALLY COMPLIED WITH THE RULE ON VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; AND

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[6] *Rollo*, p. 15.

C. CASES SHOULD BE DECIDED ON THE MERITS AND NOT ON MERE TECHNICALITIES.[7]

The Court's Ruling

The petition is meritorious.

As regards the issue on failure to state a cause of action, the CA ruled that the complaint states no cause of action because all the heirs of the spouses Fian are indispensable parties; hence, they should have been impleaded in the complaint.

The CA, affirming the RTC, held that the dismissal of the complaint is called for in view of its failure to state a cause of action. The CA reasoned that:

> Without the presence of all the heirs of spouses Fian as defendants, the trial court could not validly render judgment and grant relief to [petitioners]. x x x **The absence of an indispensable party renders all subsequent actions of the court null and void** for want of authority to act, not only as to the absent parties but even as to those present. Hence, **the court *a quo* correctly ordered for the dismissal of the action on the ground that the complaint failed to name or implead all the heirs of the late [spouses Fian]**.[8]

Failure to state a cause of action refers to the insufficiency of the pleading. A complaint states a cause of action if it avers the existence of the three essential elements of a cause of action, namely:

(a) The legal right of the plaintiff;
(b) The correlative obligation of the defendant; and
(c) The act or omission of the defendant in violation of said right.[9]

By a simple reading of the elements of a failure to state a cause of action, it can be readily seen that the inclusion of

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[7] *Id.* at 28, 32, 34.

[8] *Id.* at 13.

[9] See *Turner v. Lorenzo Shipping Corporation*, G.R. No. 157479, November 24, 2010, 636 SCRA 13, 30.

Theresa's co-heirs does not fall under any of the above elements. The infirmity is, in fact, not a failure to state a cause of action but a **non-joinder of an indispensable party**.

Non-joinder means the "failure to bring a person who is a necessary party [or in this case an indispensable party] into a lawsuit."[10] An indispensable party, on the other hand, is a party-in-interest without whom no final determination can be had of the action, and who shall be joined either as plaintiff or defendant.[11]

As such, this is properly a non-joinder of indispensable party, the indispensable parties who were not included in the complaint being the other heirs of Fian, and not a failure of the complaint to state a cause of action.

Having settled that, Our pronouncement in *Pamplona Plantation Company, Inc. v. Tinghil* is instructive as regards the proper course of action on the part of the courts in cases of non-joinder of indispensable parties, *viz*:

> **The non-joinder of indispensable parties is not a ground for the dismissal of an action.** At any stage of a judicial proceeding and/or at such times as are just, parties may be added on the motion of a party or on the initiative of the tribunal concerned. If the plaintiff refuses to implead an indispensable party despite the order of the court, that court may dismiss the complaint for the plaintiff's failure to comply with the order. **The remedy is to implead the non-party claimed to be indispensable**.[12] x x x (Emphasis Ours.)

Thus, the dismissal of the case for failure to state a cause of action is improper. What the trial court should have done is to direct petitioner Norman Mesina to implead all the heirs of Domingo Fian, Sr. as defendants within a reasonable time from notice with a warning that his failure to do so shall mean dismissal of the complaint.

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[10] *Black's Law Dictionary* 1154 (9th ed., 2009).

[11] *Pascual v. Robles*, G.R. No. 182645, December 15, 2010, 638 SCRA 712, 719; citing *Lotte Phil. Co., Inc. v. Dela Cruz*, G.R. No. 166302, July 28, 2005, 464 SCRA 591.

[12] G.R. No. 159121, February 3, 2005, 450 SCRA 421, 433.

Anent the issue on defective verification, Section 4, Rule 7 of the Rules of Court provides as follows:

> Sec. 4. *Verification*. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
>
> A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge **or** based on authentic records. (Emphasis Ours.)

The alleged defective verification states that:

> I, NORMAN S. MESINA, legal age, married, Filipino, and a resident of Poblacion, Albuera, Leyte, after having been duly sworn to in accordance with law, hereby depose and say that:
>
> x x x x x x x x x
>
> 2. The allegations herein are true and correct to the best of our knowledge;[13] x x x

Both the RTC and the CA found said verification defective, since the phrase "or based on authentic records," as indicated under the second paragraph of Sec. 4, Rule 7 as afore-quoted, was omitted.

We do not agree.

That the verification of the complaint does not include the phrase "or based on authentic records" does not make the verification defective. Notably, the provision used the disjunctive word "or." The word "or" is a disjunctive article indicating an **alternative**.[14] As such, "personal knowledge" and "authentic records" need not concur in a verification as they are to be taken separately.

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[13] *Rollo*, p. 53.

[14] *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council*, G.R. No. 171101, November 22, 2011, 660 SCRA 525, 551; citing *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging, Inc.*, G.R. No. 142618, July 12, 2007, 527 SCRA 405, 422.

Also, verification, like in most cases required by the rules of procedure, is a formal requirement, not jurisdictional. It is mainly intended to secure an assurance that matters which are alleged are done in good faith or are true and correct and not of mere speculation. Thus, when circumstances so warrant, as in the case at hand, "the court may simply order the correction of unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may thereby be served."[15]

WHEREFORE, premises considered, the petition is **GRANTED.** The assailed April 29, 2011 Decision and April 12, 2012 Resolution of the CA in CA-G.R. CV No. 01366, and the November 22, 2005 Order and February 29, 2006 Resolution of the RTC, Branch 14 in Baybay, Leyte, dismissing the complaint in Civil Case No. B-05-08-20, are hereby **REVERSED** and **SET ASIDE.** Petitioner Norman Mesina is **ORDERED** to implead all the Heirs of Domingo Fian, Sr. as defendants in said civil case within thirty (30) days from notice of finality of this Decision. Failure on the part of petitioner Mesina to comply with this directive shall result in the dismissal of Civil Case No. B-05-08-20. Upon compliance by petitioner Mesina with this directive, the RTC, Branch 14 in Baybay, Leyte is **ORDERED** to undertake appropriate steps and proceedings to expedite adjudication of the case.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.,* concur.

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[15] *Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011, 649 SCRA 281, 293.

FIRST DIVISION

[A.C. No. 9514. April 10, 2013]

BERNARD N. JANDOQUILE, *complainant, vs.* **ATTY. QUIRINO P. REVILLA, JR.,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; DISBARMENT; DISQUALIFICATION RULE UNDER SECTION 3(C), RULE IV OF THE 2004 RULES ON NOTARIAL PRACTICE; VIOLATION THEREOF IS NOT A GROUND FOR DISBARMENT; RATIONALE; CASE AT BAR.—** Indeed, Atty. Revilla, Jr. violated the disqualification rule under Section 3(c), Rule IV of the 2004 Rules on Notarial Practice. We agree with him, however, that his violation is not a sufficient ground for disbarment. Atty. Revilla, Jr.'s violation of the aforesaid disqualification rule is beyond dispute. Atty. Revilla, Jr. readily admitted that he notarized the complaint-affidavit signed by his relatives within the fourth civil degree of affinity. Section 3(c), Rule IV of the 2004 Rules on Notarial Practice clearly disqualifies him from notarizing the complaint-affidavit, from performing the notarial act, since two of the affiants or principals are his relatives within the fourth civil degree of affinity. Given the clear provision of the disqualification rule, it behooved upon Atty. Revilla, Jr. to act with prudence and refuse notarizing the document. We cannot agree with his proposition that we consider him to have acted more as counsel of the affiants, not as notary public, when he notarized the complaint-affidavit. The notarial certificate at the bottom of the complaint-affidavit shows his signature as a notary public, with a notarial commission valid until December 31, 2012. He cannot therefore claim that he signed it as counsel of the three affiants. x x x To our mind, Atty. Revilla, Jr. did not commit any deceit, malpractice, gross misconduct or gross immoral conduct, or any other serious ground for disbarment under Section 27, Rule 138 of the Rules of Court. We recall the case of *Maria v. Cortez* where we reprimanded Cortez and disqualified him from being commissioned as notary public for six months. We were convinced that said punishment, which is less severe than

disbarment, would already suffice as sanction for Cortez's violation.

2. ID.; ID.; ID.; ID.; WHEN VIOLATED; IMPOSABLE PENALTY. — In Cortez, we noted the prohibition in Section 2(b), Rule IV of the 2004 Rules on Notarial Practice that a person shall not perform a notarial act if the person involved as signatory to the instrument or document (1) is not in the notary's presence personally at the time of the notarization and (2) is not personally known to the notary public or otherwise identified by the notary public through a competent evidence of identity. Cortez had notarized a special power of attorney without having the alleged signatories appear before him. In imposing the less severe punishment, we were mindful that removal from the Bar should not really be decreed when any punishment less severe such as reprimand, temporary suspension or fine would accomplish the end desired. Considering the attendant circumstances and the single violation committed by Atty. Revilla, Jr., we are in agreement that a punishment less severe than disbarment would suffice. **WHEREFORE,** respondent Atty. Quirino P. Revilla, Jr., is **REPRIMANDED** and **DISQUALIFIED** from being commissioned as a notary public, or from performing any notarial act if he is presently commissioned as a notary public, for a period of three (3) months. Atty. Revilla, Jr. is further **DIRECTED** to **INFORM** the Court, through an affidavit, once the period of his disqualification has lapsed.

3. ID.; ID.; THE NOTARY PUBLIC NEED NOT REQUIRE A VALID IDENTIFICATION CARD IF HE PERSONALLY KNOWS THE AFFIANTS; SUSTAINED.— If the notary public knows the affiants personally, he need not require them to show their valid identification cards. This rule is supported by the definition of a "jurat" under Section 6, Rule II of the 2004 Rules on Notarial Practice. A "jurat" refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is personally known to the notary public ***or*** identified by the notary public through competent evidence of identity; (c) signs the instrument or document in the presence of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document.

RESOLUTION

VILLARAMA, JR., *J.*:

Before us is a complaint[1] for disbarment filed by complainant Bernard N. Jandoquile against respondent Atty. Quirino P. Revilla, Jr.

The facts of the case are not disputed.

Atty. Revilla, Jr. notarized a complaint-affidavit[2] signed by Heneraline L. Brosas, Herizalyn Brosas Pedrosa and Elmer L. Alvarado. Heneraline Brosas is a sister of Heizel Wynda Brosas Revilla, Atty. Revilla, Jr.'s wife. Jandoquile complains that Atty. Revilla, Jr. is disqualified to perform the notarial act[3] per Section 3(c), Rule IV of the 2004 Rules on Notarial Practice which reads as follows:

> SEC. 3. *Disqualifications*. – A notary public is disqualified from performing a notarial act if he:
>
> x x x x x x x x x
>
> (c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal[4] within the fourth civil degree.

Jandoquile also complains that Atty. Revilla, Jr. did not require the three affiants in the complaint-affidavit to show their valid identification cards.

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[1] *Rollo*, pp. 1-7.

[2] *Id*. at 14. The complaint-affidavit charged Jandoquile of fraudulent enlistment with the Philippine Army. After due proceedings, the investigating officer of the Philippine Army recommended that Jandoquile be discharged from military service. Jandoquile says that he has appealed his case before the Office of the Provost Marshal, Armed Forces of the Philippines.

[3] Under Section 7, Rule II of the 2004 Rules on Notarial Practice, "notarial act" and "notarization" refer to any act that a notary public is empowered to perform under the 2004 Rules on Notarial Practice.

[4] Under Section 10, Rule II of the 2004 Rules on Notarial Practice, a "principal" refers to a person appearing before the notary public whose act is the subject of notarization.

In his comment[5] to the disbarment complaint, Atty. Revilla, Jr. did not deny but admitted Jandoquile's material allegations. The issue, according to Atty. Revilla, Jr., is whether the single act of notarizing the complaint-affidavit of relatives within the fourth civil degree of affinity and, at the same time, not requiring them to present valid identification cards is a ground for disbarment. Atty. Revilla, Jr. submits that his act is not a ground for disbarment. He also says that he acts as counsel of the three affiants; thus, he should be considered more as counsel than as a notary public when he notarized their complaint-affidavit. He did not require the affiants to present valid identification cards since he knows them personally. Heneraline Brosas and Herizalyn Brosas Pedrosa are sisters-in-law while Elmer Alvarado is the live-in houseboy of the Brosas family.

Since the facts are not contested, the Court deems it more prudent to resolve the case instead of referring it to the Integrated Bar of the Philippines for investigation.

Indeed, Atty. Revilla, Jr. violated the disqualification rule under Section 3(c), Rule IV of the 2004 Rules on Notarial Practice. We agree with him, however, that his violation is not a sufficient ground for disbarment.

Atty. Revilla, Jr.'s violation of the aforesaid disqualification rule is beyond dispute. Atty. Revilla, Jr. readily admitted that he notarized the complaint-affidavit signed by his relatives within the fourth civil degree of affinity. Section 3(c), Rule IV of the 2004 Rules on Notarial Practice clearly disqualifies him from notarizing the complaint-affidavit, from performing the notarial act, since two of the affiants or principals are his relatives within the fourth civil degree of affinity. Given the clear provision of the disqualification rule, it behooved upon Atty. Revilla, Jr. to act with prudence and refuse notarizing the document. We cannot agree with his proposition that we consider him to have acted more as counsel of the affiants, not as notary public, when he

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[5] *Rollo*, pp. 16-22.

notarized the complaint-affidavit. The notarial certificate[6] at the bottom of the complaint-affidavit shows his signature as a notary public, with a notarial commission valid until December 31, 2012. He cannot therefore claim that he signed it as counsel of the three affiants.

On the second charge, we agree with Atty. Revilla, Jr. that he cannot be held liable. If the notary public knows the affiants personally, he need not require them to show their valid identification cards. This rule is supported by the definition of a "jurat" under Section 6, Rule II of the 2004 Rules on Notarial Practice. A "jurat" refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is personally known to the notary public **or** identified by the notary public through competent evidence of identity; (c) signs the instrument or document in the presence of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document. In this case, Heneraline Brosas is a sister of Atty. Revilla, Jr.'s wife; Herizalyn Brosas Pedrosa is his wife's sister-in-law; and Elmer Alvarado is the live-in houseboy of the Brosas family. Atty. Revilla, Jr. knows the three affiants personally. Thus, he was justified in no longer requiring them to show valid identification cards. But Atty. Revilla, Jr. is not without fault for failing to indicate such fact in the "jurat" of the complaint-affidavit. No statement was included therein that he knows the three affiants personally.[7] Let it be impressed that Atty. Revilla, Jr. was clearly disqualified to notarize the complaint-affidavit of his relatives within the fourth civil degree of affinity. While he has a valid defense as to the second charge, it does not exempt him from liability for violating the disqualification rule.

As we said, Atty. Revilla, Jr.'s violation of the disqualification rule under Section 3(c), Rule IV of the 2004 Rules on Notarial Practice is not a sufficient ground to disbar him. To our mind,

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[6] *Supra* note 2.

[7] *Id.*

Atty. Revilla, Jr. did not commit any deceit, malpractice, gross misconduct or gross immoral conduct, or any other serious ground for disbarment under Section 27,[8] Rule 138 of the Rules of Court. We recall the case of *Maria v. Cortez*[9] where we reprimanded Cortez and disqualified him from being commissioned as notary public for six months. We were convinced that said punishment, which is less severe than disbarment, would already suffice as sanction for Cortez's violation. In *Cortez*, we noted the prohibition in Section 2(b), Rule IV of the 2004 Rules on Notarial Practice that a person shall not perform a notarial act if the person involved as signatory to the instrument or document (1) is not in the notary's presence personally at the time of the notarization and (2) is not personally known to the notary public or otherwise identified by the notary public through a competent evidence of identity. Cortez had notarized a special power of attorney without having the alleged signatories appear before him. In imposing the less severe punishment, we were mindful that removal from the Bar should not really be decreed when any punishment less severe such as reprimand, temporary suspension or fine would accomplish the end desired.

Considering the attendant circumstances and the single violation committed by Atty. Revilla, Jr., we are in agreement that a punishment less severe than disbarment would suffice.

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[8] SEC. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor*. – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any **deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience appearing as an attorney for a party to a case without authority so to do**. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

x x x x (Emphasis supplied.)

[9] A.C. No. 7880, April 11, 2012, 669 SCRA 87, 93-94.

WHEREFORE, respondent Atty. Quirino P. Revilla, Jr., is **REPRIMANDED** and **DISQUALIFIED** from being commissioned as a notary public, or from performing any notarial act if he is presently commissioned as a notary public, for a period of three (3) months. Atty. Revilla, Jr. is further **DIRECTED** to **INFORM** the Court, through an affidavit, once the period of his disqualification has lapsed.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-06-2256. April 10, 2013]
(Formerly A.M. OCA IPI No. 06-2374-P)

PO2 PATRICK MEJIA GABRIEL, *complainant, vs.* **SHERIFF WILLIAM JOSE R. RAMOS, Regional Trial Court, Branch 166, Pasig City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; AN OFFICER OF THE COURT AND ANY EMPLOYEE THEREOF FOR THAT MATTER SHOULD BE ABOVE REPROACH; VIOLATION THEREOF FOR IMMORALITY; CASE AT BAR.—** Immorality has been defined to include not only sexual matters but also "conducts inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare." In this case,

Ramos showed his moral indifference to the opinions of respectable members of the community by attempting to rationalize his illicit relationship with Jenelita. However, such attempt fails as this Court agrees with the OCA that the justifications proffered by Ramos are inconsequential, distorted and misplaced. The illicit relationship between a married man and a woman not his wife will remain illicit notwithstanding the lapse of considerable number of years they have been living together. Passage of time does not legitimize illicit relationship; neither does other people's perceived tolerance or acquiescense or indifference toward such relationship. Indeed, Ramos has long been living an immoral life and his distorted belief that he has not been doing so puts in question his sense of morality, or the standard of morality he lives by. An officer of the court, and any employee thereof for that matter, should be above reproach. The very existence of the court, the institution we represent, is anchored on upholding what is true, right and just. That is why we require nothing less than the highest standard of morality and decency for each and every member, from the highest official to the lowest of the rank and file, to preserve the good name and integrity of courts of justice, lest we be deemed unworthy to represent his honorable institution.

2. **ID.; ID.; ID.; THE DISMISSAL OF CRIMINAL COMPLAINT DOES NOT AFFECT THE ADMINISTRATIVE CASE ARISING FROM THE SAME INCIDENT WHICH GAVE RISE TO SAID CRIMINAL CASE; RATIONALE; APPLICATION IN CASE AT BAR.—** Concededly, the case for Alarms and Scandals had already been dismissed by the trial court. However, it is also settled that the dismissal of the criminal complaint does not affect the administrative case arising from the same incident which gave rise to said criminal case. The quantum of proof necessary to sustain a finding of guilt in the administrative complaint is only substantial evidence, while in criminal cases proof beyond reasonable doubt must be established to sustain the culpability of the accused. Hence, the two cases may be treated as separate and unrelated complaints which do not rely or depend on the outcome of the other. This rule should be strictly adhered to in this case as the dismissal was based on technical ground which has no bearing in this administrative case. In sum, given the confluence of events as borne out by the records, this Court finds that Ramos is

administratively liable for indiscriminately discharging a firearm even if the same does not pertain to his official functions. This is in consonance with the oftrepeated exhortation that "all those involved in the administration of justice must at all times conduct themselves with the highest degree of propriety and decorum and take [utmost] care in avoiding incidents that x x x degrade the judiciary and diminish the respect and regard for the courts."

3. **ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; IMMORAL CONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, BOTH CLASSIFIED AS GRAVE OFFENSES; IMPOSABLE PENALTY.—** Immoral conduct and conduct prejudicial to the best interest of the service are both classified as grave offenses under Section 46 of the Revised Rules on Administrative Cases in the Civil Service, and are punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal for the second offense. Section 55 of the same Rules provides that "if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances." While the severity of and penalty for the offenses of immoral conduct and conduct prejudicial to the best interest of the service are the same, Section 55 is still applicable in this case. In *Re: Frequent Unauthorized Absences of Ms. Nahren D. Hernaez,* the respondent was charged and found guilty of two different grave offenses. Nevertheless, this Court agreed with the recommendation of the Office of Administrative Services to apply Section 55 by analogy and impose a single penalty of 12 months suspension without pay for both offenses.

APPEARANCES OF COUNSEL

Sañez Taguinod & Associates for respondent.

RESOLUTION

DEL CASTILLO, *J.*:

This resolves the sworn Complaint[1] for Immorality and Conduct Unbecoming of a Court Personnel filed by PO2 Patrick Mejia Gabriel (PO2 Gabriel) against William Jose R. Ramos (Ramos), Sheriff IV of the Regional Trial Court (RTC), Branch 166, Pasig City.

Complainant alleged that on August 22, 2005, Ramos destroyed personal belongings inside the house of Consolacion Dela Cruz Favillar (Consolacion), the mother of his common-law-wife, Jenelita Dela Cruz (Jenelita) and thereafter indiscriminately fired a gun outside the said house. Thus, Ramos was charged with Alarms and Scandals and Violation of Domicile.

Complainant also claimed that Jenelita is Ramos's mistress for 15 years already and that they have two children. Complainant opined that Ramos's illicit relationship with Jenelita offends the morality and sense of decency of the people in the locality. He posited that the foregoing act and conduct of Ramos, who is a public officer, violate Section 1,[2] Article XI of the Constitution.[3]

In his Comment,[4] Ramos asserted that he is also living in the house of Consolacion and, therefore, could not be charged with the said offense of Violation of Domicile. He further clarified that he and Jenelita were actually removing their personal belongings in the house of Consolacion as they were transferring to another house nearby. Consolacion, however, resented it and thus charged him with Violation of Domicile.

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[1] *Rollo*, pp. 2-3.

[2] Article XI. *Accountability of Public Officers.*

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

[3] *Rollo*, p. 3.

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

Anent the charge of immorality, Ramos admitted his common-law relationship with Jenelita but denied living under scandalous or revolting circumstances as to shock common decency.[5] He argued that their relationship having spanned 15 years already and the fact that they have two children dispel any vestiges of immorality. In addition, he averred that since the incidents alleged in the Complaint transpired in San Teodoro, Oriental Mindoro which is not his place of work, the charges against him are clearly not work-related and cannot be the subject of an administrative action. He asserted that these charges are harassment suits calculated to cow him to desist from pursuing the criminal actions he filed against PO2 Gabriel and his cohorts before the Office of the Prosecutor of Calapan, Oriental Mindoro.

Ramos prayed for the dismissal of the instant administrative case.

Report and Recommendation of the Investigating Judge

In his Report[6] dated September 10, 2007, Investigating Judge Edwin A. Villasor (Judge Villasor), recommended that Ramos be required to update his 201 file and to submit his marriage certificate and the birth certificates of his children. Judge Villasor likewise recommended that Ramos be admonished to act with propriety in his conduct as a court personnel and as a private individual.

This Court referred the Report of Judge Villasor to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.[7] Upon the recommendation of the OCA, this Court issued a Resolution[8] requiring Ramos to submit his updated Personal Data Sheet and authenticated copies of his marriage certificate and birth certificates of his children.

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[5] *Id.* at 9.

[6] *Id.* at 193-219.

[7] See minute Resolution dated November 12, 2007, *id.* at 254-255.

[8] *Id.* at 259-260.

In compliance, Ramos submitted authenticated copies of his Marriage Contract with Berlita A. Montehermoso (Montehermoso)[9] and the Certificate of Live Birth of their son Kim Montehermoso Ramos (Kim).[10] He also submitted his updated Personal Data Sheet[11] and a copy of the MCTC's July 25, 2007 Resolution[12] dismissing the case for Alarms and Scandals for non-compliance with a condition precedent before filing the action in court. Thereafter, the OCA submitted its evaluation, report and recommendation.

OCA Findings and Recommendations

In a Memorandum[13] dated November 5, 2012, the OCA found Ramos liable to the charge of immorality considering his admission that he has been cohabiting with Jenelita for 15 years despite his subsisting marriage with Montehermoso. It also found the following circumstances to have mitigated Ramos's liability, *viz*:

1. Respondent has voluntarily admitted that he and [Jenelita] have been living together as husband and wife without the benefit of marriage.

2. Respondent and [Montehermoso], his lawful wife, have been separated in fact for a long time.

3. The common-law relationship is one of the realities of life which is difficult to prevent from happening, more so because respondent has long been separated from his wife.

4. Apparently, [Montehermoso and Kim] tolerated said relationship [because they did not file] a complaint against him.

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[9] *Id.* at 273.

[10] *Id.* at 274.

[11] *Id.* at 280.

[12] *Id.* at 293; penned by Judge Edgardo M. Padilla.

[13] *Id.* at 295-301.

5. There is no indication that such relationship has caused prejudice to any person or has adversely affected the performance of respondent's functions and duties as an officer of the court to the detriment of public service.[14]

The OCA thus recommended that:

1. respondent William Jose Ramos, Sheriff IV, Branch 166, Regional Trial Court, Pasig City, be found **GUILTY** of Disgraceful and Immoral Conduct and be **SUSPENDED** for two (2) months without pay; and
2. respondent Ramos be **ADMONISHED** to terminate his common-law relationship with Ms. Jenelita dela Cruz Favillar or to take the necessary steps to legitimize the same.[15]

Our Ruling

The Court sustains the finding of the OCA that Ramos is guilty of disgraceful and immoral conduct. His barefaced admission and justification of his relationship with another woman despite his subsisting marriage to another is proof of his immoral conduct.

Immorality has been defined to include not only sexual matters but also "conducts inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare."[16] In this case, Ramos showed his moral indifference to the opinions of respectable members of the community by attempting to rationalize his illicit relationship with Jenelita. However, such attempt fails as this Court agrees with the OCA that the justifications proffered by Ramos are inconsequential, distorted and misplaced. The illicit relationship between a married man and a woman not his wife will remain illicit notwithstanding the

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[14] *Id.* at 298-299.

[15] *Id.* at 301.

[16] *Regir v. Regir*, A.M. No. P-06-2282, August 7, 2009, 595 SCRA 455, 462.

lapse of considerable number of years they have been living together. Passage of time does not legitimize illicit relationship; neither does other people's perceived tolerance or acquiescence or indifference toward such relationship. Indeed, Ramos has long been living an immoral life and his distorted belief that he has not been doing so puts in question his sense of morality, or the standard of morality he lives by. An officer of the court, and any employee thereof for that matter, should be above reproach. The very existence of the court, the institution we represent, is anchored on upholding what is true, right and just. That is why we require nothing less than the highest standard of morality and decency for each and every member, from the highest official to the lowest of the rank and file, to preserve the good name and integrity of courts of justice,[17] lest we be deemed unworthy to represent this honorable institution.

With regard to the charge of conduct unbecoming of a court personnel, it appears that there is ample evidence on record showing that Ramos indeed indiscriminately fired a gun. After receipt of a report on the commotion in the house of Consolacion on August 22, 2005, complainant, together with another police officer and the *barangay* captain of the place, proceeded to the house of Consolacion. Thereafter, the following transpired:

Complainant

Q: What happened then?

A: After that, we tried to pacify William Jose Ramos and we called Hon. Ildefonso Roxas, Brgy. Captain of Brgy. Lumangbayan to pacify him because it x x x falls under his jurisdiction.

x x x x x x x x x

Q: What happened after the Honorable Roxas Pacified and stopped William Jose Ramos?

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[17] *Bucatcat v. Bucatcat*, 380 Phil. 555, 567 (2000).

A: We left the place and then about 200 meters away we heard gunshot so we returned and then we saw again William Ramos in front of the house of Consolacion Dela Cruz Favillar, ready to injure them so we arrest[ed] him and [brought] him to our station so that there will be no harm he can [do] to anyone or anybody.[18]

The above narration of facts is also contained in the *Pinagsanib Na Sinumpaang Salaysay*[19] of PO1 Randy De Rosas Mendoza and the complainant. Notably too, Ramos neither denied nor presented controverting evidence to refute the accusation that he indiscriminately fired a gun. His silence on such accusation despite opportunity to disprove the same should, therefore, be construed as an admission.[20]

Concededly, the case for Alarms and Scandals had already been dismissed by the trial court. However, it is also settled that the dismissal of the criminal complaint does not affect the administrative case arising from the same incident which gave rise to said criminal case. The quantum of proof necessary to sustain a finding of guilt in the administrative complaint is only substantial evidence, while in criminal cases proof beyond reasonable doubt must be established to sustain the culpability of the accused. Hence, the two cases may be treated as separate and unrelated complaints which do not rely or depend on the outcome of the other. This rule should be strictly adhered to in this case as the dismissal was based on technical ground which has no bearing in this administrative case. In sum, given the confluence of events as borne out by the records, this Court finds that Ramos is administratively liable for indiscriminately discharging a firearm even if the same does not pertain to his

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[18] February 6, 2007 transcript of stenographic notes, *rollo*, pp. 99-131, 106-107.

[19] *Id.* at 75.

[20] *Gonzales v. Judge Hidalgo*, 449 Phil. 336, 340 (2003); *Plus Builders, Inc. v. Atty. Revilla, Jr.*, 533 Phil. 250, 261-262 (2006).

official functions. This is in consonance with the oft-repeated exhortation that "all those involved in the administration of justice must at all times conduct themselves with the highest degree of propriety and decorum and take [utmost] care in avoiding incidents that x x x degrade the judiciary and diminish the respect and regard for the courts."[21]

In *Alday v. Cruz, Jr.*,[22] the Court held that a judge's act of brandishing a gun and threatening the complainants during a traffic altercation constitute the administrative offense of conduct prejudicial to the best interest of the service.

Immoral conduct and conduct prejudicial to the best interest of the service are both classified as grave offenses under Section 46 of the Revised Rules on Administrative Cases in the Civil Service, and are punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal for the second offense. Section 55 of the same Rules provides that "if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances."[23] While the severity of and penalty for the offenses of immoral conduct and conduct prejudicial to the best interest of the service are the same, Section 55 is still applicable in this case. In *Re: Frequent Unauthorized Absences of Ms. Nahren D. Hernaez*,[24] the respondent was charged and found guilty of two different grave offenses. Nevertheless, this Court agreed with the recommendation of the Office of Administrative Services to apply Section 55 by analogy and impose a single penalty of 12 months suspension without pay for both offenses.

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[21] *Security Division, Supreme Court v. Umpa*, 326 Phil. 698, 702 (1996).

[22] 406 Phil. 786, 802 (2001).

[23] *Garcia v. Alejo*, A.M. No. P-09-2627, January 26, 2011, 640 SCRA 487, 495.

[24] A.M. No. 2008-05-SC, August 6, 2008, 561 SCRA 1, 12.

WHEREFORE, respondent WILLIAM JOSE R. RAMOS, Sheriff IV, Branch 166, Regional Trial Court, Pasig City is found **GUILTY** of immorality and conduct prejudicial to the best interest of the service. Accordingly, he is meted the penalty of **SUSPENSION** for twelve (12) months without pay, with **WARNING** that commission of the same or similar act will merit a more severe penalty. He is **ADMONISHED** to terminate his common-law relationship with Jenelita Dela Cruz Favillar or to take the necessary steps to legitimize the same. He is further **ADMONISHED** to be more circumspect in his conduct both as a court employee and as a private individual.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-13-3108. April 10, 2013]
(Formerly OCA I.P.I. No. 10-3465-P)

L.G. JOHNNA E. LOZADA and L.G. LIZA S. MILLADO, *complainants, vs.* **MA. THERESA G. ZERRUDO, Clerk of Court IV, and SALVACION D. SERMONIA, Clerk IV, both of the Office of the Clerk of Court, Municipal Trial Court in Cities of Iloilo City,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; PROPER ETHICAL STANDARDS,

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[*] Per raffle dated March 18, 2013.

REQUIRED; COURT PERSONNEL CANNOT ENGAGE IN A SHOUTING MATCH, ACT WITH VULGARITY OR BEHAVE IN SUCH A WAY THAT WOULD DIMINISH THE SANCTITY AND DIGNITY OF THE COURTS.— Without a doubt "[t]he conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility [since] [t]he image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work therein, from the judge to the lowest of its personnel." This Court had stressed that the conduct of employees of the judiciary, particularly those in the first and second level courts, must be circumscribed by the proper and ethical standards. The allegations contained in the complaint, however, do not immediately render respondents guilty of some groundless acts of crudeness that warrant the imposition of the maximum penalty imposed by law for less grave offenses. x x x Nonetheless, respondents cannot be fully exonerated from liability. While they may have been properly moved to call attention to an apparent irregularity, respondents' acts of "shouting" while angrily pointing their fingers at the complainants in front and in the presence of so many court personnel and visitors, thus causing complainants shame and embarrassment, cannot be allowed or tolerated. This Court has consistently directed the employees of the judiciary to exercise self-restraint and civility at all times. Hence, court employees cannot engage in a shouting match, act with vulgarity or behave in such a way that would diminish the sanctity and dignity of the courts, even when confronted with rudeness and insolence.

2. **ID.; ID.; ID.; WHEN GUILTY OF TRANSGRESSING THE BOUNDS OF DECENCY; IMPOSABLE PENALTY.—** Respondents' breach of this mandate not only showed a paucity of professionalism but also unjustifiably embarrassed complainants. Hence, regardless of respondents' motivations, their transgression of the bounds of decency warrants the imposition of a penalty as provided by law. **WHEREFORE,** respondents Ma. Theresa G. Zerrudo, Clerk of Court IV, and Salvacion O. Sermonia, Clerk IV, both of the Office of the Clerk of Court, Municipal Trial Court in Cities, Iloilo City, Iloilo, are found guilty of discourtesy and are hereby **REPRIMANDED** with a **WARNING** that a repetition of the same or similar acts shall be dealt with more severely.

R E S O L U T I O N

VELASCO, JR., *J*.:

This administrative case arose from a letter dated July 21, 2010 transmitted to the Office of the Court Administrator (OCA) by complainants L.G. Johnna E. Lozada (Lozada) and L.G. Liza S. Millado (Millado).

In their letter, complainants alleged that they were security guards of Eagle Matrix Security Agency, Inc. who were assigned to guard the premises of the CJ Ramon Avanceña Hall of Justice where the Office of the Clerk of Court of the Municipal Trial Court in Cities (OCC-MTCC) of Iloilo City, Iloilo is located. As part of their duties, complainants were directed by Executive Judge Antonio M. Natino to collect every Monday morning, at exactly 8:00 a.m., the record sheets containing the time of arrival of the court employees and submit the same to the OCC-MTCC.

Complainants recounted that on July 19, 2010, at around 8:10 a.m., a lady who claimed to be employed by the OCC-MTCC took the record sheets they had just collected on the pretext that she would be the one to submit them as the OCC-MTCC was then still closed. A few minutes after, however, complainants noticed that the record sheets had been distributed among employees who were trying to sign the record sheets for coming in late.

At this point, complainants recalled that respondent Salvacion D. Sermonia (Sermonia) angrily approached them and berated them in the vernacular saying, *"Kamo nga duha ha, i-report ko gid kamo kay Judge Natino sang gina pang obra nyo di!!!"* (You two, I will report to Judge Natino what you are doing here!)

When Sermonia left the complainants, respondent Ma. Theresa G. Zerrudo (Zerrudo) supposedly came out of her office, approached the complainants, pointed her finger at Lozada, and yelled, *"Sin-o gina saligan mo di?!! May gina saligan ka? Andaman mo lang ha kay gina bantayan ta ka, gna dumtan*

ta ka di!!! (Who are you depending on?!! Are you relying on someone? You better be ready, I have a grudge against you!!!)

Complainants averred that this happened in full view of other court personnel and visitors. Hence, complainants felt that respondents' actuations were intended to embarrass them as lowly guards of the Hall of Justice.

On September 1, 2010, the OCA sent separate Indorsements to respondents Sermonia and Zerrudo directing them to file their respective comments on the complaint within ten (10) days from receipt of the complaint.

Instead of complying, however, Zerrudo filed a letter dated October 16, 2010 seeking an additional fifteen (15) days from the expiration of the original period to file her comment, alleging that she was scheduled to attend the seminar-convention and election of officers for the Clerks of Court Association of the Philippines and that she needed time to gather the affidavits of the witnesses and other supporting papers for the comment. Similarly, Sermonia moved for an additional thirty (30) days from the expiration of the original period to submit her comment, stating that she first had to secure a counsel and gather evidence to support her comment.

Zerrudo's request for additional time to file her comment was granted by the OCA in a letter dated December 7, 2010 and received by Zerrudo on January 14, 2011. Likewise, Sermonia's motion for an extension of time to file her comment was granted by the OCA in a letter dated March 11, 2011, which was received by Sermonia on April 6, 2011.

Almost a year after, however, neither of the respondents had filed a comment. Hence, in separate trace letters both dated January 26, 2012, the OCA reiterated its prior directive for respondents to submit their comments and warned that should they fail to comply with the directive within five (5) working days, the matter will be submitted to the Court for resolution without the required comments. Per the registry return receipts, the trace letters were received by respondents on February 28, 2012.

Instead of complying with the latest OCA directive, respondents, yet again, filed separate motions requesting for additional time to file their respective comments. In her motion, Sermonia reasoned that because of the earthquake that affected the Iloilo Hall of Justice Building, she is pre-occupied with the transferring and packing of their things for immediate relocation to a new site. Hence, she needed ten (10) more days to file her comment. The same reason was used by Zerrudo in requesting for additional ten (10) days to file her comment. Further, Zerrudo alleged that she still has to look for the witnesses who could shed light on the allegations hurled by complainants against her.

In a letter dated March 13, 2012, the OCA granted the respondents' separate requests for ten (10) more days to file their respective comments.

Almost ten (10) months after, however, respondents still had not submitted their comments. Hence, in a Recommendation dated January 8, 2013, the OCA declared that the respondents' adamant refusal to file their respective comments, despite the opportunities given to them for a total period of almost two (2) years, amounts to an admission of the charges hurled against them.[1] Furthermore, the OCA found that the same refusal to submit their comments has aggravated the respondents' liability for "humiliat[ing] the complainants/security guards to cover up the irregularities they were committing vis-a-vis the record sheets containing the attendance of the court's employees."[2] The OCA also considered relevant the fact that respondents Zerrudo and Sermonia are either facing other administrative complaints or have been previously penalized by the Court.[3] Hence, it was

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[1] Citing *Mendoza v. Tablizo*, A.M. No. P-08-2553, August 28, 2009, 597 SCRA 381, 386.

[2] Recommendation, p. 5.

[3] "Respondent Zerrudo is also facing administrative charges in A.M. No. P-01-1498 (formerly docketed as OCA IPI No. 99-596-P). On the other hand, respondent Sermonia was reprimanded by the Court on 27 February 2002 in A.M. Nos. P-02-1563 and P-03-1757 and suspended for six (6) months and ordered to pay the complaint therein on 4 August 2009 in A.M. No. P-08-2436." Recommendation, p. 3.

recommended that respondents Zerrudo and Sermonia be found guilty of the offense charged and accordingly suspended for six (6) months without pay, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely by the Court.

Indeed, as correctly pointed out by the OCA, respondents in the present case, by their inexcusable refusal to submit their comments despite all the opportunities provided them, waived their right to rebut the allegations contained in the letter-complaint filed by Lozada and Millado.[4] In fact, respondents' cavalier acts of stringing the investigation out by repeatedly filing requests for extension of time to file their comments and still failing to file their comments despite the lapse of almost two years constitute an appalling disrespect of the authority of this Court and its rules and regulations.[5] This inexcusable failure on the part of respondents, by itself, amounts to an act of impudence, as to be contumacious.[6]

Even granting the implied admission by respondents of the charges contained in the letter-complaint, We cannot assent to the recommended penalty on respondents.

Without a doubt "[t]he conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility [since] [t]he image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work therein, from the judge to the lowest of its personnel."[7] This Court had stressed

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[4] *Mendoza v. Tablizo*, *supra* note 1.

[5] *Soria v. Villegas*, A.M. No. RTJ-03-1812, November 18, 2004, 443 SCRA 13, 20; citing *Imbang v. del Rosario*, A.M. No. 03-1515-MTJ, February 3, 2004, 421 SCRA 523.

[6] *Office of the Court Administrator v. Kasilag*, A.M. No. P-08-2573, June 19, 2012, 673 SCRA 583, 590.

[7] *Junto v. Bravio-Fabio*, A.M. No. P-04-1817, December 19, 2007, 541 SCRA 1, 9.

that the conduct of employees of the judiciary, particularly those in the first and second level courts, must be circumscribed by the proper and ethical standards.[8]

The allegations contained in the complaint, however, do not immediately render respondents guilty of some groundless acts of crudeness that warrant the imposition of the maximum penalty imposed by law for less grave offenses.[9] Instead, it is unclear whether the words uttered by respondents, albeit crudely, were made "to cover up the irregularities they were committing vis-a-vis the record sheets containing the attendance of the court's employees" or intended to reprimand the complainants for an apparent dereliction of the latter's duty to collect, keep, and submit the record sheets of the court employees. It is not even stated in the complaint whether respondents were among the "employees trying to sign the record sheets" or had already signed the record sheets prior to 8 o'clock in the morning and before the said sheets were distributed among the employees who came later. This ambiguity brooks the presumption of good faith behind the respondents' actuations.

Nonetheless, respondents cannot be fully exonerated from liability. While they may have been properly moved to call attention to an apparent irregularity, respondents' acts of "shouting" while angrily pointing their fingers at the complainants in front and in the presence of so many court personnel and visitors, thus causing complainants shame and embarrassment, cannot be allowed or tolerated. This Court has consistently directed the employees of the judiciary to exercise self-restraint

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[8] *De Vera, Jr. v. Rimando*, A.M. No. P-03-1672, June 8, 2007, 524 SCRA 25, 31.

[9] CSC Resolution No. 1101502, November 18, 2011, Revised Rules on Administrative Cases in the Civil Service, Rule 10, Sec. 46 (D). The following less grave offenses are punishable by suspension of one (1) month and one (1) day suspension to six (6) months for the first offense; and dismissal from the service for the second offense:

x x x x x x x x x

and civility at all times.[10] Hence, court employees cannot engage in a shouting match, act with vulgarity or behave in such a way that would diminish the sanctity and dignity of the courts,[11] even when confronted with rudeness and insolence.[12] Respondents' breach of this mandate not only showed a paucity of professionalism but also unjustifiably embarrassed complainants. Hence, regardless of respondents' motivations, their transgression of the bounds of decency warrants the imposition of a penalty as provided by law.

WHEREFORE, respondents Ma. Theresa G. Zerrudo, Clerk of Court IV, and Salvacion D. Sermonia, Clerk IV, both of the Office of the Clerk of Court, Municipal Trial Court in Cities, Iloilo City, Iloilo, are found guilty of discourtesy and are hereby **REPRIMANDED** with a **WARNING** that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.,* concur.

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[10] *De Vera, Jr. v. Rimando*, *supra* note 8, at 32.

[11] *Id.*

[12] *In Re: Ms. Edna S. Cesar, RTC, Branch 171, Valenzuela City*, A.M. No. 00-11-526-RTC, September 16, 2002, 388 SCRA 703, 707-708.

FIRST DIVISION

[G.R. No. 158361. April 10, 2013]

INTERNATIONAL HOTEL CORPORATION, *petitioner, vs.* **FRANCISCO B. JOAQUIN, JR. and RAFAEL SUAREZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT.—** A question of law exists when there is doubt as to what the law is on a certain state of facts, but, in contrast, a question of fact exists when the doubt arises as to the truth or falsity of the facts alleged. A question of law does not involve an examination of the probative value of the evidence presented by the litigants or by any of them; the resolution of the issue must rest solely on what the law provides on the given set of circumstances. When there is no dispute as to the facts, the question of whether or not the conclusion drawn from the facts is correct is a question of law.

2. **CIVIL LAW; OBLIGATIONS; CONDITIONAL OBLIGATION; CONSTRUCTIVE FULFILLMENT OF A SUSPENSIVE CONDITION, WHEN PRESENT; REQUISITES.—** Article 1186 of the *Civil Code* refers to the constructive fulfillment of a suspensive condition, whose application calls for two requisites, namely: (*a*) the intent of the obligor to prevent the fulfillment of the condition, and (*b*) the actual prevention of the fulfillment. Mere intention of the debtor to prevent the happening of the condition, or to place ineffective obstacles to its compliance, without actually preventing the fulfillment, is insufficient.

3. **ID.; ID.; ID.; PRINCIPLE OF SUBSTANTIAL PERFORMANCE IS APPLICABLE WHEN THE NATURE OF THE BREACH OR OMISSION IS NOT MATERIAL.—** It is well to note that Article 1234 of the Civil Code applies only when an obligor admits breaching the contract after honestly and faithfully performing all the material elements thereof except for some

technical aspects that cause no serious harm to the obligee. IHC correctly submits that the provision refers to an omission or deviation that is slight, or technical and unimportant, and does not affect the real purpose of the contract. x x x By reason of the inconsequential nature of the breach or omission, the law deems the performance as substantial, making it the obligee's duty to pay. The compulsion of payment is predicated on the substantial benefit derived by the obligee from the partial performance. Although compelled to pay, the obligee is nonetheless entitled to an allowance for the sum required to remedy omissions or defects and to complete the work agreed upon. Conversely, the principle of substantial performance is inappropriate when the incomplete performance constitutes a material breach of the contract. A contractual breach is material if it will adversely affect the nature of the obligation that the obligor promised to deliver, the benefits that the obligee expects to receive after full compliance, and the extent that the non-performance defeated the purposes of the contract. Accordingly, for the principle embodied in Article 1234 to apply, the failure of Joaquin and Suarez to comply with their commitment should not defeat the ultimate purpose of the contract.

4. **ID.; ID.; ID.; WHEN A MIXED CONDITIONAL OBLIGATION IS DEEMED CONSTRUCTIVELY FULFILLED; CASE AT BAR.—** Considering that the agreement between the parties was not circumscribed by a definite period, its termination was subject to a condition – the happening of a future and uncertain event. The prevailing rule in conditional obligations is that the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event that constitutes the condition. x x x To secure a DBP-guaranteed foreign loan did not solely depend on the diligence or the sole will of the respondents because it required the action and discretion of third persons – an able and willing foreign financial institution to provide the needed funds, and the DBP Board of Governors to guarantee the loan. Such third persons could not be legally compelled to act in a manner favorable to IHC. There is no question that when the fulfillment of a condition is dependent partly on the will of one of the contracting parties, or of the obligor, and partly on chance, hazard or the will of a third person, the obligation is mixed. The existing rule in a mixed conditional obligation is that when

the condition was not fulfilled but the obligor did all in his power to comply with the obligation, the condition should be deemed satisfied. Considering that the respondents were able to secure an agreement with Weston, and subsequently tried to reverse the prior cancellation of the guaranty by DBP, we rule that they thereby constructively fulfilled their obligation.

5. **ID.; ID.; PRINCIPLE OF *QUANTUM MERUIT*; A CONTRACTOR IS ALLOWED TO RECOVER THE REASONABLE VALUE OF THE SERVICES RENDERED DESPITE THE LACK OF A WRITTEN CONTRACT; APPLICATION IN CASE AT BAR.—** It is notable that the confusion on the amounts of compensation arose from the parties' inability to agree on the fees that respondents should receive. Considering the absence of an agreement, and in view of respondents' constructive fulfillment of their obligation, the Court has to apply the principle of *quantum meruit* in determining how much was still due and owing to respondents. Under the principle of quantum meruit, a contractor is allowed to recover the reasonable value of the services rendered despite the lack of a written contract. The measure of recovery under the principle should relate to the reasonable value of the services performed. The principle prevents undue enrichment based on the equitable postulate that it is unjust for a person to retain any benefit without paying for it. Being predicated on equity, the principle should only be applied if no express contract was entered into, and no specific statutory provision was applicable. Under the established circumstances, we deem the total amount of ₱200,000.00 to be reasonable compensation for respondents' services under the principle of *quantum meruit*.

6. **ID.; DAMAGES; ATTORNEY'S FEES; IN THE ABSENCE OF FACTUAL AND LEGAL BASIS, THE AWARD THEREOF IS NOT PROPER.—** We sustain IHC's position that the grant of attorney's fees lacked factual or legal basis. Attorney's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. There should be factual or legal support in the records before the award of such fees is sustained. It is not enough justification for the award simply because respondents were compelled to protect their rights.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for petitioner.

Joaquin Adarlo & Caoile Law Offices for Francisco B. Joaquin, Jr.

D E C I S I O N

BERSAMIN, *J.*:

To avoid unjust enrichment to a party from resulting out of a substantially performed contract, the principle of *quantum meruit* may be used to determine his compensation in the absence of a written agreement for that purpose. The principle of *quantum meruit* justifies the payment of the reasonable value of the services rendered by him.

The Case

Under review is the decision the Court of Appeals (CA) promulgated on November 8, 2002,[1] disposing:

> WHEREFORE, premises considered, the decision dated August 26, 1993 of the Regional Trial Court, Branch 13, Manila in Civil Case No. R-82-2434 is AFFIRMED with Modification as to the amounts awarded as follows: defendant-appellant IHC is ordered to pay plaintiff-appellant Joaquin ₱700,000.00 and plaintiff-appellant Suarez ₱200,000.00, both to be paid in cash.
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> SO ORDERED.

Antecedents

On February 1, 1969, respondent Francisco B. Joaquin, Jr. submitted a proposal to the Board of Directors of the International Hotel Corporation (IHC) for him to render technical assistance

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[1] *Rollo*, pp. 38-49; penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justice Ruben T. Reyes (later Presiding Justice, and Member of the Court, but now retired) and Edgardo F. Sundiam (retired/deceased) concurring.

in securing a foreign loan for the construction of a hotel, to be guaranteed by the Development Bank of the Philippines (DBP).[2] The proposal encompassed nine phases, namely: (1) the preparation of a new project study; (2) the settlement of the unregistered mortgage prior to the submission of the application for guaranty for processing by DBP; (3) the preparation of papers necessary to the application for guaranty; (4) the securing of a foreign financier for the project; (5) the securing of the approval of the DBP Board of Governors; (6) the actual follow up of the application with DBP[3]; (7) the overall coordination in implementing the projections of the project study; (8) the preparation of the staff for actual hotel operations; and (9) the actual hotel operations.[4]

The IHC Board of Directors approved phase one to phase six of the proposal during the special board meeting on February 11, 1969, and earmarked ₱2,000,000.00 for the project.[5] Anent the financing, IHC applied with DBP for a foreign loan guaranty. DBP processed the application,[6] and approved it on October 24, 1969 subject to several conditions.[7]

On July 11, 1969, shortly after submitting the application to DBP, Joaquin wrote to IHC to request the payment of his fees in the amount of ₱500,000.00 for the services that he had provided and would be providing to IHC in relation to the hotel project that were outside the scope of the technical proposal. Joaquin intimated his amenability to receive shares of stock instead of cash in view of IHC's financial situation.[8]

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[2] Records, pp. 211-222.

[3] *Id.* at 221.

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

[5] Exhibits, pp. 51-53.

[6] *Id.* at 43.

[7] *Id.* at 47-48.

[8] *Id.* at 49-50.

On July 11, 1969, the stockholders of IHC met and granted Joaquin's request, allowing the payment for both Joaquin and Rafael Suarez for their services in implementing the proposal.[9]

On June 20, 1970, Joaquin presented to the IHC Board of Directors the results of his negotiations with potential foreign financiers. He narrowed the financiers to Roger Dunn & Company and Materials Handling Corporation. He recommended that the Board of Directors consider Materials Handling Corporation based on the more beneficial terms it had offered. His recommendation was accepted.[10]

Negotiations with Materials Handling Corporation and, later on, with its principal, Barnes International (Barnes), ensued. While the negotiations with Barnes were ongoing, Joaquin and Jose Valero, the Executive Director of IHC, met with another financier, the Weston International Corporation (Weston), to explore possible financing.[11] When Barnes failed to deliver the needed loan, IHC informed DBP that it would submit Weston for DBP's consideration.[12] As a result, DBP cancelled its previous guaranty through a letter dated December 6, 1971.[13]

On December 13, 1971, IHC entered into an agreement with Weston, and communicated this development to DBP on June 26, 1972. However, DBP denied the application for guaranty for failure to comply with the conditions contained in its November 12, 1971 letter.[14]

Due to Joaquin's failure to secure the needed loan, IHC, through its President Bautista, canceled the 17,000 shares of stock previously issued to Joaquin and Suarez as payment for their services. The latter requested a reconsideration of the cancellation, but their request was rejected.

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[9] *Id.* at 58-60.

[10] Records, pp. 209-210.

[11] TSN dated October 2, 1975, p. 58.

[12] Records, p. 236.

[13] *Id.* at 233.

[14] TSN dated July 8, 1977, pp. 20-21.

Consequently, Joaquin and Suarez commenced this action for specific performance, annulment, damages and injunction by a complaint dated December 6, 1973 in the Regional Trial Court in Manila (RTC), impleading IHC and the members of its Board of Directors, namely, Felix Angelo Bautista, Sergio O. Rustia, Ephraim G. Gochangco, Mario B. Julian, Benjamin J. Bautista, Basilio L. Lirag, Danilo R. Lacerna and Hermenegildo R. Reyes.[15] The complaint alleged that the cancellation of the shares had been illegal, and had deprived them of their right to participate in the meetings and elections held by IHC; that Barnes had been recommended by IHC President Bautista, not by Joaquin; that they had failed to meet their obligation because President Bautista and his son had intervened and negotiated with Barnes instead of Weston; that DBP had canceled the guaranty because Barnes had failed to release the loan; and that IHC had agreed to compensate their services with 17,000 shares of the common stock plus cash of ₱1,000,000.00.[16]

IHC, together with Felix Angelo Bautista, Sergio O. Rustia, Mario B. Julian and Benjamin J. Bautista, filed an answer claiming that the shares issued to Joaquin and Suarez as compensation for their "past and future services" had been issued in violation of Section 16 of the *Corporation Code*; that Joaquin and Suarez had not provided a foreign financier acceptable to DBP; and that they had already received ₱96,350.00 as payment for their services.[17]

On their part, Lirag and Lacerna denied any knowledge of or participation in the cancellation of the shares.[18]

Similarly, Gochangco and Reyes denied any knowledge of or participation in the cancellation of the shares, and clarified that they were not directors of IHC.[19] In the course of the

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[15] Records, pp. 5-14.

[16] TSN dated May 9, 1976, pp. 43-47.

[17] Records, pp. 48-59.

[18] *Id.* at 60-64.

[19] *Id.* at 65-74.

proceedings, Reyes died and was substituted by Consorcia P. Reyes, the administratrix of his estate.[20]

Ruling of the RTC

Under its decision rendered on August 26, 1993, the RTC held IHC liable pursuant to the second paragraph of Article 1284 of the *Civil Code*, disposing thusly:

WHEREFORE, in the light of the above facts, law and jurisprudence, the Court hereby orders the defendant International Hotel Corporation to pay plaintiff Francisco B. Joaquin, the amount of Two Hundred Thousand Pesos (₱200,000.00) and to pay plaintiff Rafael Suarez the amount of Fifty Thousand Pesos (₱50,000.00); that the said defendant IHC likewise pay the co-plaintiffs, attorney's fees of ₱20,000.00, and costs of suit.

IT IS SO ORDERED.[21]

The RTC found that Joaquin and Suarez had failed to meet their obligations when IHC had chosen to negotiate with Barnes rather than with Weston, the financier that Joaquin had recommended; and that the cancellation of the shares of stock had been proper under Section 68 of the *Corporation Code*, which allowed such transfer of shares to compensate only past services, not future ones.

Ruling of the CA

Both parties appealed.[22]

Joaquin and Suarez assigned the following errors, to wit:

DESPITE HAVING CORRECTLY ACKNOWLEDGED THAT PLAINTIFFS-APPELLANTS FULLY PERFORMED ALL THAT WAS INCUMBENT UPON THEM, THE HONORABLE JUDGE ERRED IN NOT ORDERING THAT:

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[20] *Id.* at 477.

[21] *Id.* at 591.

[22] *Id.* at 593-594, 598-599.

A. DEFENDANTS WERE UNJUSTIFIED IN CANCELLING THE SHARES OF STOCK PREVIOUSLY ISSUED TO PLAINTIFFS-APPELLANTS; AND

B. DEFENDANTS PAY PLAINTIFFS-APPELLANTS TWO MILLION SEVEN HUNDRED PESOS (*sic*) (₱2,700,000.00), INCLUDING INTEREST THEREON FROM 1973, REPRESENTING THE TOTAL OBLIGATION DUE PLAINTIFFS-APPELLANTS.[23]

On the other hand, IHC attributed errors to the RTC, as follows:

[I.]

THE LOWER COURT ERRED IN HOLDING THAT PLAINTIFFS-APPELLANTS HAVE NOT BEEN COMPLETELY PAID FOR THEIR SERVICES, AND IN ORDERING THE DEFENDANT-APPELLANT TO PAY TWO HUNDRED THOUSAND PESOS (₱200,000.00) AND FIFTY THOUSAND PESOS (₱50,000.00) TO PLAINTIFFS-APPELLANTS FRANCISCO B. JOAQUIN AND RAFAEL SUAREZ, RESPECTIVELY.

[II.]

THE LOWER COURT ERRED IN AWARDING PLAINTIFFS-APPELLANTS ATTORNEY'S FEES AND COSTS OF SUIT.[24]

In its questioned decision promulgated on November 8, 2002, the CA concurred with the RTC, upholding IHC's liability under Article 1186 of the *Civil Code*. It ruled that in the context of Article 1234 of the *Civil Code*, Joaquin had substantially performed his obligations and had become entitled to be paid for his services; and that the issuance of the shares of stock was *ultra vires* for having been issued as consideration for future services.

Anent how much was due to Joaquin and Suarez, the CA explained thusly:

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

[24] *Id.* at 107.

This Court does not subscribe to plaintiffs-appellants' view that defendant-appellant IHC agreed to pay them ₱2,000,000.00. Plaintiff-appellant Joaquin's letter to defendant-appellee F.A. Bautista, quoting defendant-appellant IHC's board resolutions which supposedly authorized the payment of such amount cannot be sustained. The resolutions are quite clear and when taken together show that said amount was only the "estimated maximum expenses" which defendant-appellant IHC expected to incur in accomplishing phases 1 to 6, not exclusively to plaintiffs-appellants' compensation. This conclusion finds support in an unnumbered board resolution of defendant-appellant IHC dated July 11, 1969:

> "Incidentally, it was also taken up *the necessity of giving the Technical Group a portion of the compensation* that was authorized by this corporation in its Resolution of February 11, 1969 considering that the assistance so far given the corporation by said Technical Group in continuing our project with the DBP and its request for guaranty for a foreign loan is 70% completed leaving only some details which are now being processed. It is estimated that ₱400,000.00 worth of Common Stock would be reasonable for the present accomplishments and to this effect, the President is authorized to issue the same in the name of the Technical Group, as follows:
>
> ₱200,000.00 in common stock to Rafael Suarez, as associate in the Technical Group, and ₱200,000.00 in common stock to Francisco G. Joaquin, Jr., also a member of the Technical Group.

It is apparent that not all of the ₱2,000,000.00 was allocated exclusively to compensate plaintiffs-appellants. Rather, it was intended to fund the whole undertaking including their compensation. On the same date, defendant-appellant IHC also authorized its president to pay plaintiff-appellant Joaquin ₱500,000.00 either in cash or in stock or both.

The amount awarded by the lower court was therefore less than what defendant-appellant IHC agreed to pay plaintiffs-appellants. While this Court cannot decree that the cancelled shares be restored, for they are without a doubt null and void, still and all, defendant-appellant IHC cannot now put up its own *ultra vires* act as an excuse to escape obligation to plaintiffs-appellants. Instead of shares of stock, defendant-appellant IHC is ordered to pay plaintiff-appellant

Joaquin a total of ₱700,000.00 and plaintiff-appellant Suarez ₱200,000.00, both to be paid in cash.

Although the lower court failed to explain why it was granting the attorney's fees, this Court nonetheless finds its award proper given defendant-appellant IHC's actions.[25]

Issues

In this appeal, the IHC raises as issues for our consideration and resolution the following:

I

WHETHER OR NOT THE COURT OF APPEALS IS CORRECT IN AWARDING COMPENSATION AND EVEN MODIFYING THE PAYMENT TO HEREIN RESPONDENTS DESPITE NON-FULFILLMENT OF THEIR OBLIGATION TO HEREIN PETITIONER

II

WHETHER OR NOT THE COURT OF APPEALS IS CORRECT IN AWARDING ATTORNEY'S FEES TO RESPONDENTS[26]

IHC maintains that Article 1186 of the *Civil Code* was erroneously applied; that it had no intention of preventing Joaquin from complying with his obligations when it adopted his recommendation to negotiate with Barnes; that Article 1234 of the *Civil Code* applied only if there was a merely slight deviation from the obligation, and the omission or defect was technical and unimportant; that substantial compliance was unacceptable because the foreign loan was material and was, in fact, the ultimate goal of its contract with Joaquin and Suarez; that because the obligation was indivisible and subject to a suspensive condition, Article 1181 of the *Civil Code*[27] applied,

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[25] *Rollo,* pp. 47-49.

[26] *Rollo,* p. 22.

[27] Article 1181. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.

under which a partial performance was equivalent to non-performance; and that the award of attorney's fees should be deleted for lack of legal and factual bases.

On the part of respondents, only Joaquin filed a comment,[28] arguing that the petition was fatally defective for raising questions of fact; that the obligation was divisible and capable of partial performance; and that the suspensive condition was deemed fulfilled through IHC's own actions.[29]

Ruling

We deny the petition for review on *certiorari* subject to the ensuing disquisitions.

1.
IHC raises questions of law

We first consider and resolve whether IHC's petition improperly raised questions of fact.

A question of law exists when there is doubt as to what the law is on a certain state of facts, but, in contrast, a question of fact exists when the doubt arises as to the truth or falsity of the facts alleged. A question of law does not involve an examination of the probative value of the evidence presented by the litigants or by any of them; the resolution of the issue must rest solely on what the law provides on the given set of circumstances.[30] When there is no dispute as to the facts, the question of whether or not the conclusion drawn from the facts is correct is a question of law.[31]

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[28] *Rollo,*pp. 143-144.

[29] Under the resolution dated October 22, 2007, the Court dispensed with the comment of Suarez following the manifestation by his daughter that he was already 83 years old and already residing in the United States of America.

[30] *Lorzano v. Tabayag*, G.R. No. 189647, February 6, 2012; *Tongonan Holdings and Development Corporation v. Escano, Jr.*, G.R. No. 190994, September 7, 2011, 657 SCRA 306, 314; *Republic v. Malabanan*, G.R. No. 169067, October 6, 2010, 632 SCRA 338, 345.

[31] *The Heirs of Nicolas S. Cabigas v. Limbaco*, G.R. No. 175291, July 27, 2011, 654 SCRA 643, 651-652.

Considering that what IHC seeks to review is the CA's application of the law on the facts presented therein, there is no doubt that IHC raises questions of law. The basic issue posed here is whether the conclusions drawn by the CA were correct under the pertinent laws.

2.
Article 1186 and Article 1234 of the *Civil Code* cannot be the source of IHC's obligation to pay respondents

IHC argues that it should not be held liable because: (*a*) it was Joaquin who had recommended Barnes; and (*b*) IHC's negotiation with Barnes had been neither intentional nor willfully intended to prevent Joaquin from complying with his obligations.

IHC's argument is meritorious.

Article 1186 of the *Civil Code* reads:

> Article 1186. The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment.

This provision refers to the constructive fulfillment of a suspensive condition,[32] whose application calls for two requisites, namely: (*a*) the intent of the obligor to prevent the fulfillment of the condition, and (*b*) the actual prevention of the fulfillment. Mere intention of the debtor to prevent the happening of the condition, or to place ineffective obstacles to its compliance, without actually preventing the fulfillment, is insufficient.[33]

The error lies in the CA's failure to determine IHC's intent to pre-empt Joaquin from meeting his obligations. The June 20, 1970 minutes of IHC's special board meeting discloses that Joaquin impressed upon the members of the Board that Materials Handling was offering more favorable terms for IHC, to wit:

x x x x x x x x x

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[32] Jurado, *Comments and Jurisprudence on Obligations and Contracts*, 2002, p. 122.

[33] Tolentino, *Civil Code of the Philippines*, Volume IV, 1991, p. 160.

At the meeting all the members of the Board of Directors of the International Hotel Corporation were present with the exception of Directors Benjamin J. Bautista and Sergio O. Rustia who asked to be excused because of previous engagements. In that meeting, the President called on Mr. Francisco G. Joaquin, Jr. to explain the different negotiations he had conducted relative to obtaining the needed financing for the hotel project in keeping with the authority given to him in a resolution approved by the Board of Directors.

Mr. Joaquin presently explained that he contacted several local and foreign financiers through different brokers and after examining the different offers he narrowed down his choice to two (2), to wit: the foreign financier recommended by George Wright of the Roger Dunn & Company and the offer made by the Materials Handling Corporation.

After explaining the advantages and disadvantages to our corporation of the two (2) offers specifically with regard to the terms and repayment of the loan and the rate of interest requested by them, he concluded that the offer made by the Materials Handling Corporation is much more advantageous because the terms and conditions of payment as well as the rate of interest are much more reasonable and would be much less onerous to our corporation. However, he explained that the corporation accepted, in principle, the offer of Roger Dunn, per the corporation's telegrams to Mr. Rudolph Meir of the Private Bank of Zurich, Switzerland, and until such time as the corporation's negotiations with Roger Dunn is terminated, we are committed, on one way or the other, to their financing.

It was decided by the Directors that, should the negotiations with Roger Dunn materialize, at the same time as the offer of Materials Handling Corporation, that the funds committed by Roger Dunn may be diverted to other borrowers of the Development Bank of the Philippines. **With this condition, Director Joaquin showed the advantages of the offer of Materials Handling Corporation**. Mr. Joaquin also informed the corporation that, as of this date, the bank confirmation of Roger Dunn & Company has not been received. In view of the fact that the corporation is racing against time in securing its financing, he recommended that the corporation entertain other offers.

After a brief exchange of views on the part of the Directors present and after hearing the clarification and explanation made by Mr. C. M. Javier who was present and who represented the Materials Handling Corporation, **the Directors present approved unanimously the recommendation of Mr. Joaquin to entertain the offer of Materials Handling Corporation.**[34]

Evidently, IHC only relied on the opinion of its consultant in deciding to transact with Materials Handling and, later on, with Barnes. In negotiating with Barnes, IHC had no intention, willful or otherwise, to prevent Joaquin and Suarez from meeting their undertaking. Such absence of any intention negated the basis for the CA's reliance on Article 1186 of the *Civil Code*.

Nor do we agree with the CA's upholding of IHC's liability by virtue of Joaquin and Suarez's substantial performance. In so ruling, the CA applied Article 1234 of the *Civil Code*, which states:

Article 1234. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.

It is well to note that Article 1234 applies only when an obligor admits breaching the contract[35] after honestly and faithfully performing all the material elements thereof except for some technical aspects that cause no serious harm to the obligee.[36] IHC correctly submits that the provision refers to an omission or deviation that is slight, or technical and unimportant, and does not affect the real purpose of the contract.

Tolentino explains the character of the obligor's breach under Article 1234 in the following manner, to wit:

In order that there may be substantial performance of an obligation, there must have been an attempt in good faith to perform, without

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[34] Records, pp. 209-210.

[35] *Mathis Implement Company v. Heath*, 2003 SD 72, 665 N.W.2d 90 (S.D. 2003).

[36] 17A Am Jur 2d, Contracts § 617.

any willful or intentional departure therefrom. The deviation from the obligation must be slight, and the omission or defect must be technical and unimportant, and must not pervade the whole or be so material that the object which the parties intended to accomplish in a particular manner is not attained. The non-performance of a material part of a contract will prevent the performance from amounting to a substantial compliance.

The party claiming substantial performance must show that he has attempted in good faith to perform his contract, but has through oversight, misunderstanding or any excusable neglect failed to completely perform in certain negligible respects, for which the other party may be adequately indemnified by an allowance and deduction from the contract price or by an award of damages. But a party who knowingly and wilfully fails to perform his contract in any respect, or omits to perform a material part of it, cannot be permitted, under the protection of this rule, to compel the other party, and the trend of the more recent decisions is to hold that the percentage of omitted or irregular performance may in and of itself be sufficient to show that there had not been a substantial performance.[37]

By reason of the inconsequential nature of the breach or omission, the law deems the performance as substantial, making it the obligee's duty to pay.[38] The compulsion of payment is predicated on the substantial benefit derived by the obligee from the partial performance. Although compelled to pay, the obligee is nonetheless entitled to an allowance for the sum required to remedy omissions or defects and to complete the work agreed upon.[39]

Conversely, the principle of substantial performance is inappropriate when the incomplete performance constitutes a material breach of the contract. A contractual breach is material if it will adversely affect the nature of the obligation that the

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[37] Tolentino, *supra,* note 29, pp. 276-277.

[38] Corbin on Contracts § 709 (One Volume Edition 1952) at p. 668.

[39] 17 Illinois Jurisprudence, Commercial Law § 5:9.

obligor promised to deliver, the benefits that the obligee expects to receive after full compliance, and the extent that the non-performance defeated the purposes of the contract.[40] Accordingly, for the principle embodied in Article 1234 to apply, the failure of Joaquin and Suarez to comply with their commitment should not defeat the ultimate purpose of the contract.

The primary objective of the parties in entering into the services agreement was to obtain a foreign loan to finance the construction of IHC's hotel project. This objective could be inferred from IHC's approval of phase 1 to phase 6 of the proposal. Phase 1 and phase 2, respectively the preparation of a new project study and the settlement of the unregistered mortgage, would pave the way for Joaquin and Suarez to render assistance to IHC in applying for the DBP guaranty and thereafter to look for an able and willing foreign financial institution acceptable to DBP. All the steps that Joaquin and Suarez undertook to accomplish had a single objective – to secure a loan to fund the construction and eventual operations of the hotel of IHC. In that regard, Joaquin himself admitted that his assistance was specifically sought to seek financing for IHC's hotel project.[41]

Needless to say, finding the foreign financier that DBP would guarantee was the essence of the parties' contract, so that the failure to completely satisfy such obligation could not be characterized as slight and unimportant as to have resulted in Joaquin and Suarez's substantial performance that consequentially benefitted IHC. Whatever benefits IHC gained from their services could only be minimal, and were even probably outweighed by whatever losses IHC suffered from the delayed construction of its hotel. Consequently, Article 1234 did not apply.

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[40] Corbin, *supra*, note 34, at p. 661.

[41] TSN dated May 9, 1975, p. 7.

3.

IHC is nonetheless liable to pay under the rule on constructive fulfillment of a mixed conditional obligation

Notwithstanding the inapplicability of Article 1186 and Article 1234 of the *Civil Code*, IHC was liable based on the nature of the obligation.

Considering that the agreement between the parties was not circumscribed by a definite period, its termination was subject to a condition – the happening of a future and uncertain event.[42] The prevailing rule in conditional obligations is that the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event that constitutes the condition.[43]

To recall, both the RTC and the CA held that Joaquin and Suarez's obligation was subject to the suspensive condition of successfully securing a foreign loan guaranteed by DBP. IHC agrees with both lower courts, and even argues that the obligation with a suspensive condition did not arise when the event or occurrence did not happen. In that instance, partial performance of the contract subject to the suspensive condition was tantamount to no performance at all. As such, the respondents were not entitled to any compensation.

We have to disagree with IHC's argument.

To secure a DBP-guaranteed foreign loan did not solely depend on the diligence or the sole will of the respondents because it required the action and discretion of third persons – an able and willing foreign financial institution to provide the needed funds, and the DBP Board of Governors to guarantee the loan. Such third persons could not be legally compelled to act in a manner favorable to IHC. There is no question that when the fulfillment of a condition is dependent partly on the will of one

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[42] Tolentino, *supra,* note 29, p. 144.

[43] *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 118180, September 20, 1996, 262 SCRA 245, 252.

of the contracting parties,[44] or of the obligor, and partly on chance, hazard or the will of a third person, the obligation is mixed.[45] The existing rule in a mixed conditional obligation is that when the condition was not fulfilled but the obligor did all in his power to comply with the obligation, the condition should be deemed satisfied.[46]

Considering that the respondents were able to secure an agreement with Weston, and subsequently tried to reverse the prior cancellation of the guaranty by DBP, we rule that they thereby constructively fulfilled their obligation.

4.
Quantum meruit should apply in the absence of an express agreement on the fees

The next issue to resolve is the amount of the fees that IHC should pay to Joaquin and Suarez.

Joaquin claimed that aside from the approved ₱2,000,000.00 fee to implement phase 1 to phase 6, the IHC Board of Directors had approved an additional ₱500,000.00 as payment for his services. The RTC declared that he and Suarez were entitled to ₱200,000.00 each, but the CA revised the amounts to ₱700,000.00 for Joaquin and ₱200,000.00 for Suarez.

Anent the ₱2,000,000.00, the CA rightly concluded that the full amount of ₱2,000,000.00 could not be awarded to respondents because such amount was not allocated exclusively to compensate respondents, but was intended to be the estimated *maximum* to fund the expenses in undertaking phase 6 of the scope of services. Its conclusion was unquestionably borne out by the minutes of the February 11, 1969 meeting, *viz*:

x x x x x x x x x

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[44] Tolentino, *supra*, note 29, p. 151.

[45] *Naga Telephone Co., Inc. v. Court of Appeals*, G.R. No. 107112, February 24, 1994, 230 SCRA 351, 371.

[46] *Smith Bell & Co. v. SoteloMatti*, No.L-16570, 44 Phil. 874, 880 (1922).

II

The [p]reparation of the necessary papers for the DBP including the preparation of the application, the presentation of the mechanics of financing, the actual follow up with the different departments of the DBP which includes the explanation of the feasibility studies up to the approval of the loan, conditioned on the DBP's acceptance of the project as feasible. **The estimated expenses for this particular phase would be contingent, *i.e.* upon DBP's approval of the plan now being studied and prepared, is somewhere around ₱2,000,000.00.**

After a brief discussion on the matter, the Board on motion duly made and seconded, unanimously adopted a resolution of the following tenor:

RESOLUTION NO. ______
(Series of 1969)

> "RESOLVED, as it is hereby RESOLVED, that **if the Reparations allocation and the plan being negotiated with the DBP is realized the estimated maximum expenses of ₱2,000,000.00 for this phase is hereby authorized** subject to the sound discretion of the committee composed of Justice Felix Angelo Bautista, Jose N. Valero and Ephraim G. Gochangco."[47] (Emphasis supplied)

Joaquin's claim for the additional sum of ₱500,000.00 was similarly without factual and legal bases. He had requested the payment of that amount to cover services rendered and still to be rendered to IHC separately from those covered by the first six phases of the scope of work. However, there is no reason to hold IHC liable for that amount due to his failure to present sufficient proof of the services rendered towards that end. Furthermore, his July 11, 1969 letter revealed that the additional services that he had supposedly rendered were identical to those enumerated in the technical proposal, thus:

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[47] Exhibits, p. 52.

The Board of Directors
International Hotel Corporation

Thru: Justice Felix Angelo Bautista
President & Chairman of the Board

Gentlemen:

I have the honor to request this Body for its deliberation and action on the fees for my services rendered and to be rendered to the hotel project and to the corporation. These fees are separate from the fees you have approved in your previous Board Resolution, since my fees are separate. I realize the position of the corporation at present, in that it is not in a financial position to pay my services in cash, therefore, I am requesting this Body to consider payment of my fees even in the form of shares of stock, as you have done to the other technical men and for other services rendered to the corporation by other people.

Inasmuch as my fees are contingent on the successful implementation of this project, I request that my fees be based on a percentage of the total project cost. The fees which I consider reasonable for the services that I have rendered to the project up to the completion of its construction is ₱500,000.00. I believe said amount is reasonable since this is approximately only ¾ of 1% of the total project cost.

So far, I have accomplished Phases 1-5 of my report dated February 1, 1969 and which you authorized us to do under Board Resolution of February 11, 1969. It is only Phase 6 which now remains to be implemented. For my appointment as Consultant dated May 12, 1969 and the Board Resolution dated June 23, 1969 wherein I was appointed to the Technical Committee, it now follows that I have been also authorized to implement part of Phases 7 & 8.

A brief summary of my accomplished work has been as follows:

1. **I have revised and made the new Project Study of your hotel project, making it bankable and feasible.**
2. **I have reduced the total cost of your project by approximately ₱24,735,000.00.**

3. **I have seen to it that a registered mortgage with the Reparations Commission did not affect the application with the IBP for approval to processing.**

4. **I have prepared the application papers acceptable to the DBP by means of an advance analysis and the presentation of the financial mechanics, which was accepted by the DBP.**

5. **I have presented the financial mechanics of the loan wherein the requirement of the DBP for an additional ₱19,000,000.00 in equity from the corporation became unnecessary.**

6. **The explanation of the financial mechanics and the justification of this project was instrumental in changing the original recommendation of the Investment Banking Department of the DBP, which recommended disapproval of this application, to the present recommendation of the Real Estate Department which is for the approval of this project for proceeding.**

7. **I have submittted to you several offers already of foreign financiers which are in your files. We are presently arranging the said financiers to confirm their funds to the DBP for our project,**

8. **We have secured the approval of the DBP to process the loan application of this corporation as per its letter July 2, 1969.**

9. **We have performed other services for the corporation which led to the cooperation and understanding of the different factions of this corporation.**

I have rendered services to your corporation for the past 6 months with no clear understanding as to the compensation of my services. All I have drawn from the corporation is the amount of ₱500.00 dated May 12, 1969 and personal payment advanced by Justice Felix Angelo Bautista in the amount of ₱1,000.00.

I am, therefore, requesting this Body for their approval of my fees. I have shown my good faith and willingness to render services to your corporation which is evidenced by my continued services in

the past 6 months as well as the accomplishments above mentioned. I believe that the final completion of this hotel, at least for the processing of the DBP up to the completion of the construction, will take approximately another 2 ½ years. In view of the above, I again reiterate my request for your approval of my fees. When the corporation is in a better financial position, I will request for a withdrawal of a monthly allowance, said amount to be determined by this Body.

Very truly yours,
(Sgd.)
Francisco G., Joaquin, Jr.[48]
(Emphasis supplied)

Joaquin could not even rest his claim on the approval by IHC's Board of Directors. The approval apparently arose from the confusion between the supposedly separate services that Joaquin had rendered and those to be done under the technical proposal. The minutes of the July 11, 1969 board meeting (when the Board of Directors allowed the payment for Joaquin's past services and for the 70% project completion by the technical group) showed as follows:

III

The Third order of business is the compensation of Mr. Francisco G. Joaquin, Jr. for his services in the corporation.

After a brief discussion that ensued, upon motion duly made and seconded, the stockholders unanimously approved a resolution of the following tenor:

RESOLUTION NO. ___
(Series of 1969)

"RESOLVED that Mr. Francisco G. Joaquin, Jr. be granted a compensation in the amount of Five Hundred Thousand (₱500,000.00) Pesos for his past services and services still to be rendered in the future to the corporation up to the completion of the Project. The President is given full discretion to discuss with Mr. Joaquin the manner of payment of said compensation, authorizing him to pay part in stock and part in cash."

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[48] Exhibits, pp. 49-50.

Incidentally, it was also taken up the necessity of giving the Technical Group a portion of the compensation that was authorised by this corporation in its Resolution of February 11, 1969 considering that the assistance so far given the corporation by said Technical Group in continuing our project with the DBP and its request for guaranty for a foreign loan is 70% completed leaving only some details which are now being processed. It is estimated that ₱400,000.00 worth of Common Stock would be reasonable for the present accomplishments and to this effect, the President is authorized to issue the same in the name of the Technical Group, as follows:

> ₱200,000.00 in Common Stock to Rafael Suarez, an associate in the Technical Group, and ₱200,000.00 in Common stock to Francisco G. Joaquin, Jr., also a member of the Technical Group.[49]

Lastly, the amount purportedly included services still to be rendered that supposedly extended until the completion of the construction of the hotel. It is basic, however, that in obligations to do, there can be no payment unless the obligation has been completely rendered.[50]

It is notable that the confusion on the amounts of compensation arose from the parties' inability to agree on the fees that respondents should receive. Considering the absence of an agreement, and in view of respondents' constructive fulfillment of their obligation, the Court has to apply the principle of *quantum meruit* in determining how much was still due and owing to respondents. Under the principle of *quantum meruit*, a contractor is allowed to recover the reasonable value of the services rendered despite the lack of a written contract.[51] The measure of recovery under the principle should

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[49] Exhibits, p. 59.

[50] See Article 1233, *Civil Code*.

[51] *Heirs of Ramon C. Gaite v. The Plaza, Inc.*, G.R. No. 177685, January 26, 2011, 640 SCRA 576, 594; *H.L. Carlos Construction , Inc. v. Marina Properties Corporation*, G.R. No. 147614, January 29, 2004, 421 SCRA 428, 439.

relate to the reasonable value of the services performed.[52] The principle prevents undue enrichment based on the equitable postulate that it is unjust for a person to retain any benefit without paying for it. Being predicated on equity, the principle should only be applied if no express contract was entered into, and no specific statutory provision was applicable.[53]

Under the established circumstances, we deem the total amount of ₱200,000.00 to be reasonable compensation for respondents' services under the principle of *quantum meruit*.

Finally, we sustain IHC's position that the grant of attorney's fees lacked factual or legal basis. Attorney's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. There should be factual or legal support in the records before the award of such fees is sustained. It is not enough justification for the award simply because respondents were compelled to protect their rights.[54]

ACCORDINGLY, the Court **DENIES** the petition for review on *certiorari*; and **AFFIRMS** the decision of the Court of Appeals promulgated on November 8, 2002 in C.A.-G.R. No. 47094 subject to the **MODIFICATIONS** that: (*a*) International Hotel Corporation is ordered to pay Francisco G. Joaquin, Jr. and Rafael Suarez ₱100,000.00 each as compensation for their services, and (*b*) the award of ₱20,000.00 as attorney's fees is deleted.

No costs of suit.

SO ORDERED.

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

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[52] *Department of Health v. C.V. Canchela & Associates*, G.R. Nos. 151373-74, November 17, 2005, 475 SCRA 218, 244.

[53] *Sazon v. Vasquez-Menancio*, G.R. No. 192085, February 22, 2012.

[54] *Benedicto v. Villaflores*, G.R. No. 185020, October 6, 2010, 632 SCRA 446, 455.

THIRD DIVISION

[G.R. No. 165863. April 10, 2013]

ALBERT CHUA, JIMMY CHUA CHI LEONG and SPOUSES EDUARDO SOLIS and GLORIA VICTA, *petitioners, vs.* **B.E. SAN DIEGO, INC.,** *respondent.*

[G.R. No. 165875. April 10, 2013]

LORENZANA FOOD CORPORATION, *petitioner, vs.* **B.E. SAN DIEGO, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE, REQUIRED TO BE ESTABLISHED IN CIVIL CASES; CONSTRUED.—** In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." It is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

2. **CIVIL LAW; PROPERTY; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); AMENDMENT AND ALTERATION OF THE CERTIFICATE OF TITLE; AN AMENDMENT/ALTERATION EFFECTED WITHOUT NOTICE TO THE AFFECTED OWNERS WOULD NOT BE IN COMPLIANCE WITH THE LAW OR THE REQUIREMENT OF DUE PROCESS.—** Section 108 of P.D. No. 1529, requires that all interested parties must be duly notified of the petitioner's application for amendment or alteration of the certificate of title. Relief under the said legal provision can only be granted if there is unanimity among the

parties, or that there is no adverse claim or serious objection on the part of any party in interest. Without doubt, San Diego, a party-in-interest with an adverse claim, was not duly notified of the said petition. The records reveal that despite their knowledge about its adverse claim over the subject properties, Jimmy and Albert never notified San Diego about their application or petition for amendment or alteration of title. This Court agrees with the CA that the lack of notice to San Diego placed in serious question the validity of the CFI judgment or its enforceability against it. An amendment/alteration effected without notice to the affected owners would not be in compliance with law or the requirements of due process.

3. **ID.; ID.; ID.; A PERSON CLAIMING A BETTER RIGHT TO THE PROPERTY MUST PROVE HIS ASSERTION BY CLEAR AND CONVINCING EVIDENCE AND IS DUTY BOUND TO IDENTIFY SUFFICIENTLY AND SATISFACTORILY THE PROPERTY; NOT PRESENT IN CASE AT BAR.—** Considering the critically defective certificates of title, there can be no clear evidence of overlapping. As the petitioners themselves judicially admitted, their respective certificates of title were defective because 1] the mother title, indicated therein, was OCT No. 1898, containing descriptions lifted from OCT No. (1020) RO-9, a reconstituted title; 2] the location of the properties as indicated in their titles was Barrio Talaba; and 3] the technical descriptions contained in their TCTs pertain to properties specified in OCT No. (1020) RO-9. These defects are very material that it cannot be argued that they are just clerical in nature. The flaws in their titles are major defects that cannot just be dismissed as typographical and innocuous. The defects pertain to the essential core of a title and definitely affect their integrity. Being significantly defective, these cannot serve as indubitable and valid bases for a clear and convincing delineation of the metes and bounds of the properties. x x x The apparent defects in the certificates of title prove that the petitioners are claiming the wrong property, as evidenced by the Certification of the Office of the Municipal Planning and Development Coordinator, Bacoor, Cavite. In other words, the petitioners are claiming ownership of parcels of land not in the location stated in their respective titles. x x x Basic is the rule that a person, who claims that he has a better right to the property or prays for

its recovery, must prove his assertion by clear and convincing evidence and is duty bound to identify sufficiently and satisfactorily the property.

APPEARANCES OF COUNSEL

Andres Marcelo Padernal Guerrero and Paras for petitioner in G.R. No. 165875.
Ismael R. Baterina for petitioners in G.R. No. 165863.
Serafin V. Cuevas for B.E. San Diego, Inc.

D E C I S I O N

MENDOZA, *J.*:

These cases were already disposed of with finality by the Court on April 22, 1994, but were reconsidered, remanded to the Court of Appeals *(CA)* for reevaluation and elevated to this Court again for another review.

It appears from the records that on April 22, 1994, **G.R. No. 105027**, a case for annulment of title, entitled *Lorenzana Food Corporation, Jimmy Chua Chi Leong, Albert Chua, and Spouses Eduardo Solis and Gloria Victa v. Court of Appeals and B.E. San Diego, Inc.,* was dismissed by the Court.[1] On June 20, 1994, the Court stood by its April 22, 1994 Decision by denying the motion for reconsideration filed by Lorenzana Food Corporation *(LFC)* and Spouses Eduardo Solis and Gloria Victa *(Spouses Solis)*. On November 16, 1994, the Court issued a resolution ordering the entry of judgment.

Insistent, LFC filed its Petition to Re-open Case while Jimmy Chua Chi Leong *(Jimmy)* and Albert Chua *(Albert)* filed their Second Motion for Reconsideration, both seeking to set aside the April 22, 1994 Decision and the June 20, 1994 and November 16, 1994 Resolutions of the Court.

[1] 231 SCRA 713. (Penned by then Associate Justice Reynato S. Puno and concurred in by Chief Justice Andres R. Narvasa, Associate Justice Teodoro R. Padilla, and Associate Justice Florenz D. Regalado.

On March 18, 1996, the Court issued its Resolution[2] favorably granting both pleadings stating that the "petitioners alleged new facts and submitted pertinent documents putting in doubt the correctness of our factual findings and legal conclusions,"[3] and ordering the remand of the case to the CA for another round of evaluation.

B.E. San Diego, Inc. *(San Diego)* filed an Omnibus Motion 1) to Recall the Resolution of March 18, 1996; and 2) to Refer the Case to the Court En Banc; and 3) to Set Case for Oral Argument; but the Court denied it on March 3, 1997.

On July 14, 2004, after considering all the evidence presented by the parties, the CA rendered another decision,[4] the dispositive portion of which reads:

> WHEREFORE, after a detailed consideration of the totality of evidence presented by both parties, this Court hereby holds, as follows:
>
> a.) The complaints of plaintiffs in Civil Cases Nos. 80-17 and BCV 81-18 are hereby DISMISSED.
>
> b) The Transfer Certificates of Title in the name of plaintiffs, that is, TCT Nos. 88467, 88468, 104248 and 104249, as well as the title of Spouses Solis, TCT No. 94389, are hereby CANCELLED on account of their spurious nature.
>
> c) The validity of the title of defendant B.E. San Diego is hereby UPHELD.
>
> No pronouncement as to costs.
>
> SO ORDERED.[5]

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[2] *Rollo* (G.R. No. 165875), pp. 414-423.

[3] *Id.* at 421.

[4] *Rollo* (G.R. No. 165863), p. 10-25. (Penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justice Regalado E. Maambong and Associate Justice Lucenito N. Tagle)

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

Again, not in conformity, the petitioners come to this Court with two separate petitions, challenging the July 14, 2004 Decision[6] of the CA and the October 29, 2004 Resolution,[7] denying their motion for reconsideration. The first petition, docketed as **G.R. No. 165863** was filed by Albert, Jimmy and Spouses Solis. The other one, docketed as **G.R. No. 165875**, was filed by LFC.

The Facts

Records show that three (3) civil cases for Quieting of Title involving tracts of land located in Bacoor, Cavite, were filed before the Regional Trial Court, Branch XIX, Bacoor, Cavite and docketed as

1. Civil Case BCV-80-17 entitled "*Lorenzana Food Corporation vs. B.E. San Diego, Inc., et al.*"
2. Civil Case BCV-81-18 entitled "*Jimmy Chua Chi Leong and Albert Chua vs. B.E. San Diego, Inc.*"
3. Civil Case BCV-83-79 entitled "*B.E. San Diego, Inc. vs. Eduardo Solis.*"

The factual and procedural antecedents of this long-drawn controversy were succinctly summarized by the Court in its April 22, 1994 Decision in G.R. No. 105027, entitled *Lorenzana Food Corporation v. Court of Appeals,* as follows:

> The objects of the controversy are several portions of a large tract of land located in the municipality of Bacoor, Cavite. The large tract of land is claimed to be originally owned by one Juan Cuenca *y* Francisco, who had it surveyed way back in 1911. The land itself is traversed by railroad tracks dividing the land into two (2) parcels. On February 21, 1922, Juan Cuenca was issued Original Certificate of Title No. 1020 (Exhibit "H") covering the two parcels, designated as Lots 1 and 2. Original Certificate of Title No. 1020 was later reconstituted as O.C.T. No. (1020) RO-9, containing the technical descriptions of Lots 1 and 2.

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[6] *Id.* at 10-25.

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

On April 14, 1928, a separate original certificate of title for Lot 1, referring to the parcel north of the railroad tracks, was issued to Juan Cuenca as O.C.T. No. (1898) RO-58 (Exhibit "Z"). Lot 1 itself was divided into thirteen (13) parcels, eleven (11) of which were described therein as situated in the barrios of Talaba, Zapote, and Malicsi, while two (2) parcels were situated in the poblacion of Bacoor, Cavite.

Upon the demise of Juan Cuenca, an action for partition of his properties was filed by Jose Cuenca, one of the surviving heirs. On February 21, 1969, a project of partition was approved by the Land Registration Commission (Exhibit "EEE"), and on April 10, 1969, the court ordered the Register of Deeds of the Province of Cavite to issue individual titles for twelve (12) parcels of Lot 2 (Exhibit "GG"). Three (3) parcels thereof: Lot 2-A, 2-K, and 2- L, were titled (T.C.T. Nos. 35963, 35973 and 35974, respectively) and registered in the name of Juan Cuenca (Exhibits "K", "TTT-1" and "TTT-2") on April 21, 1969. All three titles stated that the lands covered therein were originally registered as O.C.T. No. RO-9 on February 21, 1922 (Exhibits "K", "G" and "H").

Lot 2-A of Juan Cuenca was later subdivided into seven (7) lots in 1969. Of these seven subdivided parcels, one parcel (Lot 2-A-3) was adjudicated to his heir, Pura Cuenca, who was issued Transfer Certificate of Title No. 41505 on February 24, 1970 (Exhibit "L"). The said T.C.T. No. 41505 stated that the land covered therein was originally registered as Original Certificate of Title No. 1898 on April 14, 1928, and Transfer Certificate of Title No. RO-58-I was cancelled by virtue thereof. One other parcel (Lot 2-A-4) was adjudicated to another heir, Ladislaw Cuenca, who was issued Transfer Certificate of Title No. 41506 (Annex "M") on February 24, 1970. Likewise, T.C.T. No. 41506 stated that the land covered therein was originally registered as Original Certificate of Title No. 1898 on April 14, 1928, and that T.C.T. No. RO-58-I was cancelled by virtue thereof.

We interpose at this point the observation that although the transfer certificates of title issued to Pura and Ladislaw Cuenca stated that the lands covered therein were originally registered as O.C.T. No. 1898, hence, referring to Lot 1 located at the northern portion of Juan Cuenca's large tract of land, the technical description appearing in said transfer certificates of title were taken or lifted from O.C.T. No. (1020) RO-9 covering Lot 2, referring to the southern portion of the original tract of land.

In the meantime, Lots 2-K and 2-L (T.C.T. Nos. 35973 and 35974) in the name of Juan Cuenca, were consolidated and, in turn, were subdivided into eight (8) lots. Lot 4 was adjudicated to Pura Cuenca, who was issued T.C.T. No. 41498 (Exhibit "TTT-5") on February 24, 1970. Lot 3 was adjudicated to Ladislaw Cuenca, who was issued T.C.T. No. 41497 (Exhibit "TTT-4") on the same date. Lot 6 was adjudicated to Jose Cuenca, who was issued T.C.T. No. 41501 with the inscription therein that the land covered by said titles were originally registered as O.C.T. No. 1898 on April 14, 1928, and that T.C.T. No. RO-58-I was cancelled thereby, referring to Lot 1 of the original tract. However, the technical descriptions inscribed therein were lifted from O.C.T. No. (1020) RO-9 covering Lot 2 of the original tract of land.

Upon the deaths of Pura and Ladislaw Cuenca, the administrators of their respective testate estates were given authority by the court to dispose of some parcels of land. Lot 2-A-3 of Pura Cuenca covered by T.C.T. No. 41505, and Lot 2-A-4 of Ladislaw[a] Cuenca covered by T.C.T. No. 41506, were eventually sold to herein appellee Lorenzana Food Corporation on February 4, 1977 (Annexes, "OOO", "CCC" and "UU-1"). Transfer Certificate of Title No. 41505 was cancelled by T.C.T. No. 88468 issued to, and registered in favor of, Lorenzana Food Corporation (Annex "D"). Transfer Certificate of Title No. 41506 was cancelled by T.C.T. No. 88467 (Exhibit "2") on February 18, 1977. Both T.C.T. Nos. 88467 and 88468 also stated that the lands covered therein were originally registered as O.C.T. No. 1898, but contained portions of the technical description appearing in O.C.T. No. (1020) RO-9.

On the other hand, Lot 3 of the consolidated Lots 2-K and 2-L, as part of the testate estate of Ladislaw Cuenca, was sold to herein appellee Jimmy Chua Chi Leong. Transfer Certificate of Title No. 104248 (Exhibit "A") was issued to and registered in his name on May 9, 1979, cancelling T.C.T. No. 41497. Lot 4, being part of the testate estate of Pura Cuenca, was sold to Albert Chua, who was issued T.C.T. No. T-104249 on May 9, 1979 (Exhibit "B"), cancelling T.C.T. No. 41498. Lot 6 was sold by Jose Cuenca to Eduardo Solis, who was issued T.C.T. No. T-94389, cancelling T.C.T. No. T-41501. Common to the titles of Jimmy Chua Ching Leong, Albert Chua and Eduardo Solis is the inscription that the lands covered therein were originally registered as O.C.T. No. 1898 on April 14, 1928.

Another common feature of all these succeeding titles is the description that the property therein described is situated in the barrio of Talaba, Bacoor, Cavite. Looking back, the records show that the original tract of land owned by Juan Cuenca was bounded on the north by Calle Real de Talaba, on the south and southeast by Sapa Niog, and on the west, by Calle Niog. As mentioned earlier, the land was divided into two (2) by the railroad tracks running from and going to east and west. The area located north of the railroad tracks, bordering Calle Real de Talaba was later titled as O.C.T. (1898) 50-58, said parcel straddling the barrios of Talaba, Zapote and Milicsi, as well as the poblacion proper.

On the other hand, the portion located south of the railroad tracks was designated as Lot 2. Traversing this land is what used to be a national road, now called the Aguinaldo Highway, linking Tagaytay City to Metro Manila. This parcel was later titled as O.C.T. No. (1020) RO-9. The sub-divided parcels aforementioned, by their technical descriptions are located at the south to southeast portions of Lot 2, bounded on the south, by Sapa Niog and Calle Niog on the west. Nevertheless, the said parcels were described as situated in the barrio of Talaba.

The controversy arose when herein appellees learned that the same parcels were being claimed by herein appellant, B.E. San Diego, Incorporated. B.E. San Diego's claim was based on two (2) titles registered in its name. The first parcel was covered under T.C.T. No. T-17621 (Annex "C") issued on March 2, 1966, which originated from O.C.T. No. 0-490 registered on December 22, 1965. The said title described "a parcel of land Plan Psu-211245, pursuant to L.R.C. Case No. N-467, (LRC) Record No. N-27923, situated in the Barrio of Niog, Municipality of Bacoor." The second parcel was titled under O.C.T. No. 0-644, registered on January 5, 1967, pursuant to LRC Case No. N-557, (LRC) Record No. N-30647, describing "a parcel of land (Lot 1, Plan Psu-223920), situated in Barrio of Niog" (Exhibit "9").

All parties resolutely seeking to enforce their respective claims over the subject properties, three (3) civil suits for quieting of title were filed before the Regional Trial Court of Bacoor, Cavite, Branch XIX. The first case, docketed as BCV-80-17 was filed by Lorenzana Food Corporation *versus* B.E. San Diego, Incorporated, and other defendants. The second civil case, BCV-81-18, was filed by Jimmy Chua Chi Leong and Albert Chua, also against B.E. San Diego, Inc.,

et al., as defendants. The last case, BCV-83-79 was filed by B.E. San Diego, Inc., against spouses Eduardo and Gloria Solis, as defendants.

In Civil Case No. BCV-80-17, Lorenzana Food Corporation claimed exclusive ownership over the two (2) parcels covered by T.C.T. Nos. 88467 and 88468, issued to it on February 18, 1977. Lorenzana Food Corporation alleged that it took immediate possession of the said property and even contracted to prepare the land for development. It is alleged that it was only years later that Lorenzana Food Corporation learned that B.E. San Diego, Inc. was claiming ownership over portions of the said parcels by virtue of O.C.T. No. 0-644. It is Lorenzana Food Corporation's contention that the O.C.T. No. 0-644, in B.E. San Diego's name is null and void because Lorenzana Food Corporation's title emanated from an O.C.T. issued more than thirty-nine (39) years prior to the issuance of B.E. San Diego's original certificate of title.

In answer, B.E. San Diego countered that it and its predecessors-in-interest have been in the open continuous and adverse possession in concept of owner of the subject property for more than fifty (50) years prior to Lorenzana Food Corporation's purchase of the two (2) parcels. It also argued that Original Certificate of Title No. 0-644 was not null and void since it was issued upon application and proper proceedings in (LRC) Case No. N-557 and N-30647, before the then Court of First Instance of Cavite. Pursuant to its issuance, the said property was declared by B.E. San Diego for tax purposes (Exhibits "Q" and "5-F") since June 22, 1966.

B.E. San Diego claims it bought the subject property from Teodora Dominguez on February 6, 1966 (Exhibit "5-D") and the absolute deed of sale was submitted in (LRC) Case No. N-577. It was further argued that Lorenzana Food Corporation was erroneously claiming the subject property because Lorenzana's titled property is described to be located in Barrio Talaba, while B.E. San Diego's property is situated in Barrio Niog. Denying that Lorenzana Food Corporation's predecessor-in-interest had been in possession of the subject property, B.E. San Diego claimed that in 1979, by force, intimidation, threat, stealth, and strategy, Lorenzana Food Corporation entered and occupied the subject property, despite barbed wire fencing with warning signs, and security guards posted by B.E. San Diego.

In Civil Case No. BCV-81-18, plaintiffs Jimmy Chua Chi Leong and Albert Chua claim ownership over the parcels they respectively purchased from the heirs of Juan Cuenca, as evidenced by Transfer Certificates of Titles Nos. T-104248 and T-104249, issued on January 20 and 30, 1979, respectively. B.E. San Diego, for its part, claimed the property by virtue of Transfer Certificate of Title No. T-17621 issued on March 2, 1966, which cancelled Original Certificate of Title No. 0-490 originally issued to Teodora Dominguez, who sold the same property to B.E. San Diego. Again, B.E. San Diego argued that, as appearing in their respective titles, Jimmy Chua Chi Leong's and Albert Chua's properties were located in Barrio Talaba while that of B.E. San Diego was located in Barrio Niog.

The last case, BCV-83-79 was initiated by B.E. San Diego against the Solis spouses who, according to the former, unlawfully entered a portion of its property titled under Transfer Certificate of Title No. T-17621. The Solis spouses, meanwhile, claim the said portion by virtue of their Transfer Certificate of Title No. T-94389, issued pursuant to their purchase of said portion from Jose Cuenca.[8]

The Ruling of the RTC

On July 15, 1986, after a long trial, the RTC handed down its Joint Decision[9] in favor of LFC, Jimmy, Albert, and Spouses Solis, and declared the titles of San Diego null and void. The pertinent portions of the RTC decision reads:

Proceeding in the light of the foregoing evidence, the Court finds that the three lots of San Diego which are presently covered by O.C.T. No. 0-644 and TCT No. T-17621, are *within* Lot 2, Psu-2075 and *overlapped* the lots in question of Lorenzana, Chua and Solis. The fact that it appears in the titles of San Diego that its lots are situated in Niog, and not in Talaba, cannot prevail over the findings in the verification surveys conducted by the Bureau of Lands. Aside from this, these two barrios are adjoining and that the land described in plan Psu-2075 of Cuenca is bounded by Calle Real de Talaba and Calle Niog and Sapa Niog.

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[8] 231 SCRA 713, 715-719. Quoting from the December 24, 1991 CA Decision in CA-G.R. CV No. 13540.

[9] *Rollo* (G.R. No. 165875), pp. 164-193.

Since the titles of Lorenzana, Chua and Solis emanated from the title of Juan Cuenca *y* Francisco issued on February 21, 1922, these titles should prevail over O.C.T. No. 0-644 issued on January 5, 1967 and O.C.T. No. 0-490 allegedly issued on December 22, 1965, not to mention the fact that the authenticity of O.C.T. No. 0-490 of Teodora Dominguez predecessor-in-interest of San Diego, is questionable, for the original thereof appears to be registered under the name of Antonio Sentero. The rule is well-settled that a decree ordering the registration of a particular parcel of land is a bar to a future application for registration covering or affecting said lot (Legarda *vs.* Saleeby, 31 Phil 590). Thus, where two certificates of title are issued to different persons covering the same land in whole or in part, the *earlier in date must prevail* as between original parties and in case of successive registration where more than one certificate is issued over the land, the person holding under the prior certificate is entitled to the land against the person who rely on the second certificate (De Villa *vs.* Trinidad, L-24918, March 20, 1968, 22 SCRA 1167, Gatioon *vs.* Gaffud, L-21953, March 28, 1969, 27 SCRA 769).[10]

x x x x x x x x x

Thereafter, San Diego filed an appeal with the CA, which was docketed as CA-G.R. CV No. 13540, based on the following assignments of error:

I The trial court erred in finding that the three lots of the appellant are within and overlapped the lots in question of the appellees.

II The trial court erred in declaring "null and void" and ordering the cancellation of appellant's titles and ordering to pay appellees sums of money, attorney's fees and costs.

III The trial court erred in not ordering judgment for the appellant.[11]

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[10] *Id.* at 189-191.

[11] *Id.* at 92-93.

First Ruling of the CA

On December 24, 1991, the CA rendered its Decision[12] in CA-G.R. CV No. 13540, *reversing* the RTC Decision. The CA ruled that the titles held by LFC, Jimmy, Albert, and Spouses Solis were defective while those of San Diego showed no defects. Hence, it ordered the nullification and cancellation of the TCTs in the names of LFC (TCT Nos. T-88467[13] and T-88468[14]), Jimmy and Albert (TCT Nos. T-104248[15] and T-104249[16]) and Spouses Solis (TCT No. T-94389); and dismissed Civil Case No. BCV-80-17 and Civil Case No.BCV-81-18 ordering Spouses Solis to vacate the subject premises. The relevant portions of the CA decision read:

First – In this case, where there is a so-called "overlapping" or "overlaying" of titles, the best evidence are the certificates of title themselves. While the titles of all the contending parties, at first blush, seem to have been regularly issued, a closer examination bares the peculiar common defects in the titles of the appellees. These defects are:

a. The appellees' titles are annotated with the inscription that the land described therein was originally registered under OCT No. 1898, but the technical descriptions found therein were lifted from OCT No. (1020) RO-9.

b. The appellees' titles state that the properties are located in the barrio of Talaba when the properties described therein are situated in the Barrio of Niog.

On the other hand, the appellant's titles show no defect. x x x

x x x x x x x x x

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[12] *Id.* at 194-208; penned by Associate Justice Venancio D. Aldecoa and concurred in by Associate Justice Jose C. Campos and Associate Justice Filemon H. Mendoza.

[13] *Rollo* (G.R. No. 165863), pp. 205-206.

[14] *Id.* at 199-200.

[15] *Id.* at 185-186.

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

Thus, even though the appellees can trace their titles as having been originally registered on February 21, 1922, the succeeding titles, issued on February 24, 1970, were all defective. Why no effort was exerted to correct the alleged "clerical errors" on the part of the appellees' predecessors-in-interest, has not been explained. x x x

Second – Not only were the appellants' titles not blemished by any defect and were regularly issued, its valid title was coupled with open, adverse and continuous possession of the subject property. x x x

Besides, the land possessed by the appellant is, as described in its titles, in the barrio of Niog. On the other hand, the appellees' titles describe their properties as located in the barrio of Talaba, but the land they claim is located in Barrio Niog. The appellant is where it should be, as decreed in its titles. The appellees are claiming properties that are not in the location stated in their respective titles.

x x x x x x x x x

Third – the lower court largely relied on the testimony and recommendation of the Bureau of Lands surveyor who was ordered to conduct a verification survey. The surveyor's report declared that the appellant's property overlapped those of the appellees. Upon questioning, however, the same surveyor admitted that his verification survey was just based on the technical descriptions appearing in the opposing parties' titles. x x x

The Bureau of Lands' verification and recommendation, therefore, does not prove that only the appellees have the right to claim the property, to the exclusion of others. The survey did not even pretend to resolve the issue of whether or not the titles issued to the appellees were perfect or defective. x x x[17]

Not in conformity, LFC, Jimmy, Albert and Spouses Solis moved for reconsideration but their motions were denied by the CA.

<u>First Petition to the Court</u>

On June 5, 1992, LFC, Jimmy, Albert and Spouses Solis filed a petition for review on *certiorari* before this Court, docketed as G.R. No. 105027, raising the following issues:

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[17] *Rollo* (G.R. No. 165875), pp. 203-206.

I The Honorable Court of Appeals committed reversible error of law and grave abuse of discretion in reversing the decision of the lower court to uphold the validity of the land titles of private respondent in spite of the fact that these were issued some forty-six (46) years later than the titles of petitioners and their predecessors-in-interest.

II The Honorable Court of Appeals committed reversible error of law and grave abuse of discretion in giving more significance to the annotation than the technical description in identifying the lots in dispute.

III The Honorable Court of Appeals committed reversible erroneous conclusion of facts, amounting to reversible error of law and grave abuse of discretion in holding in its resolution denying petitioners' motion for reconsideration that petitioners failed to make proper correction of their titles.

IV The Honorable Court of Appeals committed grave abuse of discretion when it failed to pass judgment on the liabilities of the estates of Pura Cuenca and Ladislao Cuenca, predecessors-in-interest (sellers) of the petitioners.

On April 22, 1994, the Court *dismissed* the petition and subsequently issued Resolutions, dated June 20, 1994 and November 16, 1994, denying with finality the petitioners' motions for reconsideration.

On March 18, 1996, however, the Court issued a Resolution[18] granting 1) LFC's Petition to Re-open Case; and 2) Jimmy and Albert's Second Motion for Reconsideration and setting aside the Decision, dated April 22, 1994, and the Resolutions dated June 20, 1994 and November 16, 1994. The Court, thus, declared:

Petitioners now assail the correctness of the factual bases of our Decision, *i.e.*, that their titles facially contain irregularities while

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[18] *Rollo* (G.R. No. 165875), pp. 414-423.

the titles of private respondent are unblemished. They also deny that Barrios Talaba and Niog are one and a half kilometers away from each other.

To prove their claim, petitioners have attached the following documents:

(1) certified true copies of the titles of Juan Cuenca, petitioners and private respondents;

(2) a historical study of how San Diego acquired its titles (OCT No. 0-490 and OCT No. 0-644) and a certification dated August 29, 1994 from the Register of Deeds that the original of OCT No. 0-490 in the name of Teodora Dominguez, San Diego's predecessor, did not exist in the Registry file and did not form part of their records;

(3) a statement that OCT No. 0-491 (not OCT No. 490) in the name of Teodora Dominguez now exists in the records of the Register of Deeds of Cavite with a true copy of said OCT No. 0-491 certified on February 24, 1995;

(4) a certification and sketch from the Land Registration Authority that the lot described in the alleged OCT No. 0-490 of Teodora Dominguez sits upon and encroaches on the National Highway (Aguinaldo Highway);

(5) survey, sketch plans and certifications from the Land Registration Authority indicating that the land in OCT No. 0-644 of San Diego overlaps with the land covered by OCT No. 1020 (RO-9) of Juan Cuenca;

(6) flow charts tracing the subdivision and partition of Cuenca's land into the present parcels of land purchased by petitioners from the heirs of Cuenca himself; the partitions were made with approval of the court;

(7) a historical outline and graphic study of the transactions over Cuenca's land which shows how petitioners came to purchase their lots;

(8) a factual representation that OCT No. 1020 (RO-9), Cuenca's title, and OCT No. 1898 (RO-58) inscribed in petitioners' titles cover different parcels of land; and that OCT No. 1898 is not the same as OCT Nos. 0-644 and 0-490 of San Diego;

(9) a certification by the Municipal Planning and Development Coordinator of Bacoor, Cavite that Barrio Niog and Barrio Talaba are actually adjacent to each other;

(10) order dated January 26, 1981 of the Court of First Instance, Branch 5, Bacoor, Cavite, decreeing the correction of the Chuas' transfer certificates of title. The court declared that the certification in the face of the Chuas' titles was an error and, therefore, ordered its amendment to reflect the true fact that the titles were derived from OCT No. 1020 (RO-9) of Cuenca "originally registered on the 21st day of February, in the year nineteen hundred and twenty two x x x" not OCT 1898 as originally inscribed therein. Per annotation in the second page of the Chuas' titles, the order of the Court was recorded and the correction duly made on January 29, 1981 prior to the institution by the Chuas of Civil Case No. BCV-81-18 against San Diego.

The general rule is that no party is allowed a second motion for reconsideration of a final order or judgment. After the promulgation of our Decision, however, petitioners alleged new facts and submitted pertinent documents putting in doubt the correctness of our factual findings and legal conclusions. We cannot be insensitive to these allegations for this Court is committed to render justice on the basis of the truth.

Pursuant to this postulate, this Court has held time and again that rules of procedure are but mere tools designed to facilitate the attainment of justice. They are not the end in themselves. Under extreme circumstances, we have suspended the rules and excepted a particular case from their operation to respond to the higher interests of justice. In the cases at bar, the location of the contested lots, the number of people affected and the impact of the litigation on the peace of the community justify its reopening to give all the parties full opportunity to prove their claims.[19]

On March 3, 1997, the Court issued another resolution denying San Diego's Omnibus Motion 1) to Recall the Resolution of March 18, 1996; 2) to Refer the Case to the Court *En Banc*; and 3) to Set Case for Oral Argument.

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[19] *Id.* at 419-422.

Back to the Court of Appeals

In accordance with this Court's Resolutions, dated March 18, 1996 and March 3, 1997, the CA was tasked to receive evidence and resolve the following issues:

I Whether or not there is overlapping of titles of the petitioners with those of the private respondent; and

II Whether or not the apparent defective transfer certificates of title of the petitioners, allegedly coming from Original Certificate of Title No. 1020, can withstand the rigors of legal scrutiny.

Second Ruling of the CA

On July 14, 2004, after considering all the evidence presented by the parties, the CA rendered another decision again in favor of San Diego, the dispositive portion of which reads:

WHEREFORE, after a detailed consideration of the totality of evidence presented by both parties, this Court hereby holds, as follows:

a. The complaints of plaintiffs in Civil Cases Nos. 80-17 and BCV 81-18 are hereby **DISMISSED**.

b) The Transfer Certificates of Title in the name of plaintiffs, that is, TCT Nos. 88467, 88468, 104248 and 104249, as well as the title of Spouses Solis, TCT No. 94389, are hereby **CANCELLED** on account of their spurious nature.

c) The validity of the title of defendant B.E. San Diego is hereby **UPHELD**.

No pronouncement as to costs.

SO ORDERED.[20]

The CA composed of a new set of Justices,[21] again found that *first*, there was no overlapping of titles between those of

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[20] *Rollo* (G.R. No. 165863), pp. 24-25.

[21] *Id.* at 10-25. (Penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justice Regalado E. Maambong and Associate Justice Lucenito N. Tagle)

the petitioners' and those of the respondent because the subject properties described in the separate titles were located in separate and different barrios. The certificates of title of the petitioners indicated that the properties covered therein were located in Barrio Talaba, Bacoor, Cavite, while those of the respondent showed that its properties were located in Barrio Niog. Barrio Talaba and Barrio Niog were two separate and distinct localities whose boundaries were clearly defined and delineated.

Moreover, copies of the application for registration and confirmation of title filed by Juan Cuenca *(Juan)* before the then Court of First Instance *(CFI)* of the Province of Cavite specifically indicated that the properties applied for were located in Barrios Talaba, Zapote, Malicsi, and Poblacion in Bacoor, Cavite. The notices of hearing for his application likewise identified the subject lots as located in the aforementioned barrios, without any mention of a property in Barrio Niog.

Second, the CA stated that, except for TCT Nos. 104248 and 104249, the titles relied upon by the petitioners all indicated that they came from OCT No. 1898.[22] It appeared, however, that the technical descriptions of the properties therein referred to the parcels of land previously covered by OCT No. (1020) RO-9. On the other hand, the survey plans presented by San Diego consistently showed that its property was located in Barrio Niog and these survey plans appeared to be regular and in order.

Third, the CA noted that TCT Nos. 104248 and 104249 of Jimmy and Albert, respectively, contained alterations, in violation of Section 108 of Presidential Decree *(P.D.)* No. 1529, considering that the number 1898 in the OCT was altered to reflect R0-9. Additionally, Jimmy and Albert failed to notify San Diego, as a party-in-interest, when they filed a petition for correction of entries in their respective titles before the then CFI of Cavite, despite their knowledge of its claim over the subject property.

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[22] *Rollo* (G.R. No. 165863), pp. 209-216.

Fourth, the CA ruled that the documents presented by the petitioners were not exactly "newly discovered evidence" because all of them could have been previously obtained and presented at the hearing before the lower court. The petitioners failed to exert their best efforts to obtain these already available documents to buttress their claim.

Back to the Court

Obviously not satisfied with the July 14, 2004 CA Decision, the petitioners again filed separate petitions before this Court. The first petition, entitled *Albert Chua, Jimmy Chua Chi Leong and Spouses Eduardo Solis and Gloria Victa v. B.E. San Diego, Inc.,* was docketed as G.R. No. 165863. The second, entitled *Lorenzana Food Corporation v. B.E. San Diego, Inc.,* was docketed as G.R. No. 165875.

On March 9, 2005, upon motion of the parties, the Court issued a Resolution[23] directing the consolidation of G.R. No. 165875 with G.R. No. 165863.

On June 6, 2007, the Court issued the Resolution[24] denying due course to the petitions.

On March 5, 2008, acting on the separate motions for reconsideration of the petitioners and other supplemental pleadings, the Court resolved to grant the motions, reinstate the petitions and require the parties to submit their respective memoranda.[25]

In effect, this disposition is a review of the Court's April 22, 1994 Decision in G.R. No. 105027.[26]

In their respective petitions, LFC, Jimmy, Albert, and Spouses Solis anchored their prayer for the reversal of the CA decision on the following:

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[23] *Rollo* (G.R. No. 165875), p. 243.

[24] *Rollo* (G.R. No. 165863), p. 317.

[25] *Id.* at 428.

[26] *Lorenzana Food Corp. v. CA*, 231 SCRA 713.

For Albert Chua, Jimmy Chua and Spouses Solis (G.R. No. 165863):

ASSIGNMENT OF ERRORS

I

The Honorable Court of Appeals committed reversible error of law, erroneous conclusion of facts and grave abuse of discretion when it upheld the validity of the titles of San Diego considering that the said titles cover tracts of land that ha[ve] been previously registered and titled under the name Juan Cuenca *y* Francisco.

II

The Honorable Court of Appeals committed reversible error of law and grave abuse of discretion in ruling that the two titles of San Diego are unblemished by any defect.

III

The Honorable Court of Appeals committed reversible erroneous conclusion of facts amounting to grave abuse of discretion in holding [that] OCT 1898 RO-58 is a separate title for Lot-1 of OCT 1020 RO-9 that was issued on April 14, 1928.

IV

The Honorable Court of Appeals committed reversible erroneous conclusion of facts, amounting to reversible error of law and grave abuse of discretion, in holding that the titles of the petitioners originated from O.C.T. 1898 RO-58.

V

The Honorable Court of Appeals committed reversible error of law and grave abuse of discretion in holding that the titles of the petitioners are defective because the technical description of the land stated therein came from OCT 1020 RO-9 and not from OCT 1898 RO-58.

VI

The Honorable Court of Appeals committed reversible error of law and grave abuse of discretion in holding that the correction made on the titles of Jimmy Chua and Albert Chua are null and void.

For LFC (G.R. No. 165875):

GROUNDS

A

The Court of Appeals grievously committed a reversible error in ruling that petitioner failed to establish a better right to the subject properties even after petitioner was able to trace its title from one issued prior to the title relied upon by respondent.

1. **Petitioner established the identity of the Subject Properties and that they are overlapped by the property described in respondent's OCT No. O-644.**
2. **Petitioner clearly established its ownership of the Subject Properties.**

B

The Court of Appeals grievously committed a reversible error in ruling that respondent's title rests on solid support despite the latter's failure to establish how it acquired ownership over the property covered by OCT No. O-644.

C

The Court of Appeals grievously committed a reversible error when it relied upon a superficial comparison of the respective certificates of title of the parties in concluding that respondent had superior title to the subject properties.

1. **The presence or absence of errors on the face of the certificates of title is irrelevant in an action for quieting of title.**
2. **In ruling that there was no overlapping of titles in this case, the Court of Appeals disregarded the principle that it is the description of the boundaries of a property that is essential for its identification.**
3. **The errors in petitioner's certificates of title that were highlighted in the Assailed Decision were adequately explained.**

D

Petitioner is an innocent purchaser for value entitled to protection under the law.

Petitioners' consolidated arguments

The petitioners argue that their land titles should prevail over those of the respondent because the lands covered by their titles were previously registered under the name of their predecessor-in-interest, Juan, as early as February 1922. Specifically, OCT No. (1020)-RO-9, from which they derived their titles, was originally registered on February 21, 1922 in the name of Juan while those of the respondent were registered only in 1965 and 1967, respectively.

The subject properties are Lots 2-A-3 (TCT No. T-88468) and 2-A-4 (TCT No. T-88467) of plan Psd-110980. The technical descriptions found in TCT Nos. T-88468 and T-88467, which were transferred from TCT Nos. 41505[27] and 41506,[28] identify the lots they cover as Lots 2-A-3 and 2-A-4, respectively, of plan Psd-110980 and define the metes and bounds thereof.

The petitioners insist that the titles of the respondent overlap their titles. The evidence admitted in the RTC showed the respondent's properties, covered by OCT No. O-644 issued in 1967; and TCT No. 17621[29] from OCT No. O-490[30] issued in 1965 to Teodora Dominguez, overlapping the National Highway and Sapang Niog and the properties covered by the titles of the petitioners which were traced to have originated from Lot-2 of OCT No. 1020 RO-9 issued to Juan in 1922. The overlapping was admitted by the respondent's own counsel. The Bureau of Lands, through Engr. Felipe Venezuela *(Engr. Venezuela)*, the Chief of Technical Services Section, identified the subject properties with the use of the technical descriptions in TCT

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[27] *Rollo* (G.R. No. 165863), p. 195.

[28] *Id.* at 201.

[29] *Rollo* (G.R. No. 165875), pp. 663-664.

[30] *Id.* at 662.

Nos. T-88467 and T-88468 in a verification survey conducted in compliance with the RTC order. The Report of the Bureau of Lands on the verification survey, dated July 1, 1980, disclosed that there was an overlapping between the subject properties and the property described in the respondent's OCT No. O-644. The same report showed that of the 9,287 square meters of land comprising Lot 2-A-3 of Psd-110980 (TCT No. T-88468), 5,628 square meters were overlapped by the respondent's OCT No. O-644; while 7,489 square meters of the 9,288 square meter area of Lot 2-A-4 (TCT No. T-88467) were overlapped by OCT No. O-644. This overlapping was confirmed by the Land Registration Authority *(LRA)* through its Certification,[31] dated February 14, 1995.

The petitioners further argue that what defines the land is the technical description as plotted on the ground and that the location should be based on the technical description and not on the basis of the barrio indicated therein.

They claim that the errors in their certificates of title were adequately explained in the sense that the property of Juan covered by OCT No. 1020 was principally located in Barrio Talaba, which was adjacent to Barrio Niog, as shown by the Certification, dated May 22, 1995, issued by the Municipal Planning and Development Coordinator of Bacoor, Cavite. The subject properties once formed part of a large tract of land covered by OCT No. 1020, and when Juan's land was partitioned or subdivided through the years, the resulting lots were mistakenly described as being located in Barrio Talaba, although they were actually situated in the adjacent Barrrio Niog.

At any rate, petitioner LFC argues that it is an innocent purchaser for value entitled to protection under the law considering that the subject properties were purchased with the approval of the court in the course of the probate proceedings and were not in possession of anyone. It was justified in relying upon TCT Nos. T-41505 and T-41506 since it was not under any obligation to go beyond what appeared on the face of these titles.

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[31] *Rollo* (G.R. No. 165863), p. 112.

Respondent's argument

Respondent San Diego counters that the petitioners' claim of ownership over the subject properties was not sufficiently proven. They were not able to prove the superiority of their titles over their titles. It gave the following reasons:

First, the petitioners' titles have defects, as follows:

1. They were annotated with the inscription that the land described therein was originally registered under OCT No. 1898, but the technical descriptions found therein were lifted from OCT No. (1020) RO-9;

2. The inscriptions on the petitioners' titles state that the properties are located in Barrio Talaba when the properties described therein are situated in Barrio Niog;

Second, TCT Nos. 104248 and 104249 of Jimmy and Albert, respectively, were altered. The number 1898 in the OCT space was changed to reflect RO-9 instead. Their petitions for correction of entries in their titles filed before the CFI of Cavite failed to comply with the jurisdictional requirements of Section 108 of P.D. No. 1529, one of which was to give notice to a party in interest of one's application or petition for amendment or alteration to a title.

Third, even assuming that the petitioners' titles originated from OCT No. 1020, the petitions would still not prosper because OCT No. 1020 was never offered as evidence in court. Likewise, the petition for reconstitution filed by Ladislaw Cuenca *(Ladislaw)*, dated January 26, 1959, was void on its face because it did not contain all the essential data required by law such as the location, area and boundaries of the properties; the nature and description of the buildings or improvements, if any, which did not belong to the owners of the land, the names and addresses of the owners of such buildings and improvements; the names and addresses of the occupants or persons in possession of the property; the names of the owners of the adjoining properties; and the names of all persons who might have any interest in the property.

Fourth, the alleged "new evidence" presented by the petitioners before the CA cannot support their claim of ownership because said "new evidence" were not new because the same could have been easily presented and produced during the trial. Even if the same were newly discovered, they did not affect, much less impinge on, the indefeasibility of the respondent's titles.

Fifth, the respondent's titles were legally issued. OCT No. O-644 was issued pursuant to Decree No. N-112239 in LRC No. 557 of the then CFI of Cavite, LRC Record No. N-30647, and TCT No. 17621 was derived from OCT No. O-490 in the name of Dominguez which was issued pursuant to Decree No. N-106480, LRC Case No. N-467, LRC Record No. N-27923.

Additionally, the respondent contends that LFC cannot raise for the first time on appeal the argument that it is an innocent purchaser for value.

The Court's Ruling

A person, who seeks registration of title to a piece of land, who claims that he has a better right to the property, or who prays for its recovery, must prove his assertion by clear and convincing evidence, and is duty bound to identify sufficiently and satisfactorily the property.[32]

After cautiously going over the voluminous records of these consolidated cases and applying the pertinent law and jurisprudence on the matter, the Court holds that the respondent's claim over the disputed properties prevails over those of the petitioners.

The consolidated records reveal that the subject properties undeniably come from a large land area consisting of 271,264 square meters (PSU-2075) located in the Municipality of Bacoor, Cavite, which was originally owned by and registered in the

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[32] *Datu Kiram Sampaco v. Hadji Serad Mingca Lantud,* G.R. No. 163551, July 18, 2011,654 SCRA 36, 51*; Republic v. Spouses Enriquez,* G.R. No. 160990*,* September 11, 2006, 501 SCRA 436, 447; and *Spouses Divinagracia v. Leonidisa N. Cometa,* G.R. No. 159660, February 20, 2006, 482 SCRA 628, 658-659.

name of Juan. PSU-2075 was traversed by a railroad track dividing it into two lots: Lot 1 covering the northern portion and Lot 2 covering the southern portion.

On February 15, 1922, upon application for registration, OCT No. 1020 which covered Lots 1 and 2 of PSU-2075 was issued to Juan. Later, on June 7, 1959, OCT No. 1020 was administratively reconstituted after a fire gutted the Cavite Provincial Hall, and Juan was issued OCT No. (1020) RO-9[33] which also contained the technical descriptions of Lots 1 and 2 of PSU-2075.

On April 14, 1928, a separate OCT – OCT No. 1898 - was issued to Juan covering Lot 1, North of the railroad track. Similarly, in June 1959, OCT No. 1898 was administratively reconstituted due to the fire that gutted the Cavite Municipal Hall and Juan was issued OCT No. (1898) RO-58. OCT No. (1898)RO-58 was divided into 13 lots. Eleven (11) were located in the barrios of Talaba, Zapote, and Malicsi, and two (2) in the Poblacion of Bacoor, Cavite.

On April 16, 1969, after Juan's death, Lot 2 of OCT No. (1020) RO-9 was subdivided into 12 lots as approved by the CFI of Cavite, in an action for partition filed by Jose Cuenca *(Jose),* a surviving heir. Thereafter, 12 new titles were issued to each of these lots which included TCT No. 35963[34] for Lot 2-A; TCT No. 35973[35] for Lot 2-K; and TCT No. 35974[36] for Lot 2-L. These 3 lots – Lot 2-A, Lot 2-K and Lot 2-L – were titled and registered in the name of Juan. All these titles were inscribed as originally registered as OCT No. (1020) RO-9.

On September 9, 1969, Lot 2-A was subdivided into 7 lots and new individual titles were issued to each lot including TCT No. 41505[37] for Lot 2-A-3, which was adjudicated to

[33] *Rollo* (G.R. No. 165863), pp. 145-147.

[34] *Id.* at 163.

[35] *Id.* at 175.

[36] *Id.* at 176.

[37] *Id.* at 195.

Pura Cuenca *(Pura),* another heir; and TCT No.41506 for Lot 2-A-4, which was adjudicated to Ladislaw, also another heir. All these titles were inscribed as originally registered as OCT No. (1898) RO-58, and not as T-35963, originally registered as OCT No. (1020) RO-9.

Although the titles issued to Pura and Ladislaw stated that the lands covered therein were originally registered as OCT No. 1898, which was Lot 1 of the northern portion of Juan's large tract of land, the technical descriptions in the said TCTs *were taken or lifted from* OCT No. (1020) RO-9, which was Lot 2 or the southern portion of Juan's large tract of land.

Likewise, Lot 2-K and Lot 2-L were consolidated and further subdivided into 8 lots. These 8 lots were issued new individual titles which included TCT No. 41497[38] for Lot 3, which was adjudicated to Ladislaw; TCT No. 41498[39] for Lot 4, which was adjudicated to Pura; and TCT No. 41500 for Lot 6, which was adjudicated to Jose. All these new titles were inscribed as originally registered as OCT No. (1898) RO-58, not as T-35973 and T-35974, originally registered as OCT No. (1020) RO-9.

On October 21, 1976, after the death of Pura and Ladislaw, the CFI of Cavite approved the sale of Lot 2-A-3 with TCT No. 41505 and Lot 2-A-4 with TCT No. 41506 to LFC. The new titles were eventually issued in the name of LFC**.** TCT No. 88468 and TCT No. 88467, which were also inscribed as originally issued as OCT No. (1898) RO-58.

On May 9, 1979, the CFI of Cavite approved the sale of Lot 3 with TCT No. 41497 and Lot 4 with TCT No. 41498 to Jimmy and Albert, respectively, and new titles were issued, TCT No.104248 for Jimmy and TCT No. 104249 for Albert. The new titles were inscribed as originally issued as OCT No. (1898)RO-58. Lot 6 with TCT No. 41500 was sold by Jose to Spouses Solis and a new title, TCT No. 94389, was issued to them.

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[38] *Id.* at 181.

[39] *Id.* at 187.

There were two common features present in the titles of Jimmy, Albert and Spouses Solis: 1) the common inscription in their titles was that the lands covered therein were originally registered as OCT No.1898 on April 14, 1928; and 2) the common description that the properties therein were located in the Barrio of Talaba, Bacoor, Cavite.

The legal squabble in this case started when San Diego came into the picture and claimed ownership of the subject parcels of land for which titles were also registered in its name, based on OCT No. O-644, issued upon application and proper proceedings in LRC Case Nos. N-557 and N-30647 before the then CFI of Cavite and TCT No.T-17621 which cancelled OCT No. 0-490 which, in turn, was originally issued to Dominguez, who sold the same property to it through an absolute deed of sale,[40] dated February 26, 1966.

To recapitulate, the parcels of land in dispute are those covered by 1) TCT No. 88467 and TCT No. 88468 issued in favor of LFC; 2) TCT No. T-104248 and TCT No. T-104249 issued in favor of Jimmy and Albert; 3) TCT No. T-94389 issued in favor of Spouses Solis; 4) TCT No. T-17621 which cancelled OCT No. O-490 and issued in favor of San Diego; and 5) OCT No. 0-644 issued in favor of San Diego.

Specifically, on the LFC claim of exclusive ownership over the two (2) parcels of land covered by TCT Nos. 88467 and 88468, issued on February 18, 1977, San Diego insists that it has been in open, continuous and adverse possession in the concept of an owner of these parcels of land for more than fifty (50) years before they were purchased by LFC. San Diego bought the subject property from Dominguez on February 6, 1966 and the absolute deed of sale was submitted in LRC Case No. N-557. It has also been declaring said property for tax purposes.

With respect to the claims of ownership by Jimmy and Albert over the parcels of land covered by TCT No. T-104248 and

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[40] *Rollo* (G.R. No. 165875), pp. 666-668.

TCT No. T-104249 issued on January 20 and 30, 1979, respectively, San Diego argues that it acquired the same parcels by virtue of TCT No. T-17621 issued on March 2, 1966 which cancelled OCT No. O-490 originally issued to Dominguez, who sold the same property to San Diego.

On their part, Spouses Solis claim that they purchased a portion of the property titled under TCT No. T-17621 in favor of San Diego from Jose for which TCT No. T-94389 was issued to them.

Petitioners failed to prove the superiority of their titles over those of the respondent

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." It is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[41]

In the consolidated cases at bench, the petitioners failed to discharge the burden of proving the superiority of their titles over those of the respondent. Contrary to the petitioners' arguments, the evidence on record unmistakably show that their titles have common defects. These are 1] the petitioners' titles are annotated with the inscription that the land described therein was originally registered under OCT No. 1898, but the technical descriptions found therein were lifted from OCT No. (1020) RO-9; and 2) the petitioners' titles specifically state that the subject properties are located in the Barrio of Talaba, Bacoor, Cavite, when the properties described therein are actually situated in the Barrio of Niog, which is a separate and distinct locality.

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[41] *Encinas v. National Bookstore, Inc.,* 485 Phil. 683, 695(2004).

These defects were carried over from the defective titles of their predecessors-in-interest, namely, Pura and Ladislaw, which contained technical descriptions which, however, did not correspond with the recital of facts in the certification portion. It may be recalled that when TCT NO. 41505 was adjudicated to Pura, and TCT No. 41506 to Ladislaw on September 9, 1969, both titles were inscribed as originally registered as OCT No. (1898) RO-58, and not as T-35963, originally registered as OCT No. (1020)RO-9.

The defects of these titles are evident from the fact that OCT No. (1020) RO-9 is different from OCT No. 1898. OCT No. (1020) RO-9 was an administratively reconstituted title from OCT No. 1020 issued to Juan on February 15, 1922. On the other hand, OCT No. 1898 was a separate OCT issued to Juan on April 14, 1928. OCT No. 1898 covered Lot 1, the northern portion of Juan's vast tract of land, while OCT No. (1020) RO-9 covered its southern portion.

The same defects also showed in TCT No. 41497 issued in favor of Ladislaw; TCT No. 41498 issued in favor of Pura; and in TCT No. 41500 issued in favor of Jose. All these titles were likewise inscribed as originally registered as OCT No. (1898) RO-58, and not as T-35973 and T-35974, originally registered as OCT No. (1020)RO-9.

Since TCT No. 41505 and TCT No. 41506 were defective titles issued on September 9, 1969 to Pura and Ladislaw, respectively, it necessarily follows that LFC's TCT No. 88468 and TCT No. 88467, which cancelled said titles, were likewise defective. The same is true with the title issued to Spouses Solis, TCT No. 94389, which cancelled TCT No. 41500.

Clearly, the mismatch in the technical descriptions and the recital of facts in the certification on the face of the petitioners' titles creates a serious cloud of doubt on the integrity of the said titles. The obvious disparities make it difficult to exactly determine the subject parcels of land covered by the said titles in the sense that the technical descriptions therein referred to the area south of Juan's tract of land while the recital of facts

in the certification therein refers to the area north of Juan's tract of land. It must be stressed that the northern and southern portions of Juan's tract of land have separate titles, OCT No. 1898 for the northern portion and OCT No. 1020 for the southern portion. In effect, the petitioners' alleged ownership rights over the subject properties have not been satisfactorily and conclusively proven due to such inconsistencies.

The petitioners, however, argue that the errors or disparities in the inscriptions on the face of their respective titles were just clerical and, therefore, cannot affect the integrity of their titles. In this regard, the Court adopts the initial ruling of the CA on the matter and other related points in its December 24, 1991 Decision in CA G.R. No. 13540, which reads:

> The appellees (petitioners) argue, however, that the annotations appearing in their respective titles are mere clerical errors and that the technical descriptions contained therein should prevail. This argument, however, cannot find application to the case at bar because the opposing parties have in their possession titles referring to the same property, and whose technical descriptions pertain to the said property. The appellees' claim that it is the annotations in their titles that are erroneous is not supported by the evidence. On the contrary, their admission that the original titles of their predecessors-in-interest were reconstituted casts doubts on the appellees' claim that the technical description should prevail over the annotations.
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> Our conclusion that the appellees' titles are defective is bolstered by the fact that the titles of their predecessors-in-interest were already defective, as a result of the partition of the property. As narrated in the foregoing facts, pursuant to a partition of the estate of Juan Cuenca, separate titles were issued to the heirs Pura, Ladislawa and Jose Cuenca. One parcel adjudicated to Pura Cuenca covered by TCT No. 41505 was issued on February 24, 1970 (Annex "L"). This title was defective in the manner already mentioned, that is, the annotation states that the origin of the said transfer certificate of title was O.C.T. No. 1898, but the technical description was lifted from O.C.T. (1020) RO-9. Another parcel, adjudicated to Ladislawa Cuenca was covered by T.C.T. No. 41506 (Annex "M"). This, title, likewise, contained the same defect. These two parcels were eventually sold to appellee Lorenzana Food Corporation and the defect was carried over to the new titles issued to it.

Transfer Certificate of Title No. 41498 issued to Pura Cuenca (Exhibit "TTT-5") covering still another parcel also carried the same defect. This parcel was later sold to appellee Albert Chua, and his new title, in turn, continued to contain the same defect. Moreover, TCT No. 41437 (Exhibit "TTT-4"), covering a parcel adjudicated to Ladiswala Cuenca, was also defective. When sold to appellee Jimmy Chua Chi Leong, the new title issued to him also carried the same defect. The last subject parcel was adjudicated to Jose Cuenca, whose TCT No. 41501 was also defective. Accordingly, the new title issued to the appellee spouses Solis, who bought said parcel, was also defective.

Thus, even though the appellees can trace their titles as having been originally registered on February 21, 1922, the succeeding titles, issued on February 24, 1970, were all defective. Why no effort was exerted to correct the alleged "clerical errors" on the part of the appellees' predecessors-in-interest, has not been explained. The uncorrected defects in the appellees' titles have brought about this present controversy.

Notwithstanding, the appellant's (respondent) O.C.T. No. 0-644 and T.C.T. No. T-17621 were issued way before the defective titles were issued to Pura, Ladislawa and Jose Cuenca. And more so, the appellant's titles were issued and registered long before the appellees purchased the subject parcels from the Cuencas. As against the perfect and regularly issued titles of the appellant, the appellees' belated and defective titles must give way.[42]

Furthermore, the titles issued sometime in 1979, (TCT No. 104248, to Jimmy which cancelled TCT No. 41497, and TCT No. 104249, to Albert which cancelled TCT No. 41498) are likewise defective due to the apparent material alterations in the certification portion of their respective titles. The certifications were altered to make the number 1898 appear as RO-9 in the OCT space of the titles. The CA was correct in saying that material alterations affected the integrity of these titles.

Jimmy and Albert manifested that they filed a petition for the correction of entries in their respective titles before the then CFI of Cavite and that the said court granted their petition.

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[42] *Rollo* (G.R. No. 165875), pp. 203-205.

The records, however, failed to show sufficient proof that Jimmy and Albert faithfully complied with the basic notice requirement under Section 108 of P.D. No. 1529, which provides as follows:

> Sec. 108. *Amendment and alteration of certificates*. — No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that [a] new interest not appearing upon the certificate have arisen or been created; **or that an omission or error was made in entering a certificate or any memorandum thereon, or on any duplicate certificate**; or that the name of any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interest of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition **after notice to all parties in interest**, and may order the entry or cancellation of a new certificate, x x x. [Emphases supplied]

The above provision requires that all interested parties must be duly notified of the petitioner's application for amendment or alteration of the certificate of title. Relief under the said legal provision can only be granted if there is unanimity among the parties, or that there is no adverse claim or serious objection on the part of any party in interest.[43]

Without doubt, San Diego, a party-in-interest with an adverse claim, was not duly notified of the said petition. The records reveal that despite their knowledge about its adverse claim over

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[43] *Tagaytay-Taal Tourist Development Corporation v. CA*, 339 Phil. 377, 389 (1997).

the subject properties, Jimmy and Albert never notified San Diego about their application or petition for amendment or alteration of title. This Court agrees with the CA that the lack of notice to San Diego placed in serious question the validity of the CFI judgment or its enforceability against it. An amendment/ alteration effected without notice to the affected owners would not be in compliance with law or the requirements of due process.[44]

The record shows that Albert was aware of San Diego's adverse claim on his property. Despite said knowledge, there was still no due notice given to it. Thus:

Atty Bernardo:

Q After you purchased this property did you take possession thereof?
A Yes, sir.

Q **Did any person disturb your property**?
A **Yes, sir**.

By Atty. Bernardo (To the witness)

Q **Did you come to know who is that person**?
A **Yes, sir**.

Q **Who**?
A **The men of Bartolome San Diego, sir**.

Q Did you come to know why they disturb your possession?
A Yes, sir.

Q What?
A Because they claimed that they are also the owner of the lot, sir.

Q **After knowing that Bartolome E. San Diego is claiming to be the owner of your lot, what did you do**?
A I went to my attorney and he instructed me also to locate for the original title from where this lot came from. (TSN, pp. 15-16, July 19, 1983)[45]

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[44] *Life Homes Realty Corporation v. CA*, G.R. No. 120827, February 15, 2007, 516 SCRA 6, 14.

[45] *Rollo* (G.R. No. 165863), pp. 90-91.

There is no overlapping of the properties covered by the titles of the parties

The petitioners argue that an overlapping of titles was established by their evidence. Surveys and sketch plans[46] were presented showing the relative positions of the subject properties as well as their history[47] which were traced all the way back to their mother title, OCT No. 1020. Moreover, the Bureau of Lands, through the Chief of its Technical Services Section, Engr. Venezuela, identified the subject properties using the technical descriptions in TCT Nos. T-88467 and T-88468 in a verification survey conducted in compliance with the order of the trial court. His Report, dated July 1, 1980, stated that there was an overlapping between the subject properties and the property described in the respondent's OCT No. O-644. The report showed that of the 9,287 square meters of land comprising Lot 2-A-3 Psd-110980 (TCT No. T-88468), 5,628 square meters were overlapped by the respondent's OCT No. O-644, while 7,489 square meters of the 9,288 square meter of Lot 2-A-4 (TCT No. T-88467) were overlapped by OCT No. O-644. This report was the basis of the Certification, dated February 14, 1995, of the LRA, to the effect that Lots 1 and 2 situated in Barrio Niog, Bacoor, Cavite, decreed in LRC Case No. N-557, Record No. N-30647 under Decree No. N-112239 issued on January 4, 1967 in favor of the respondent, were parcels of land covered by OCT No. O-644, and when plotted in the municipal index sheet through its tie line, would fall inside subdivision plan (LRC) Psd-99697, Lot-2-A, which included the subject properties.

The respondent, however, asserts that overlapping is impossible because the properties in question are located in different barrios; the petitioners' properties are in Barangay Talaba, while those of the respondent are situated in Barangay Niog.

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[46] *Id.* at 104-118.

[47] *Id.* at 141.

Considering the critically defective certificates of title, there can be no clear evidence of overlapping. As the petitioners themselves judicially admitted, their respective certificates of title were defective because 1] the mother title, indicated therein, was OCT No. 1898, containing descriptions lifted from OCT No. (1020) RO-9, a reconstituted title; 2] the location of the properties as indicated in their titles was Barrio Talaba; and 3] the technical descriptions contained in their TCTs pertain to properties specified in OCT No. (1020) RO-9.

These defects are very material that it cannot be argued that they are just clerical in nature. The flaws in their titles are major defects that cannot just be dismissed as typographical and innocuous. The defects pertain to the essential core of a title and definitely affect their integrity. Being significantly defective, these cannot serve as indubitable and valid bases for a clear and convincing delineation of the metes and bounds of the properties. The Court already debunked this argument in its April 22, 1994 Decision in G.R. No. 105027. Thus:

> Petitioners would minimize the import of the defects in their titles by describing them as "clerical." The plea does not persuade for the self-contradictions in petitioners' titles infract their integrity. Errors that relate to the lots' mother title, their technical descriptions and their locations cannot be dismissed as clerical and harmless in character. With these errors, the titles of the petitioners do not deserve the sanctity given to torrens title. These errors precisely created and cast the cloud of doubt over petitioners' titles and precipitated the case at bench.[48]

The apparent defects in the certificates of title prove that the petitioners are claiming the wrong property, as evidenced by the Certification[49] of the Office of the Municipal Planning and Development Coordinator, Bacoor, Cavite. In other words, the petitioners are claiming ownership of parcels of land not in the location stated in their respective titles.

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[48] *Lorenzana Food Corp. v. CA*, *supra* note 26 at 726.

[49] *Rollo* (G.R. No. 165863), p. 103.

The properties, presently in possession of San Diego, are located in Barrio Niog, as described in their titles. Although Barrio Talaba and Barrio Niog are adjacent to each other, their respective boundaries are clearly defined and delineated from the plans, maps and surveys on record. It has not been shown, so far, that the said barrios were one and the same at some point in time. Basic is the rule that a person, who claims that he has a better right to the property or prays for its recovery, must prove his assertion by clear and convincing evidence and is duty bound to identify sufficiently and satisfactorily the property.[50]

Consistently, the notices of hearing of Juan's applications for registration and confirmation of title in Case No. 129, GLRO Record No. 29210[51] and Case No. 69, GLRO Record No. 18826,[52] before the CFI of the Province of Cavite, specifically indicated therein that the properties applied for were located in *Barrios Talaba, Zapote, Malicsi, and Poblacion*, in Bacoor, Cavite. There was no mention whatsoever of any property located in Barrio Niog. It is for this reason that the Court finds difficulty in accepting the petitioners' theory that the property that they have been claiming may have been erroneously classified as situated in Barrio Talaba, when they are actually located in Barrio Niog.

The verification survey is unreliable

Like the petitioners' titles, the Court finds the verification survey conducted by Engr. Venezuela of the Bureau of Lands unreliable. It is so because Engr. Venezuela admitted that his table survey was merely based on the technical description of the defective titles. Naturally, an overlapping would be expected

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[50] *Datu Kiram Sampaco v. Hadji Serad Mingca Lantud,* G.R. No. 163551, July 18, 2011,654 SCRA 36, 51*; Republic v. Spouses Enriquez,* G.R. No. 160990, September 11, 2006, 501 SCRA 436, 447; and *Spouses Divinagracia v. Leonidisa N. Cometa,* G.R. No. 159660, February 20, 2006*,* 482 SCRA 628, 658-659.

[51] *Rollo* (G.R. No. 165863), p. 217.

[52] *Id.* at 149.

on this basis. Again, the Court reiterates its position in this regard which appears in its April 22, 1994 Decision in G.R. No. 105027. Thus:

To be sure, these defects were judicially admitted by the petitioners. They attached their defective titles to their complaints in the trial court. As aforestated, their titles showed on their very face that they covered lots located in Barrio Talaba, municipality of Bacoor whereas the lots of private respondent are in Barrio Niog of the same municipality. The two barrios are one and a half kilometers away from each other. Likewise, the face of their titles show that they emanated from OCT No. 1898 or from Lot 1 constituting the northern portion of Juan Cuenca's property before its subdivision. Nonetheless, the technical descriptions of the lots appearing in their titles were lifted from OCT No. (1020) RO-9 or from Lot 2 forming the southern portion of Juan Cuenca's land. No less than petitioners' witness, Eng. Venezuela, confirmed these blatant defects when he testified, thus:

BY ATTY. VASQUEZ: (to the witness)

Q You said you referred to these titles in connection with your verification?

WITNESS:

A Yes, sir.

Q Now, I presume you also saw the matters stated in the second paragraph of the first page of the titles, I am referring . . . particularly to the fact that as stated in both of these titles, this land was originally registered on April 14, 1928 as Original Certificate of Title 1898 pursuant to Decree No. 338259 LRC Record No. 29214, did you notice those?

WITNESS:

A I noticed that, sir.

x x x x x x x x x

BY ATTY. VASQUEZ: (To the witness)

Q In the report that you submitted to this Court on your verification survey, we find in paragraph 8, No, paragraph 4, subparagraph f, the following statement which I read, "THAT

AS PER TECHNICAL DESCRIPTIONS APPEARING ON TCT NO. 88467 AND TCT NO. 88468 REGISTERED IN THE NAME OF. . . . . . LORENZANA FOOD CORPORATION, THE PROPERTY FALLS IN THE BARRIO OF NIOG, BACOOR, CAVITE," CONTRADICTING TO THE LOCATION STATED IN THE TITLE WHICH IS BARRIO TALABA, I READ FURTHER, "IT MAY BE DUE TO THE FACT THAT SAID TITLE ORIGINATED FROM ORIGINAL CERTIFICATE NO TITLE NO. 1898 DECREED UNDER NO. 338259 WHICH IS ACTUALLY LOCATED IN BARRIO TALABA, BACOOR, CAVITE.

MY QUESTION IS, BARRIO TALABA AND BARRIO NIOG ARE DIFFERENT BARRIOS?

WITNESS:

A YES, SIR.

Q And you have apparently noticed that the statement contained in the second paragraph of the title of plaintiff stating that the land supposed to be covered by said titles is derived from OCT No. 1898?

A Yes, sir.

Q Are we to understand that the land covered by OCT No. 1898 is not the same land covered by the titles of the Lorenzana?

x x x x x x x x x

A In a sense it is not actually, the title OCT 1898 is located on northern portion of OCT No. 1020, in fact I made here a working sheet showing the titles, the one Original Certificate of Title 1020 and Original Certificate .... of Title 1898 and I have here a sketch plan of the positions. x x x.

x x x x x x x x x

BY ATTY. VASQUEZ: (To the witness)

Q You [are] mentioned OCT No. 1898 and OCT No. 1020, you will tell the Court of these two (2) titles cover different parcels of land?

WITNESS:

A As per my sketch sheet plan, Original Certificate of Title No. 1020 is located at the southern portion of the Original of Title No. 1898, meaning to say that they are far apart from each other.

Q Now, this technical description that you utilized to plot the land described in the title or titles of the plaintiff, which title did you use, 1898 or 1020?

A I just followed the title as issued, as ordered by the Court.

I based my verification based on the title as required by the Court.

Q THE QUESTION IS, ACCORDING TO YOU .... VERIFICATION, THE LAND BEING CLAIMED BY THE PLAINTIFF, IS IT COVERED BY 1898 OR 1020?

WITNESS:

A WELL, IT IS ALREADY CLEAR ON THE TITLE THAT IT WAS TAKEN FROM OCT 1898.

Q I will not argue to that fact that the title of Lorenzana was taken from 1898 but I am asking you the plotting of the technical description as described on the title of the plaintiff is referring to a land covered by original certificate of title 1898 or 1020?

A It is very clear on my plan that the two (2) titles of Lorenzana happened to fall to Original Certificate of Title No. 1020.

Q IN OTHER WORDS, IF WE GO BY THE TITLE, IT WOULD APPEAR THAT THIS TITLE OF THE LORENZANAS WAS DERIVED FROM 1898 BUT THE TECHNICAL DESCRIPTION ..... WAS FROM ANOTHER TITLE SPECIFICALLY 1020?

WITNESS:

A YES, SIR, BY USING THE TECHNICAL DESCRIPTION (pp. 34-35, 37-40, 41-43, tsn, 12-9-80, bold letters supplied).

His attempt to reconcile the defects and inconsistencies appearing on the faces of petitioners' titles did not impress the respondent court and neither are we. **His opinion lacks authoritativeness for his verification survey was not made on the land itself. It was a mere table survey based on the defective titles themselves.**[53] [Emphasis supplied]

San Diego's titles have no marked defect and accompanied by an open, adverse and continuous possession

In contrast, San Diego was able to sufficiently prove their claim of ownership of the subject properties. Its certificates of title covering the subject properties have no marked defects and the description of the properties therein coincides with the annotations appearing thereon. Thus, its titles state that the subject properties are located in Barrio Niog and the parcels of land it claims are also located in the same *barrio*. There is simply no discrepancy between its titles and the actual location of the subject properties being claimed and possessed by it.

Moreover, San Diego has in its favor the fact that it has been in open, adverse and continuous possession of the subject properties since it purchased the same on February 6, 1966. Their prior and lawful possession of their titled properties is further bolstered by the fact that they have been paying the property taxes thereon since their purchase in 1966.[54]

The documents of petitioners are not newly discovered evidence

The Court sustains the ruling of the CA that the alleged new documents submitted by the petitioners cannot be considered as newly discovered evidence. The documents attached by the petitioners in their petition to re-open were the following: 1] Certified true copies of notices of hearing pertaining to Juan's application for registration and confirmation of title; 2]

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[53] *Lorenzana Food Corporation v. CA, supra* note 26, at 724-726.

[54] *Rollo* (G.R. No. 165863), pp. 135-136.

Certification by the Municipal Planning and Development Coordinator of Bacoor, Cavite, that Barrios Niog and Talaba are adjacent; and 3) certification from the LRA regarding the encroachment of San Diego's property. These are not newly discovered and they cannot affect the Court's ruling in its April 22, 1994 Decision in G.R. No. 105027. The Court quotes with approval the ruling of the CA on this matter:

> A common characteristic shared by all the foregoing documents is that they are not exactly "newly discovered evidence" as plaintiffs' claim they are. By their nature, all of them could have been previously obtained and presented by plaintiffs at the hearings before the lower court. For plaintiffs' failure to present these documents there is no one else to blame but themselves. It appears that they did not exert their best efforts to get hold of evidence which was already available, or at the very least, obtainable, to buttress their claim. To allow the presentation of evidence on a piece-meal basis, thereby needlessly causing a delay in the resolution of the case would be anathema to the purpose of delivering justice.[55]

In view of the foregoing, the Court can safely state that San Diego's OCT No. O-644 and TCT No. T-17621 (from OCT No. O-490) are more reliable than LFC's TCT No. 88467 and TCT No. 88468; Jimmy and Albert's TCT T-104248 and TCT T-104249, respectively; and Spouses Solis's TCT No. T-94389.

Finally, as to LFC's assertion that it is an innocent purchaser for value, suffice it to state that this doctrine is not applicable as the contending titles do not refer to one and the same property. The Court, once again, restates its position on any claim of damages against its predecessors-in-interest. Thus:

> In a last swing against the disputed Decision, petitioners contend that the respondent court committed grave abuse of discretion when it failed to pass judgment on the liabilities of the estates of Pura Cuenca and Ladislaw Cuenca, their predecessors-in-interest. The contention deserves scant attention. The records show that the trial court dismissed petitioners' Complaint against the Estates of Pura Cuenca and Ladislaw Cuenca in Civil Case Nos. BCV-80-17 and

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[55] *Id.* at 92.

BCV-81-18. They alleged that the said Estates breached their warranties as sellers of the subject lots. Petitioners Lorenzana Food Corporation as well as Jimmy Chua Chi Leong and Albert Chua did not appeal the dismissal of their Complaints against these Estates. The dismissal has become final and petitioners cannot resurrect the Estates' alleged liability in this petition for review on *certiorari*.[56]

Granting *arguendo* that they are so, the remedy of the petitioners is to seek compensation from the Assurance Fund.

WHEREFORE, the consolidated petitions are hereby **DENIED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178952. April 10, 2013]

HEIRS OF LAZARO GALLARDO, namely: PROSPERIDAD PANLAQUI-GALLARDO, MARIA CARMEN P. GALLARDO-NUNAG, MARIO LAZARO P. GALLARDO, JOY CATALINA P. GALLARDO, PINKY PERPETUA P. GALLARDO and LAZARO P. GALLARDO, JR., *petitioners, vs.* **PORFERIO SOLIMAN, VIVIAN VALETE, and ANTONIO SOLIMAN,** *respondents.*[*]

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[56] *Lorenzana Food Corporation v. CA, supra* note 26, at 727.

[*] The Provincial Agrarian Reform Officer and the Register of Deeds of Tarlac who were originally impleaded as respondents were no longer indicated in the caption pursuant to Section 4, Rule 45 of the Rules of Court.

SYLLABUS

1. **REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI*; VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; WHERE THE PARTIES ARE IMMEDIATE RELATIVES, WHO SHARE COMMON INTEREST IN THE PROPERTY SUBJECT OF THE ACTION, THE FACT THAT ONLY ONE SIGNED THE VERIFICATION OR CERTIFICATE AGAINST FORUM SHOPPING WILL NOT DETER THE COURT FROM PROCEEDING WITH THE ACTION.—** [I]n *Traveño v. Bobongon Banana Growers Multi-Purpose Cooperative* the Court held that: x x x The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule. The same position was taken in *Medado v. Heirs of the Late Antonio Consing*, where the Court held that "where the petitioners are immediate relatives, who share a common interest in the property subject of the action, the fact that only one of the petitioners executed the verification or certification of [non] forum shopping will not deter the court from proceeding with the action." The same situation obtains in this case. Petitioners are all heirs of the deceased Lazaro. As such, they undoubtedly share a common interest in the land, as well as common claims and defenses, as against respondents.

2. **LABOR AND SOCIAL LEGISLATION; LAND REFORM LAWS; WHILE THE TENANT IS EMANCIPATED FROM BONDAGE TO THE SOIL, THE LANDOWNER IS ENTITLED TO HIS JUST COMPENSATION FOR THE DEPRIVATION OF HIS LAND; APPLICATION IN CASE AT BAR.—** [A]s the farmer tenant-transferee of the land under PD 27, Porferio is by law required to make amortizations on the land until he completes payment of the fixed price thereof. Under the *Kasunduan* and Deed of Transfer, he has to make good on his payments to the landowners. If he fails to pay, cancellation of any Certificate of Land Transfer or Emancipation

Patent issued in his name is proper, pursuant to Section 2 of PD 816. Considering the tenor of the law, the PARAD's and DARAB's pronouncement that respondents cannot be faulted for they "labored under the honest belief that they were now vested with absolute ownership" of the land, and that they "cannot be expected to understand the legal implications of the existing lien/encumbrances annotated on their respective titles entered into in 1990 to insure payment of the land value" to petitioners, appears to be anchored not on legal ground. Besides, it is common maxim that "ignorance of the law excuses no one from compliance therewith." Moreover, when one party enters into a covenant with another, he must perform his obligations with fealty and good faith. This becomes more imperative where such party has been given a grant, such as land, under the land reform laws. While the tenant is emancipated from bondage to the soil, the landowner is entitled to his just compensation for the deprivation of his land.

APPEARANCES OF COUNSEL

Ricardo C. Atienza for petitioners.
Amor Ibarra for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

When one party enters into a covenant with another, he must perform his obligations with fealty and good faith. This becomes more imperative where such party has been given a grant, such as land, under the land reform laws. While the tenant is emancipated from bondage to the soil, the landowner is entitled to his just compensation for the deprivation of his land.

This Petition for Review on *Certiorari*[1] assails the May 21, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP

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[1] *Rollo*, pp. 15-35.

[2] *Id.* at 37-38; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Lucenito N. Tagle and Mariflor P. Punzalan-Castillo.

No. 98730 as well as its July 23, 2007 Resolution[3] denying petitioners' Motion to Reconsider.[4]

Factual Antecedents

Petitioners Prosperidad Panlaqui-Gallardo (Prosperidad), Maria Carmen P. Gallardo-Nunag, Mario Lazaro P. Gallardo, Joy Catalina P. Gallardo, Pinky Perpetua P. Gallardo and Lazaro P. Gallardo, Jr. are the heirs of Lazaro Gallardo (Lazaro). Lazaro and Prosperidad are the registered owners of a 4.3699-hectare parcel of land in Balingcanaway, Tarlac, Tarlac, covered by Transfer Certificate of Title No. (TCT) 97603[5] (the land). The land was placed under the coverage of Operation Land Transfer pursuant to Presidential Decree (PD) No. 27,[6] and respondent Porferio Soliman (Porferio) was instituted as a qualified farmer tenant-transferee thereof.

On June 2, 1995, petitioners filed a Complaint[7] for collection of land amortizations, dispossession, ejectment, and cancellation of Deed of Transfer[8] and Emancipation Patent against respondent Porferio before the Office of the Provincial Agrarian Reform Adjudicator (PARAD), Diwa ng Tarlak, Tarlac City. The case was docketed as DARAB Case No. 898-T'95.

The Complaint was later amended[9] to include, as additional respondents, Vivian Valete (Vivian), Antonio Soliman (Antonio), the Provincial Agrarian Reform Office of Tarlac (Tarlac PARO), and the Register of Deeds of Tarlac.

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

[4] CA *rollo*, pp. 147-155.

[5] DARAB records, p. 5.

[6] DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR. October 21, 1972.

[7] DARAB records, pp. 1-4.

[8] *Id.* at 6.

[9] See Amended Complaint, *id.* at 44-48.

It appears that a *Kasunduan*[10] dated December 10, 1985 and a notarized Deed of Transfer[11] were executed by Lazaro and Porferio. Under said deeds, Porferio, as sole farmer-beneficiary and in consideration for the transfer of the whole of the land in his favor, obliged himself to pay the petitioners 999 cavans of *palay* in 15 equal yearly amortizations under the government's Direct Payment Scheme pursuant to PD 27. It was agreed that an advance payment of 66 cavans and 28 kilos, representing total lease payments made by Porferio to Lazaro since 1973, shall be deducted from the 999 cavans, thus leaving an annual amortization to be made by Porferio of about 62 cavans or 16 cavans[12] per hectare per year. However, Porferio paid only a total of 121.2 cavans or 480.9 cavans short of the total amortizations due from 1986 to 1995, or 10 years into the deed. Petitioners claimed that notwithstanding written demands[13] and the failure/refusal of Porferio to attend Barangay Agrarian Reform Committee (BARC) scheduled mediation[14] and pay amortizations on the land to them or to the Land Bank of the Philippines,[15] the Tarlac PARO issued Emancipation Patents (EP Nos. 437306 to 308)[16] not only in favor of Porferio, but also of his children, herein respondents Vivian and Antonio who were not legally instituted farmer tenant-transferees of the land under PD 27.

Respondents Porferio, Vivian and Antonio alleged in their Amended Answer[17] that TCT No. 97603 has been cancelled and new titles have been issued in their names, specifically TCT Nos. 21512, 21513, and 21514,[18] pursuant to EP Nos.

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[10] *Id.* at 7.

[11] *Id.* at 6.

[12] *Id.* at 7.

[13] *Id.* at 8; latest written demand made.

[14] *Id.* at 9.

[15] *Rollo*, p. 57.

[16] See Transfer Certificates of Title Nos. 21512, 21513 and 21514, DARAB records, pp. 25-27.

[17] *Id.* at 57-62.

[18] *Id.* at 25-27.

437306 to 308. Thus, they argued that the PARAD has no jurisdiction over the case and no authority to cancel such titles as the same pertain to the regular courts. They further contended that between them and the petitioners, there is no tenancy relationship; and that they have exceeded payments for the land, having paid, since 1973, a total of 1,050 cavans plus ₱5,000.00, and an additional 187 cavans after 1985. As counterclaim, they sought reimbursement of their alleged overpayment, and the payment of actual, moral and exemplary damages, and attorney's fees.

Ruling of the PARAD

On November 24, 1999, the PARAD rendered its Decision[19] declaring itself clothed with jurisdiction over the controversy which partakes of an agrarian dispute.[20] Notwithstanding its observation that the *Kasunduan* and the Deed of Transfer were defective for non-compliance with certain requirements of PD 27,[21] the PARAD nevertheless opined that said deeds were "within the context of PD 27".[22] It also held that Porferio still owes petitioners 597.8 cavans of *palay*.[23]

As regards the issue of whether Vivian and Antonio are entitled to the beneficial effects of PD 27 despite the fact that they were not instituted as tenants of the land, the PARAD held that the same has been mooted by the issuance of Emancipation Patents in their favor.[24] It also opined that the jurisdiction over said issue lies not with PARAD but the Secretary of the Department of Agrarian Reform (DAR). It thus upheld the

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[19] *Id.* at 120-134; penned by Regional Adjudicator Fe Arche-Manalang.

[20] *Id.* at 127.

[21] Such as lack of approval of any authorized official of the Department of Agrarian Reform and erroneous computation of the annual amortizations, *id.* at 130.

[22] *Id.* at 131.

[23] *Id.*

[24] *Id.* at 132.

validity of EP Nos. 437306 to 308 based on the presumption of the regularity in the performance of official functions.[25]

The PARAD also ruled that the failure of Porferio, Vivian and Antonio to pay rentals/amortizations cannot be considered as deliberate[26] because they "labored under the honest belief that they are now vested with absolute ownership"[27] of the land; moreover they "cannot be expected to understand the legal implications of the existing lien/encumbrance annotated on their respective titles entered in 1990 to insure payment of the land value"[28] to petitioners. The PARAD thus directed Porferio, Vivian and Antonio to pay petitioners a total of about 478.24 cavans of *palay*, ₱25,000.00 moral and exemplary damages, ₱15,000.00 attorney's fees, and costs.[29]

Ruling of the Department of Agrarian Reform Adjudication Board (DARAB)

Petitioners appealed to the DARAB[30] which likewise upheld the validity of the Emancipation Patents following the ratiocination of the PARAD that they have been regularly issued.

It also affirmed the PARAD's finding that respondents' failure to pay the rentals/amortizations was not deliberate and willful. The DARAB further found that respondents have made a total payment of 280 cavans of *palay* to petitioners from 1982 to 1985, and thus have religiously paid the lease rentals for four years at 70 cavans annually.[31] To this should be added payments made in 1986, 1988 and 1991 totaling 121.1 cavans.

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[25] *Id.*

[26] *Id.*

[27] *Id.* at 132-133.

[28] *Id.* at 133.

[29] *Id.* at 134.

[30] Docketed as DARAB Case No. 9481.

[31] 70 cavans x 4 years = 280 cavans.

Thus, on February 12, 2007, the DARAB rendered its Decision[32] affirming the judgment of the PARAD, with modification that respondents were ordered to pay petitioners 448.35 cavans of *palay* or their money equivalent at the current market value representing the amortizations due accruing from 1986 up to the year 2000, and 29.89 cavans annually thereafter until the land value fixed at 999 cavans is fully paid. The award of moral and exemplary damages, attorney's fees, and costs was deleted.

Petitioners went up to the CA by Petition for Review.[33]

Ruling of the Court of Appeals

Docketed as CA-G.R. SP No. 98730, the Petition for Review assailed the DARAB Decision, contending that the issuance of the Emancipation Patents in respondents' name was irregular, and that Porferio's deliberate failure and refusal to pay the annual amortizations since 1986 despite demand should result in the cancellation of his title.

On May 21, 2007, the CA issued the assailed Resolution dismissing petitioners' Petition for Review on the ground that the verification and certification against forum shopping was signed by only four of the six petitioners. Petitioners Mario Lazaro P. Gallardo and Lazaro P. Gallardo, Jr. did not sign, and no special power of attorney to sign in their favor accompanied the Petition. The CA held that the certification against forum shopping must be executed and signed by all of the petitioners, or else it is insufficient.

Petitioners moved to reconsider which was again rebuffed by the CA in its July 23, 2007 Resolution.

Hence, the present Petition.

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[32] DARAB records, pp. 178-185; pp. 140-147; penned by Assistant Secretary and DARAB Vice Chairman Augusto P. Quijano and concurred in by Assistant Secretaries/Members Edgar A. Igano, Delfin B. Samson and Patricia Rualo-Bello.

[33] CA *rollo*, pp. 10-37.

Issues

I

THE HON. COURT OF APPEALS X X X ERRED IN HOLDING THAT THE SIGNING OF THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING BY ONLY FOUR (4) OF THE SIX (6) PETITIONERS IS INSUFFICIENT TO MEET THE REQUIREMENTS OF THE RULE.

II

THE HON. COURT OF APPEALS X X X ERRED IN OUTRIGHTLY DISMISSING THE PETITION FOR REVIEW ON PURELY TECHNICAL GROUND.[34]

Petitioners' Arguments

In seeking a reversal of the assailed CA Resolutions, petitioners claim substantial compliance, citing *Iglesia ni Cristo v. Judge Ponferrada*.[35] In said case, this Court applied the rule on substantial compliance on account of the commonality of interest of all the parties in the subject of the controversy. Such commonality of interest clothed one of the plaintiffs-heirs/co-owners with the authority to inform the trial court on behalf of the others that they have not commenced any action or claim involving the same issues in another court or tribunal, and that there is no other pending action or claim in another court or tribunal involving the same issues.

Petitioners add that the verification and certification against forum shopping in their CA Petition for Review especially states that:

> **That we are signing this Petition for ourselves and also in behalves [sic] of our co-Petitioners because we have a community of interest as we are all co-heirs of the deceased Lazaro Gallardo and who have common interest in the property subject of the case** and in connection with this case, we have not commenced any other action, counterclaim or proceeding involving the same issues

[34] *Rollo*, p. 23.

[35] 536 Phil. 705 (2006).

raised in the above captioned case, in the Supreme Court, the Court of Appeals, or different Divisions thereof or any other tribunal or agency.[36]

Petitioners further plead that their case be decided on the merits rather than on technicality. They add that instead of dismissing their Petition, the CA should have granted them ample time to correct the defective verification and certification. Finally, petitioners claim that they honestly believed that the signing by four of them constituted substantial compliance with the rules of procedure, and that therefore their case be treated as a special case to compel relaxation of the rules.

Respondents' Arguments

Respondents, in their Comment,[37] insist on the correctness of the assailed Resolutions, and that TCT Nos. 21512, 21513, and 21524 issued in their names can no longer be cancelled, nor may the land be returned to petitioners as a result of its being placed under the coverage of PD 27.

Our Ruling

We grant the Petition.

The Court's disquisitions point favorably toward the direction of petitioners' argument. In *Heirs of Domingo Hernandez, Sr. v. Mingoa, Sr.*,[38] the Court ruled that –

> 'The general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs in a case and the signature of only one of them is insufficient. However, the Court has also stressed that the rules on forum shopping were designed to promote and facilitate the orderly administration of justice and thus should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the

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[36] CA *rollo*, p. 33. Emphasis supplied.

[37] *Rollo*, pp. 211-215.

[38] G.R. No. 146548, December 18, 2009, 608 SCRA 394.

> requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. Thus, under justifiable circumstances, the Court has relaxed the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional.
>
> In *HLC Construction and Development Corporation v. Emily Homes Subdivision Homeowners Association*, it was held that the signature of only one of the petitioners in the certification against forum shopping substantially complied with rules because all the petitioners share a common interest and invoke a common cause of action or defense.
>
> The same leniency was applied by the Court in *Cavile v. Heirs of Cavile*, because the lone petitioner who executed the certification of non-forum shopping was a relative and co-owner of the other petitioners with whom he shares a common interest. x x x
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> x x x x x x x x x
>
> In the instant case, petitioners share a common interest and defense inasmuch as they collectively claim a right not to be dispossessed of the subject lot by virtue of their and their deceased parents' construction of a family home and occupation thereof for more than 10 years. The commonality of their stance to defend their alleged right over the controverted lot thus gave petitioners x x x authority to inform the Court of Appeals in behalf of the other petitioners that they have not commenced any action or claim involving the same issues in another court or tribunal, and that there is no other pending action or claim in another court or tribunal involving the same issues.'

Here, all the petitioners are immediate relatives who share a common interest in the land sought to be reconveyed and a common cause of action raising the same arguments in support thereof. There was sufficient basis, therefore, for Domingo Hernandez, Jr. to speak for and in behalf of his co-petitioners when he certified that they had not filed any action or claim in another court or tribunal involving

the same issue. Thus, the Verification/Certification that Hernandez, Jr. executed constitutes substantial compliance under the Rules.[39]

Similarly, in *Traveño v. Bobongon Banana Growers Multi-Purpose Cooperative*[40] the Court held that:

> 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.[41]

The same position was taken in *Medado v. Heirs of the Late Antonio Consing*,[42] where the Court held that "where the petitioners are immediate relatives, who share a common interest in the property subject of the action, the fact that only one of the petitioners executed the verification or certification of [non] forum shopping will not deter the court from proceeding with the action."

The same situation obtains in this case. Petitioners are all heirs of the deceased Lazaro. As such, they undoubtedly share a common interest in the land, as well as common claims and defenses, as against respondents.

In *Medado*, the Court held further:

> Furthermore, we have consistently held that verification of a pleading is a formal, not a jurisdictional, requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules. It is deemed substantially complied with when one who

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[39] *Id.* at 405-407.

[40] G.R. No. 164205, September 3, 2009, 598 SCRA 27.

[41] *Id.* at 36 citing *Altres v. Empleo*, G.R. No. 180986, December 10, 2008, 573 SCRA 583, 597.

[42] G.R. No. 186720, February 8, 2012, 665 SCRA 534, 545.

has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification; and when matters alleged in the petition have been made in good faith or are true and correct x x x.[43]

It was therefore error for the CA to have dismissed the Petition for Review.

Aside from the fact that petitioners substantially complied with the rules, we also find it necessary for the CA to decide the case on the merits considering the vital issues presented in the Petition. There is a need for the CA to resolve whether the Emancipation Patents issued in the name of Vivian and Antonio were valid, considering that by the evidence presented, they were never instituted as tenants to the land. Porferio appears to be the sole tenant of the land, as can be seen from the *Kasunduan* and notarized Deed of Transfer. It would be enlightening to know how Vivian and Antonio acquired patents and certificates of title in their name notwithstanding the fact that they were never instituted as tenants or beneficiaries of PD 27. This becomes more imperative considering that the PARAD's pronouncement that the issue regarding the cancellation of the Emancipation Patents and certificates of title issued to Vivian and Antonio lies within the exclusive jurisdiction of the DAR Secretary does not hold water. On the contrary, the DARAB has exclusive jurisdiction over cases involving the cancellation of *registered* emancipation patents. The DAR Secretary, on the other hand, has exclusive jurisdiction over the issuance, recall or cancellation of Emancipation Patents/Certificates of Land Ownership Awards that are *not yet registered* with the Register of Deeds.[44]

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[43] *Id.* at 546 citing *Bello v. Bonifacio Security Services, Inc.*, G.R. No. 188086, August 3, 2011, 655 SCRA 143, 147-148.

[44] *Lakeview Golf and Country Club, Inc. v. Luzvimin Samahang Nayon*, G.R. No. 171253, April 16, 2009, 585 SCRA 368, 378; *Padunan v. Department of Agrarian Reform Adjudication Board*, 444 Phil. 213, 222-223 (2003).

Also, as the farmer tenant-transferee of the land under PD 27, Porferio is by law required to make amortizations on the land until he completes payment of the fixed price thereof. Under the *Kasunduan* and Deed of Transfer, he has to make good on his payments to the landowners. If he fails to pay, cancellation of any Certificate of Land Transfer or Emancipation Patent issued in his name is proper, pursuant to Section 2[45] of PD 816.[46] Considering the tenor of the law, the PARAD's and DARAB's pronouncement that respondents cannot be faulted for they "labored under the honest belief that they were now vested with absolute ownership"[47] of the land, and that they "cannot be expected to understand the legal implications of the existing lien/encumbrances annotated on their respective titles entered into in 1990 to insure payment of the land value"[48] to petitioners, appears to be anchored not on legal ground. Besides, it is common maxim that "ignorance of the law excuses no one from compliance therewith."[49] Moreover, when one party enters into a covenant with another, he must perform his obligations with fealty and good faith. This becomes more imperative where such party has been given a grant, such as land, under the land reform laws. While the tenant is emancipated from bondage to the soil, the landowner is entitled to his just compensation for the deprivation of his land.

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[45] Sec. 2. That any agricultural lessee of a rice or corn land under Presidential Decree No. 27 who deliberately refuses and/or continues to refuse to pay the rentals or amortization payments when they fall due for a period of two (2) years shall, upon hearing and final judgment, forfeit the Certificate of Land Transfer issued in his favor, if his farmholding is already covered by such Certificate of Land Transfer, and his farmholding.

[46] PROVIDING THAT TENANT-FARMERS AGRICULTURAL LESSES SHALL PAY THE LEASEHOLD RENTALS WHEN THEY FALL DUE AND PROVIDING PENALTIES THEREFOR. October 21, 1975.

[47] DARAB records, pp. 132-133.

[48] *Id.* at 133.

[49] CIVIL CODE, Article 3.

The CA should likewise settle the issue as to whether Porferio may be said to have deliberately refused to honor his obligation to pay the amortizations on the land, per the *Kasunduan* and Deed of Transfer, considering that on record, written demand has been served upon him, and despite such demand, Porferio failed to pay the amortizations.

Finally, an issue regarding interest arises, once it is resolved whether Porferio breached his agreement with Lazaro under the *Kasunduan* and Deed of Transfer. The issue of whether petitioners are entitled to recover interest on top of damages is a valid issue that must be addressed. This could be done through a proper assessment of the evidence.

Thus said, a remand of the case to the CA for proper disposition on the merits is in order.

WHEREFORE, the Petition is **GRANTED**. The May 21, 2007 and July 23, 2007 Resolutions of the Court of Appeals in CA-G.R. SP No. 98730 are **SET ASIDE**. The case is **REMANDED** to the Court of Appeals for appropriate disposition.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 181182. April 10, 2013]

BOARDWALK BUSINESS VENTURES, INC., *petitioner, vs.* **ELVIRA A. VILLAREAL (deceased) substituted by Reynaldo P. Villareal, Jr.-spouse, Shekinah Marie Villareal-Azugue-daughter, Reynaldo A. Villareal III-son, Shahani A. Villareal-daughter, and Billy Ray A. Villareal-son,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI*; APPEAL IS A MERE STATUTORY PRIVILEGE WHICH MAY BE EXERCISED ONLY IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF LAW; REQUIREMENTS; NOT ESTABLISHED IN CASE AT BAR.— "[T]he right to appeal is neither a natural right nor [is it a component] of due process[. I]t is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law." x x x In this case, petitioner must comply with the requirements laid down in Rule 42 of the Rules of Court: x x x In addition, the Rules also require that the Petition must be verified or accompanied by an affidavit by which the affiant attests under oath that he "has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records." And finally, Section 3 of Rule 42 provides that non-compliance "with any of the foregoing requirements regarding the payment of the docket and other lawful fees, x x x and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof." Records show that petitioner failed to comply with the foregoing rules. x x x Boardwalk's request for the Court to review its case on the merits should be denied as well. The import of the Court's foregoing pronouncements necessarily renders the RTC judgment final and unassailable; it became final and executory after the period to appeal expired without Boardwalk perfecting an appeal. As such, the Court may no longer review it.

2. ID.; ID.; VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; THE PERSON SIGNING IN BEHALF OF A CORPORATION MUST BE DULY AUTHORIZED TO REPRESENT THE SAID CORPORATION; NOT SATISFIED IN CASE AT BAR.— The Rules require that the Petition must be accompanied by a Verification and Certification against forum shopping. If the petitioner is a juridical entity, as in this case, it must be shown that the person signing in behalf of the corporation is duly authorized to represent said corporation. In this case, no special power of attorney or board resolution was attached to the Petition showing that Lo was authorized to sign the Petition or represent Boardwalk in the proceedings. In addition, petitioner failed to attach to the Petition copies of the relevant pleadings and other material portions of the record.

3. ID.; ID.; DOCKET FEES; PAYMENT OF DOCKET FEES AND OTHER LAWFUL FEES WITHIN THE REGLEMENTARY PERIOD, REQUIRED; VIOLATION IN CASE AT BAR.— Section 1, Rule 42 of the Rules of Court specifically states that payment of the docket fees and other lawful fees should be made to the clerk of the CA. A plain reading of the Rules leaves no room for interpretation; it is categorical and explicit. It was thus grave error on the part of the petitioner to have misinterpreted the same and consequently mistakenly remitted its payment to the RTC clerk. Petitioner's subsequent payment to the clerk of the CA of the docket fees and other lawful fees did not cure the defect. The payment to the CA was late; it was done long after the reglementary period to file an appeal had lapsed. It must be stressed that the payment of the docket fees and other lawful fees must be done within 15 days from receipt of notice of decision sought to be reviewed or denial of the motion for reconsideration. In this case, petitioner remitted the payment to the CA clerk long after the lapse of the reglementary period. x x x Section 1 of Rule 42 allows an extension of only 15 days. "No further extension shall be granted except for the most compelling reason x x x." Petitioner never cited any compelling reason. Thus, even on the assumption that the CA granted Boardwalk a 15-day reprieve from February 3, 2007, or the expiration of its original reglementary period, it still failed to file its Petition for Review on or before the February 19, 2007 due date. Records show that the Petition

was actually filed only on March 7, 2007, or way beyond the allowable February 19, 2007 deadline. The appellate court thus correctly ruled that this may not simply be brushed aside. More significantly, Section 8 of Rule 42 provides that the appeal is deemed perfected as to the petitioner "[u]pon the timely filing of a petition for review and the payment of the corresponding docket and other lawful fees." Undisputably, petitioner's appeal was not perfected because of its failure to timely file the Petition and to pay the docket and other lawful fees before the proper court which is the CA. Consequently, the CA properly dismissed outright the Petition because it never acquired jurisdiction over the same. As a result, the RTC's Decision had long become final and executory. x x x At this point, it must be emphasized that since petitioner's right of appeal is a mere statutory privilege, it was bound to a strict observance of the periods of appeal, which requirements are not merely mandatory, but jurisdictional.

APPEARANCES OF COUNSEL

Buenaventura R. Puentebella for petitioner.
Alfredo U. Ganggangan for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

"[T]he right to appeal is neither a natural right nor [is it a component] of due process[. I]t is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law."[1]

This Petition for Review on *Certiorari*[2] seeks a review of the Court of Appeals' (CA) April 25, 2007 Resolution[3] in CA-

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[1] *Fenequito v. Vergara, Jr.*, G.R. No. 172829, July 18, 2012, 677 SCRA 113, 117.

[2] *Rollo*, pp. 41-83.

[3] CA *rollo*, pp. 75-78; penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Portia Aliño-Hormachuelos and Monina Arevalo-Zenarosa.

G.R. SP No. UDK 5711 which dismissed outright petitioner's Petition. Also assailed is the December 21, 2007 Resolution[4] which denied the Motion for Reconsideration.

Factual Antecedents

Petitioner Boardwalk Business Ventures, Inc. (Boardwalk) is a duly organized and existing domestic corporation engaged in the selling of ready-to-wear (RTW) merchandise. Respondent Elvira A. Villareal (Villareal), on the other hand, is one of Boardwalk's distributors of RTW merchandise.

On October 20, 2005, Boardwalk filed an Amended Complaint[5] for replevin against Villareal covering a 1995 Toyota Tamaraw FX, for the latter's alleged failure to pay a car loan obtained from the former. The case, docketed as Civil Case No. 160116, was filed with the Metropolitan Trial Court (MeTC) of Manila and was assigned to Branch 27 thereof.

Ruling of the Metropolitan Trial Court

On May 30, 2005, the MeTC rendered its Decision[6] favoring Boardwalk, as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant adjudging that the former has the right to the possession of the subject motor vehicle and for the latter to pay the costs of the suit.
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> SO ORDERED.[7]

Villareal moved for reconsideration,[8] but failed.[9]

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[4] *Id.* at 138-141.

[5] Records, pp. 2-5.

[6] *Id.* at 343-347; penned by Judge Joel A. Lucasan.

[7] *Id.* at 347.

[8] *Id.* at 348.

[9] See Order dated September 9, 2005, *id.* at 374-376.

Ruling of the Regional Trial Court (RTC)

She thus appealed[10] to the Manila RTC, which court[11] issued a Decision[12] reversing the MeTC Decision, thus:

> WHEREFORE, the appeal is granted. The assailed judgment of the lower court is reversed and set aside. Defendant Villareal has the right of possession to and the value of subject vehicle described in the complaint. Hence, plaintiff is directed to deliver the subject vehicle to defendant or its value in case delivery cannot be made. The complaint and counterclaim are both dismissed.
>
> SO ORDERED.[13]

Boardwalk filed a Motion for Reconsideration,[14] but the same was denied by the RTC in a December 14, 2006 Order,[15] which Boardwalk received on January 19, 2007.[16] On February 5, 2007,[17] Boardwalk through counsel filed with the Manila RTC a Motion for Extension of Time to File Petition for Review,[18] praying that it be granted 30 days, or until March 7, 2007, to file its Petition for Review. It paid the docket and other legal fees therefor at the Office of the Clerk of Court of the Manila RTC.[19] On even date, Boardwalk also filed a Notice of Appeal[20] with the RTC which the said court denied for being a wrong mode of appeal.[21]

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[10] *Id.* at 381.

[11] Branch 18 thereof.

[12] *Id.* at 392-410; penned by Judge Myra V. Garcia-Fernandez.

[13] *Id.* at 410.

[14] *Id.* at 412-430.

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

[16] *Id.* at 451.

[17] *Id.*

[18] *Id.* at 451-456.

[19] *Id.* at 461-462.

[20] *Id.* at 457-460.

[21] See Order dated February 15, 2007, *id.* at 463.

On March 7, 2007, Boardwalk filed through mail[22] its Petition for Review[23] with the CA.

Ruling of the Court of Appeals

On April 25, 2007, the CA issued the first assailed Resolution, the dispositive portion of which reads as follows:

ACCORDINGLY, the Petition for Review is hereby **DISMISSED OUTRIGHT**.

SO ORDERED.[24]

In dismissing the Petition for Review, the CA held that Boardwalk erred in filing its Motion for Extension and paying the docket fees therefor with the RTC. It should have done so with the CA as required by Section 1[25] of Rule 42 of the Rules of Court. It held that as a result of Boardwalk's erroneous filing and payment of docket fees, it was as if no Motion for Extension was filed, and the subsequent March 7, 2007 filing of its Petition with the appellate court was thus late and beyond the reglementary 15-day period provided for under Rule 42.

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[22] See CA *rollo*, p. 75.

[23] *Id.* at 2-23.

[24] *Id.* at 77-78. Emphases in the original.

[25] 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, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. 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. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

The CA added that Boardwalk's prayer for a 30-day extension in its Motion for Extension was irregular, because the maximum period that may be granted is only 15 days pursuant to Section 1 of Rule 42. A further extension of 15 days should only be granted for the most compelling reason which is not obtaining in the present case. Moreover, it held that Boardwalk's Petition for Review failed to include a board resolution or secretary's certificate showing that its claimed representative, Ma. Victoria M. Lo (Lo), was authorized to sign the Petition or represent Boardwalk in the proceedings, which thus rendered defective the Verification and Certification against forum-shopping. Finally, the CA faulted Boardwalk for its failure to attach to its Petition copies of the Complaint, Answer, position papers, memoranda and other relevant pleadings, as required in Sections 2 and 3[26] of Rule 42, thus meriting the outright dismissal of its Petition for Review.

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[26] Sec. 2. *Form and contents.*

The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

Boardwalk filed a Motion for Reconsideration[27] and Supplemental Motion for Reconsideration,[28] invoking a liberal construction of the Rules in its favor. It further informed the CA that it had paid the docket fees with the CA Cashier, and submitted the required secretary's certificate and additional pleadings in support of its Petition.

In the second assailed December 21, 2007 Resolution subsequently issued, the CA denied the Motion for Reconsideration and its supplement. It held that despite curative action, the fact remains that Boardwalk's Petition was filed beyond the reglementary 15-day period. Even if technicality were to be set aside and Boardwalk were to be allowed an extension of 15 days from the filing of the Motion for Extension on February 5, 2007, or until February 20, 2007, within which to file its Petition, its actual filing on March 7, 2007 would still be tardy.

Issues

Boardwalk thus filed the instant Petition, raising the following issues for resolution:

PETITIONER IS INVOKING THE LIBERAL CONSTRUCTION OF THE RULES TO EFFECT SUBSTANTIAL JUSTICE IN ACCORDANCE WITH RULE 1, SECTION 6 OF THE 1997 RULES OF CIVIL PROCEDURE.

SPECIFICALLY, THE ASSAILED RESOLUTIONS X X X ORDERING THE OUTRIGHT DISMISSAL OF THE PETITION FOR REVIEW X X X DUE TO PROCEDURAL LAPSES, IN TOTAL DISREGARD OF THE SUBSTANTIAL ISSUES CLEARLY RAISED THEREAT, [ARE] CONTRARY TO

Sec. 3. *Effect of failure to comply with requirements.*

The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

[27] CA *rollo*, pp. 79-92.

[28] *Id.* at 93-96.

EXISTING RULES, LAW, JURISPRUDENCE AND THE PRINCIPLE OF EQUITY AND SUBSTANTIAL JUSTICE.[29]

Petitioner's Arguments

In its Petition and Reply,[30] Boardwalk invokes the principle that litigations should be decided on the merits and not on technicalities; that litigants should be afforded the amplest opportunity for the proper and just disposition of their causes, free from the constraints of technicalities. It claims that it should not be faulted for the error committed by its counsel's clerk in wrongly filing the Motion for Extension and paying the docket fees with the RTC Clerk of Court. It prays that the Court review the merits of its case.

As for the defective Verification and Certification of non-forum shopping, Boardwalk contends that these are formal, not jurisdictional, requisites which could as well be treated with leniency. Its subsequent submission of the proper secretary's certificate should thus have cured the defect. It adds that the same treatment should be accorded its subsequent payment of the docket fees with the CA Cashier and submission of the required annexes and pleadings in support of its Petition. It prays the Court to consider these as substantial compliance with the Rules.

Respondent's Arguments

In her Comment,[31] respondent simply echoes the CA ruling. She insists that Boardwalk's reasons for erroneously filing the Motion for Extension and paying the docket fees in the RTC are flimsy and should not be considered.

Respondent adds that Boardwalk's Petition raised factual issues relative to the merits of the case, which may not be the subject of review at this stage.

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[29] *Rollo*, p. 54.

[30] *Id.* at 189-197.

[31] *Id.* at 181-186.

Our Ruling

The Court denies the Petition.

Petitioner's case is not unique, and there is no compelling reason to accord it the privilege it now seeks.

"[T]he right to appeal is neither a natural right nor [is it a component] of due process[. I]t is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law."[32] This being so,

> x x x an appealing party must strictly comply with the requisites laid down in the Rules of Court. Deviations from the Rules cannot be tolerated. The rationale for this strict attitude is not difficult to appreciate as the Rules are designed to facilitate the orderly disposition of appealed cases. In an age where courts are bedeviled by clogged dockets, the Rules need to be followed by appellants with greater fidelity. Their observance cannot be left to the whims and caprices of appellants. x x x[33]

In this case, petitioner must comply with the following requirements laid down in Rule 42 of the Rules of Court:

> 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, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, 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 x x x. Upon proper motion x x x, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted

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[32] *Fenequito v. Vergara, Jr.*, *supra* note 1.

[33] *Id.*

except for the most compelling reason and in no case to exceed fifteen (15) days.

Sec. 2. *Form and contents.*

The petition shall be x x x accompanied by x x x copies x x x of the pleadings and other material portions of the record as would support the allegations of the petition.

The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

In addition, the Rules also require that the Petition must be verified or accompanied by an affidavit by which the affiant attests under oath that he "has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records."[34]

And finally, Section 3 of Rule 42 provides that non-compliance "with any of the foregoing requirements regarding the payment of the docket and other lawful fees, x x x and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof."

Records show that petitioner failed to comply with the foregoing rules.

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[34] See RULES OF COURT, Rule 7, Section 4.

The Petition must be accompanied by a Verification and Certification against forum shopping. Copies of the relevant pleadings and other material portions of the record must likewise be attached to the Petition.

The Rules require that the Petition must be accompanied by a Verification and Certification against forum shopping. If the petitioner is a juridical entity, as in this case, it must be shown that the person signing in behalf of the corporation is duly authorized to represent said corporation. In this case, no special power of attorney or board resolution was attached to the Petition showing that Lo was authorized to sign the Petition or represent Boardwalk in the proceedings. In addition, petitioner failed to attach to the Petition copies of the relevant pleadings and other material portions of the record.

Petitioner tried to cure these lapses by subsequently submitting a board resolution showing Lo's authority to sign and act on behalf of Boardwalk, as well as copies of the relevant pleadings. Now, it prays that the Court consider these as substantial compliance with the Rules.

Concededly, this Court in several cases exercised leniency and relaxed the Rules. However, in this case, petitioner committed multiple violations of the Rules which should sufficiently militate against its plea for leniency. As will be shown below, petitioner failed to perfect its appeal by not filing the Petition within the reglementary period and paying the docket and other lawful fees before the proper court. These requirements are mandatory and jurisdictional.

Petitioner erroneously paid the docket fees and other lawful fees with the RTC.

Section 1, Rule 42 of the Rules of Court specifically states that payment of the docket fees and other lawful fees should be made to the clerk of the CA. A plain reading of the Rules leaves no room for interpretation; it is categorical and explicit. It was thus grave error on the part of the petitioner to have misinterpreted the same and consequently mistakenly remitted its payment to the RTC clerk. Petitioner's subsequent payment to the clerk of the CA of the docket fees and other lawful fees did not cure the defect. The payment to the CA was late; it was done long after the reglementary period to file an appeal had lapsed. It must be stressed that the payment of the docket fees and other lawful fees must be done within 15 days from receipt of notice of decision sought to be reviewed or denial of the motion for reconsideration. In this case, petitioner remitted the payment to the CA clerk long after the lapse of the reglementary period.

The CA may grant an extension of 15 days only. The grant of another 15-days extension, or a total of 30-days extension is allowed only for the most compelling reason.

Petitioner sought an extension of 30 days within which to file its Petition for Review with the CA. This is not allowed. Section 1 of Rule 42 allows an extension of only 15 days. "No further extension shall be granted except for the most compelling reason x x x."[35] Petitioner never cited any compelling reason.

Thus, even on the assumption that the CA granted Boardwalk a 15-day reprieve from February 3, 2007, or the expiration of

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[35] RULES OF COURT, Rule 42, Section 1.

its original reglementary period,[36] it still failed to file its Petition for Review on or before the February 19, 2007[37] due date. Records show that the Petition was actually filed only on March 7, 2007, or way beyond the allowable February 19, 2007 deadline. The appellate court thus correctly ruled that this may not simply be brushed aside.

Petitioner's appeal is not deemed perfected.

More significantly, Section 8 of Rule 42 provides that the appeal is deemed perfected as to the petitioner "[u]pon the timely filing of a petition for review and the payment of the corresponding docket and other lawful fees." Undisputably, petitioner's appeal was not perfected because of its failure to timely file the Petition and to pay the docket and other lawful fees before the proper court which is the CA. Consequently, the CA properly dismissed outright the Petition because it never acquired jurisdiction over the same. As a result, the RTC's Decision had long become final and executory.

To stress, the right to appeal is statutory and one who seeks to avail of it must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory. And, just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party have the correlative right to enjoy the finality of a decision in his favor.

True it is that in a number of instances, the Court has relaxed the governing periods of appeal in order to serve substantial justice.

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[36] The CA erroneously reckoned the additional 15-day period from the date of filing of the Motion for Extension. It should be reckoned from the date of expiration of the original reglementary period.

[37] February 18, 2007 is a Sunday.

But this we have done only in exceptional cases. Sadly, the instant case is definitely not one of them.[38]

At this point, it must be emphasized that since petitioner's right of appeal is a mere statutory privilege, it was bound to a strict observance of the periods of appeal, which requirements are not merely mandatory, but jurisdictional.

Nor may the negligence of Boardwalk's former counsel be invoked to excuse it from the adverse effects of the appellate court's pronouncement. His negligence or mistake proceeded from carelessness and ignorance of the basic rules of procedure. This does not constitute excusable negligence that would extricate and excuse Boardwalk from compliance with the Rules.

Boardwalk's request for the Court to review its case on the merits should be denied as well. The import of the Court's foregoing pronouncements necessarily renders the RTC judgment final and unassailable; it became final and executory after the period to appeal expired without Boardwalk perfecting an appeal. As such, the Court may no longer review it.

In light of the above conclusions, the Court finds no need to further discuss the other issues raised by the parties.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals' April 25, 2007 and December 21, 2007 Resolutions in CA-G.R. SP No. UDK 5711 are hereby **AFFIRMED**.

SO ORDERED.

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

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[38] *Apex Mining Co., Inc. v. Commissioner of Internal Revenue*, 510 Phil. 268, 275 (2005).

FIRST DIVISION

[G.R. No. 182760. April 10, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ROBERT P. NARCEDA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SUMMARY PROCEEDING; NO APPEAL CAN BE HAD OF THE TRIAL COURT'S JUDGMENT IN A SUMMARY PROCEEDING FOR THE DECLARATION OF PRESUMPTIVE DEATH OF AN ABSENT SPOUSE UNDER ARTICLE 41 OF THE FAMILY CODE; THE REMEDY OF THE LOSING PARTY IS A PETITION FOR *CERTIORARI* TO QUESTION THE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION BEFORE THE COURT OF APPEALS.—** This Court has already declared in *Republic v. Granda* that Jomoc cannot be interpreted as having superseded our pronouncements in *Bermudez-Lorino*, because *Jomoc* does not expound on the characteristics of a summary proceeding under the Family Code; *Bermudez-Lorino*, however, squarely touches upon the impropriety of an ordinary appeal as a vehicle for questioning a trial court's decision in a summary proceeding for the declaration of presumptive death under Article 41 of the Family Code. As explained in *Republic v. Tango*, the remedy of a losing party in a summary proceeding is not an ordinary appeal, but a petition for *certiorari,* to wit: **By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code. It goes without saying, however, that an aggrieved party may file a petition for *certiorari* to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts. To be sure, even if the Court's original jurisdiction to issue a writ of *certiorari* is concurrent with the RTCs and the Court of Appeals in**

certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum. From the decision of the Court of Appeals, the losing party may then file a petition for review on *certiorari* under Rule 45 of the Rules of Court with the Supreme Court. This is because the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AVAILMENT OF THE WRONG REMEDY OF APPEAL WILL NOT TOLL THE RUNNING OF THE PERIOD FOR FILING A PETITION FOR *CERTIORARI*.—** When the OSG filed its notice of appeal under Rule 42, it availed itself of the wrong remedy. As a result, the running of the period for filing of a Petition for *Certiorari* continued to run and was not tolled. Upon lapse of that period, the Decision of the RTC could no longer be questioned. Consequently, petitioner's contention that respondent has failed to establish a well-founded belief that his absentee spouse is dead may no longer be entertained by this Court.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Francisco R. Collado for respondent.

R E S O L U T I O N

SERENO, *C.J.*:

The present case stems from a Petition for Review[1] filed by the Republic of the Philippines (petitioner), praying for the reversal of the Decision[2] of the Court of Appeals (CA) dated 14 November 2007 and its subsequent Resolution[3] dated 29

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[1] *Rollo*, pp. 7-29.

[2] *Id*. at 32-40; CA-G.R. CV. No. 85704, penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

[3] *Id*. at 42-45.

April 2008. The CA dismissed the appeal of petitioner, because it supposedly lacked jurisdiction to decide the matter. It held that the Decision[4] of the Regional Trial Court of Balaoan, La Union (RTC) declaring the presumptive death of Marina B. Narceda (Marina) was immediately final and executory, "because by express provision of law, the judgment of the RTC is not appealable."[5]

Robert P. Narceda (respondent) married Marina on 22 July 1987. A reading of the Marriage Contract[6] he presented will reveal that at the time of their wedding, Marina was only 17 years and 4 months old.

According to respondent, Marina went to Singapore sometime in 1994 and never returned since.[7] There was never any communication between them. He tried to look for her, but he could not find her. Several years after she left, one of their town mates in Luna, La Union came home from Singapore and told him that the last time she saw his wife, the latter was already living with a Singaporean husband.[8]

In view of her absence and his desire to remarry,[9] respondent filed with the RTC on 16 May 2002 a Petition for a judicial declaration of the presumptive death and/or absence of Marina.[10]

The RTC granted respondent's Petition in a Decision[11] dated 5 May 2005, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court hereby renders judgment declaring the PRESUMPTIVE DEATH of MARINA B.

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[4] *Id*. at 50-51; Special Proceeding No. 622, dated 5 May 2005.

[5] *Id*. at 39.

[6] *Id*. at 48.

[7] *Id*. at 47.

[8] *Id*.

[9] *Rollo,* p. 51.

[10] *Id.* at 46-49.

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

NARCEDA for all legal intents and purposes of law as provided for in Rule 131, Sec. 3(w-4), Rules of Court, without prejudice to the effect of re-appearance of the absent spouse.

SO ORDERED.[12]

Petitioner, through the Office of the Solicitor General (OSG), appealed the foregoing Decision to the CA. According to petitioner, respondent failed to conduct a search for his missing wife with the diligence required by law and enough to give rise to a "well-founded" belief that she was dead.[13]

The CA dismissed the appeal ruling that the hearing of a petition for the declaration of presumptive death is a summary proceeding under the Family Code and is thus governed by Title XI thereof.[14] Article 247 of the Family Code provides that the judgment of the trial court in summary court proceedings shall be immediately final and executory. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED OUTRIGHT** on the **GROUND OF LACK OF JURISDICTION**, and this Court hereby reiterates the fact that the **RTC Decision is immediately final and executory** because by express provision of law, the **judgment of the RTC is not appealable.**

SO ORDERED.[15]

The OSG filed a Motion for Reconsideration, but it was likewise denied through the CA's 29 April 2008 Resolution.[16]

Petitioner now comes to this Court, through Rule 45, alleging as follows:

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[12] *Id*. at 51.

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

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

[15] *Id*. at 39.

[16] *Id*. at 42-45.

1. The Court of Appeals erred in dismissing the Petition on the ground of lack of jurisdiction.[17]

2. Respondent has failed to establish a well-founded belief that his absentee spouse is dead.[18]

The OSG insists that the CA had jurisdiction to entertain the Petition, because respondent had failed to establish a well-founded belief that his absentee spouse was dead.[19] The OSG cites *Republic v. CA (Jomoc)*,[20] in which this Court ruled:

> By the trial court's citation of Article 41 of the Family Code, it is gathered that the petition of Apolinaria Jomoc to have her absent spouse declared presumptively dead *had for its purpose her desire to contract a valid subsequent marriage*. *Ergo*, the petition for that purpose is a "*summary proceeding,*" following above-quoted Art. 41, paragraph 2 of the Family Code.
>
> x x x x x x x x x
>
> there is no doubt that the petition of Apolinaria Jomoc required, and is, therefore, a summary proceeding under the Family Code, *not* a special proceeding under the Revised Rules of Court appeal for which calls for the filing of a Record on Appeal. It being a summary ordinary proceeding, the filing of a Notice of Appeal from the trial court's order sufficed. (Emphasis in the original)[21]

The CA points out, however, that because the resolution of a petition for the declaration of presumptive death requires a summary proceeding, the procedural rules to be followed are those enumerated in Title XI of the Family Code. Articles 238, 247, and 253 thereof read:

> Art. 238. Until modified by the Supreme Court, the procedural rules provided for in this Title shall apply as regards separation in fact between husband and wife, abandonment by one of the other, and incidents involving parental authority.

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[17] *Id*. at 13.

[18] *Id*. at 18.

[19] *Id*. at 12.

[20] 497 Phil. 528 (2005).

[21] *Id*. at 533-534.

x x x x x x x x x

Art. 247. The judgment of the court shall be immediately final and executory.

x x x x x x x x x

ART. 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern summary proceedings filed under Articles 41, 51, 69, 73, 96, 124 and 217, insofar as they are applicable.

The appellate court argues that there is no reglementary period within which to perfect an appeal in summary judicial proceedings under the Family Code, because the judgments rendered thereunder, by express provision of Article 247, are immediately final and executory upon notice to the parties.[22] In support of its stance, it cited *Republic v. Bermudez-Lorino (Bermudez-Lorino)*,[23] in which this Court held:

In Summary Judicial Proceedings under the Family Code, there is no reglementary period within which to perfect an appeal, precisely because judgments rendered thereunder, by express provision of Section 247, Family Code, *supra*, are "immediately final and executory." It was erroneous, therefore, on the part of the RTC to give due course to the Republic's appeal and order the transmittal of the entire records of the case to the Court of Appeals.

An appellate court acquires no jurisdiction to review a judgment which, by express provision of law, is immediately final and executory. As we have said in *Veloria vs. Comelec*, "the right to appeal is not a natural right nor is it a part of due process, for it is merely a statutory privilege." Since, by express mandate of Article 247 of the Family Code, all judgments rendered in summary judicial proceedings in Family Law are "immediately final and executory," the right to appeal was not granted to any of the parties therein. The Republic of the Philippines, as oppositor in the petition for declaration of presumptive death, should not be treated differently. It had no right to appeal the RTC decision of November 7, 2001.[24]

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[22] *Rollo*, p. 38.

[23] 489 Phil. 761 (2005).

[24] *Id.* at 767.

We agree with the CA.

Article 41 of the Family Code provides:

Art. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

This Court has already declared in *Republic v. Granda*[25] that *Jomoc* cannot be interpreted as having superseded our pronouncements in *Bermudez-Lorino,* because *Jomoc* does not expound on the characteristics of a summary proceeding under the Family Code; *Bermudez-Lorino*, however, squarely touches upon the impropriety of an ordinary appeal as a vehicle for questioning a trial court's decision in a summary proceeding for the declaration of presumptive death under Article 41 of the Family Code.[26]

As explained in *Republic v. Tango*,[27] the remedy of a losing party in a summary proceeding is not an ordinary appeal, but a petition for *certiorari*, to wit:

By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code. It

[25] G.R. No. 187512, 13 June 2012.

[26] *Supra*.

[27] G.R. No. 161062, 31July 2009, 594 SCRA 560, 566-567.

goes without saying, however, that an aggrieved party may file a petition for *certiorari* to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts. To be sure, even if the Court's original jurisdiction to issue a writ of *certiorari* is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum. From the decision of the Court of Appeals, the losing party may then file a petition for review on *certiorari* under Rule 45 of the Rules of Court with the Supreme Court. This is because the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.

When the OSG filed its notice of appeal under Rule 42, it availed itself of the wrong remedy. As a result, the running of the period for filing of a Petition for *Certiorari* continued to run and was not tolled. Upon lapse of that period, the Decision of the RTC could no longer be questioned. Consequently, petitioner's contention that respondent has failed to establish a well-founded belief that his absentee spouse is dead[28] may no longer be entertained by this Court.

WHEREFORE, the instant Petition is **DENIED**. The 14 November 2007 Decision of the Court Appeals and its subsequent 29 April 2008 Resolution in CA-G.R. CV No. 85704, dismissing the appeal of the Republic of the Philippines are **AFFIRMED.**

The Decision of the Regional Trial Court of Balaoan, La Union in Special Proceeding No. 622 dated 5 May 2005 declaring the presumptive death of Marina B. Narceda is hereby declared **FINAL** and **EXECUTORY.**

SO ORDERED.

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

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[28] *Rollo,* p. 18.

THIRD DIVISION

[G.R. No. 183137. April 10, 2013]

PELIZLOY REALTY CORPORATION, represented herein by its President, GREGORY K. LOY, *petitioner, vs.* **THE PROVINCE OF BENGUET,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENTS; LOCAL TAXATION; THE POWER OF A PROVINCE TO TAX IS LIMITED TO THE EXTENT THAT SUCH POWER IS DELEGATED TO IT EITHER BY THE CONSTITUTION OR BY STATUTE.—** The power to tax "is an attribute of sovereignty," and as such, inheres in the State. Such, however, is not true for provinces, cities, municipalities and *barangays* as they are not the sovereign; rather, they are mere "territorial and political subdivisions of the Republic of the Philippines". The rule governing the taxing power of provinces, cities, muncipalities and *barangays* is summarized in *Icard v. City Council of Baguio*: It is settled that a municipal corporation unlike a sovereign state is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality, cannot assume it. And the power when granted is to be construed in *strictissimi juris*. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions – all these – have no place in the interpretation of the taxing power of a municipal corporation. Therefore, the power of a province to tax is limited to the extent that such power is delegated to it either by the Constitution or by statute. Section 5, Article X of the 1987 Constitution is clear on this point x x x. Per Section 5, Article X of the 1987 Constitution, "the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges." Nevertheless, such authority is "subject to such guidelines and limitations as the Congress may provide". In conformity with Section 3, Article X of the 1987 Constitution,

Congress enacted Republic Act No. 7160, otherwise known as the Local Government Code of 1991. Book II of the LGC governs local taxation and fiscal matters.

2. **TAXATION; PERCENTAGE TAX; CONCEPT THEREOF; AMUSEMENT TAXES ARE PERCENT TAX.—** In *Commissioner of Internal Revenue v. Citytrust Investment Phils. Inc.*, the Supreme Court defined percentage tax as a "tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services." Also, Republic Act No. 8424, otherwise known as the National Internal Revenue Code (NIRC), in Section 125, Title V, lists amusement taxes as among the (other) percentage taxes which are levied regardless of whether or not a taxpayer is already liable to pay value-added tax (VAT). Amusement taxes are fixed at a certain percentage of the gross receipts incurred by certain specified establishments. Thus, applying the definition in *CIR v. Citytrust* and drawing from the treatment of amusement taxes by the NIRC, amusement taxes are percentage taxes as correctly argued by Pelizloy.

3. **STATUTORY CONSTRUCTION; PRINCIPLE OF *EJUSDEM GENERIS*; EXPLAINED; PURPOSE AND RATIONALE OF THE PRINCIPLE.—** [P]rovinces are not barred from levying amusement taxes even if amusement taxes are a form of percentage taxes. Section 133 (i) of the LGC prohibits the levy of percentage taxes "except as otherwise provided" by the LGC. x x x. [S]ection 140 of the LGC carves a clear exception to the general rule in Section 133 (i). Section 140 expressly allows for the imposition by provinces of amusement taxes on "the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement." However, resorts, swimming pools, bath houses, hot springs, and tourist spots are not among those places expressly mentioned by Section 140 of the LGC as being subject to amusement taxes. Thus, the determination of whether amusement taxes may be levied on admissions to resorts, swimming pools, bath houses, hot springs, and tourist spots hinges on whether the phrase 'other places of amusement' encompasses resorts, swimming pools, bath houses, hot springs, and tourist spots. Under the principle of *ejusdem generis*,

"where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned." The purpose and rationale of the principle was explained by the Court in National Power Corporation v. Angas as follows: The purpose of the rule on ejusdem generis is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms. [2 Sutherland, Statutory Construction, 3rd ed., pp. 395-400].

4. **POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENTS; LOCAL TAXATION; AMUSEMENT TAXES; PHRASE "OTHER PLACES OF AMUSEMENT" IN SECTION 140 OF THE LOCAL GOVERNMENT CODE, CONSTRUED; RESORTS, SWIMMING POOLS, BATH HOUSES, HOT SPRINGS AND TOURIST SPOTS DO NOT BELONG TO THE SAME CATERGORY OR CLASS AS THEATERS, CINEMAS, CONCERT HALLS, CIRCUSES, AND BOXING STADIA, THUS THEY CANNOT BE CONSIDERED AS AMONG THE "OTHER PLACES OF AMUSEMENT" CONTEMPLATED BY SECTION 140 OF THE LOCAL GOVERNMENT CODE AND WHICH MAY PROPERLY BE SUBJECT TO AMUSEMENT TAXES.—** In the present case, the Court need not embark on a laborious effort at statutory construction. Section 131 (c) of the LGC already provides a clear definition of 'amusement places': Section 131. Definition of Terms. - When used in this Title, the term: x x x (c) "Amusement Places" include theaters, cinemas, concert halls, circuses and other places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performances. Indeed, theaters, cinemas, concert halls, circuses, and boxing stadia are bound by a common typifying characteristic in that they are all venues primarily for the staging of spectacles or the holding of public

shows, exhibitions, performances, and other events meant to be viewed by an audience. Accordingly, 'other places of amusement' must be interpreted in light of the typifying characteristic of being venues "where one seeks admission to entertain oneself by seeing or viewing the show or performances" or being venues primarily used to stage spectacles or hold public shows, exhibitions, performances, and other events meant to be viewed by an audience. As defined in The New Oxford A merican Dictionary, 'show' means "a spectacle or display of something, typically an impressive one"; while 'performance' means "an act of staging or presenting a play, a concert, or other form of entertainment." As such, the ordinary definitions of the words 'show' and 'performance' denote not only visual engagement (*i.e.*, the seeing or viewing of things) but also active doing (*e.g.*, displaying, staging or presenting) such that actions are manifested to, and (correspondingly) perceived by an audience. Considering these, it is clear that resorts, swimming pools, bath houses, hot springs and tourist spots cannot be considered venues primarily "where one seeks admission to entertain oneself by seeing or viewing the show or performances". While it is true that they may be venues where people are visually engaged, they are not primarily venues for their proprietors or operators to actively display, stage or present shows and/or performances. Thus, resorts, swimming pools, bath houses, hot springs and tourist spots do not belong to the same category or class as theaters, cinemas, concert halls, circuses, and boxing stadia. It follows that they cannot be considered as among the 'other places of amusement' contemplated by Section 140 of the LGC and which may properly be subject to amusement taxes.

5. ID.; ID.; ID.; ID.; ID.; THE POWER TO TAX WHEN GRANTED TO A PROVINCE IS TO BE CONSTRUED IN STRICTISSIMI JURIS; SECOND PARAGRAPH OF SECTION 59, ARTICLE X OF THE BENGUET PROVINCIAL REVENUE CODE OF 2005 WHICH IMPOSES AMUSEMENT TAXES ON ADMISSION FEES TO RESORTS, SWIMMING POOLS, BATH HOUSES, HOT SPRINGS, AND TOURIST SPORTS, DECLARED NULL AND VOID.— [I]t is helpful to recall this Court's pronouncements in Icard: [T]he power [to tax] when granted [to a province] is to be construed in *strictissimi juris*. Any doubt or ambiguity arising out of the term used in granting

that power must be resolved against the [province]. Inferences, implications, deductions – all these – have no place in the interpretation of the taxing power of a [province]. In this case, the definition of 'amusement places' in Section 131 (c) of the LGC is a clear basis for determining what constitutes the 'other places of amusement' which may properly be subject to amusement tax impositions by provinces. There is no reason for going beyond such basis. To do otherwise would be to countenance an arbitrary interpretation/application of a tax law and to inflict an injustice on unassuming taxpayers. The previous pronouncements notwithstanding, it will be noted that it is only the second paragraph of Section 59, Article X of the Tax Ordinance which imposes amusement taxes on "resorts, swimming pools, bath houses, hot springs, and tourist spots". The first paragraph of Section 59, Article X of the Tax Ordinance refers to "theaters, cinemas, concert halls, circuses, cockpits, dancing halls, dancing schools, night or day clubs, and other places of amusement". In any case, the issues raised by Pelizloy are pertinent only with respect to the second paragraph of Section 59, Article X of the Tax Ordinance. Thus, there is no reason to invalidate the first paragraph of Section 59, Article X of the Tax Ordinanc.e. Any declaration as to the Province of Benguet's lack of authority to levy amusement taxes must be limited to admission fees to resorts, swimming pools, bath houses, hot springs and tourist spots. Moreover, the second paragraph of Section 59, Article X of the Tax Ordinance is not limited to resorts, swimming pools, bath houses, hot springs, and tourist spots but also covers admission fees for boxing. As Section 140 of the LGC allows for the imposition of amusement taxes on gross receipts from admission fees to boxing stadia, Section 59, Article X of the Tax Ordinance must be sustained with respect to admission fees from boxing stadia.

APPEARANCES OF COUNSEL

Oracion Barlis & Associates for petitioner.
Benguet Provincial Legal Office for respondent.

D E C I S I O N

LEONEN, *J.*:

The principal issue in this case is the scope of authority of a province to impose an amusement tax.

This is a *Petition for Review on Certiorari* under Rule 45 of the Rules of Court praying that the December 10, 2007 decision of the Regional Trial Court, Branch 62, La Trinidad, Benguet in Civil Case No. 06-CV-2232 be reversed and set aside and a new one issued in which: (1) respondent Province of Benguet is declared as having no authority to levy amusement taxes on admission fees for resorts, swimming pools, bath houses, hot springs, tourist spots, and other places for recreation; (2) Section 59, Article X of the Benguet Provincial Revenue Code of 2005 is declared null and void; and (3) the respondent Province of Benguet is permanently enjoined from enforcing Section 59, Article X of the Benguet Provincial Revenue Code of 2005.

Petitioner Pelizloy Realty Corporation ("Pelizloy") owns Palm Grove Resort, which is designed for recreation and which has facilities like swimming pools, a spa and function halls. It is located at Asin, Angalisan, Municipality of Tuba, Province of Benguet.

On December 8, 2005, the Provincial Board of the Province of Benguet approved Provincial Tax Ordinance No. 05-107, otherwise known as the Benguet Revenue Code of 2005 ("Tax Ordinance"). Section 59, Article X of the Tax Ordinance levied a ten percent (10%) amusement tax on gross receipts from admissions to "resorts, swimming pools, bath houses, hot springs and tourist spots." Specifically, it provides the following:

Article Ten: Amusement Tax on Admission

Section 59. Imposition of Tax. There is hereby levied a tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, cockpits, dancing halls, dancing schools, night or day clubs, and other places of amusement at the rate of thirty percent (30%) of the gross receipts from admission fees; and

A tax of ten percent (10%) of gross receipts from admission fees for boxing, **resorts, swimming pools, bath houses, hot springs, and tourist spots** is likewise levied. [Emphasis and underscoring supplied]

Section 162 of the Tax Ordinance provided that the Tax Ordinance shall take effect on January 1, 2006.

It was Pelizloy's position that the Tax Ordinance's imposition of a 10% amusement tax on gross receipts from admission fees for resorts, swimming pools, bath houses, hot springs, and tourist spots is an *ultra vires* act on the part of the Province of Benguet. Thus, it filed an appeal/petition before the Secretary of Justice on January 27, 2006.

The appeal/petition was filed within the thirty (30)-day period from the effectivity of a tax ordinance allowed by Section 187 of Republic Act No. 7160, otherwise known as the Local Government Code (LGC).[1] The appeal/petition was docketed as MSO-OSJ Case No. 03-2006.

Under Section 187 of the LGC, the Secretary of Justice has sixty (60) days from receipt of the appeal to render a decision. After the lapse of which, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

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[1] Section 187. *Procedure for Approval and Effectivity of Tax, Ordinances and Revenue Measures; Mandatory Public Hearings.* - The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided, further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

Treating the Secretary of Justice's failure to decide on its appeal/petition within the sixty (60) days provided by Section 187 of the LGC as an implied denial of such appeal/petition, Pelizloy filed a Petition for Declaratory Relief and Injunction before the Regional Trial Court, Branch 62, La Trinidad, Benguet. The petition was docketed as Civil Case No. 06-CV-2232.

Pelizloy argued that Section 59, Article X of the Tax Ordinance imposed a percentage tax in violation of the limitation on the taxing powers of local government units (LGUs) under Section 133 (i) of the LGC. Thus, it was null and void *ab initio*. Section 133 (i) of the LGC provides:

> Section 133. *Common Limitations on the Taxing Powers of Local Government Units.* - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following:
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> x x x x x x x x x
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> (i) Percentage or value-added tax (VAT) on sales, barters or exchanges or similar transactions on goods or services except as otherwise provided herein

The Province of Benguet assailed the Petition for Declaratory Relief and Injunction as an improper remedy. It alleged that once a tax liability has attached, the only remedy of a taxpayer is to pay the tax and to sue for recovery after exhausting administrative remedies.[2]

On substantive grounds, the Province of Benguet argued that the phrase 'other places of amusement' in Section 140 (a) of the LGC[3] encompasses resorts, swimming pools, bath houses, hot springs, and tourist spots since "Article 220 (b) (sic)" of the LGC defines "amusement" as "pleasurable diversion and

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[2] *Rollo,* p. 91.

[3] Section 140. Amusement Tax - (a) The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.

entertainment x x x synonymous to relaxation, avocation, pastime, or fun."[4] However, the Province of Benguet erroneously cited Section 220 (b) of the LGC. Section 220 of the LGC refers to valuation of real property for real estate tax purposes. Section 131 (b) of the LGC, the provision which actually defines "amusement", states:

> Section 131. *Definition of Terms.* - When used in this Title, the term:
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> x x x x x x x x x
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> (b) "Amusement" is a pleasurable diversion and entertainment. It is synonymous to relaxation, avocation, pastime, or fun

On December 10, 2007, the RTC rendered the assailed Decision dismissing the Petition for Declaratory Relief and Injunction for lack of merit.

Procedurally, the RTC ruled that Declaratory Relief was a proper remedy. On the validity of Section 59, Article X of the Tax Ordinance, the RTC noted that, while Section 59, Article X imposes a percentage tax, Section 133 (i) of the LGC itself allowed for exceptions. It noted that what the LGC prohibits is not the imposition by LGUs of percentage taxes in general but the "imposition and levy of percentage tax on sales, barters, *etc.*, on goods and services only."[5] It further gave credence to the Province of Benguet's assertion that resorts, swimming pools, bath houses, hot springs, and tourist spots are encompassed by the phrase 'other places of amusement' in Section 140 of the LGC.

On May 21, 2008, the RTC denied Pelizloy's Motion for Reconsideration.

Aggrieved, Pelizloy filed the present petition on June 10, 2008 on pure questions of law. It assailed the legality of Section 59, Article X of the Tax Ordinance as being a (supposedly) prohibited percentage tax per Section 133 (i) of the LGC.

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[4] *Rollo,* p. 92.

[5] *Id.* at 101.

In its *Comment*, the Province of Benguet, erroneously citing Section 40 of the LGC, argued that Section 59, Article X of the Tax Ordinance does not levy a percentage tax "because the imposition is not based on the *total gross receipts of services* of the petitioner but solely and actually limited on the *gross receipts of the admission fees collected*."[6] In addition, it argued that provinces can validly impose amusement taxes on resorts, swimming pools, bath houses, hot springs, and tourist spots, these being 'amusement places'.

For resolution in this petition are the following issues:

1. Whether or not Section 59, Article X of Provincial Tax Ordinance No. 05-107, otherwise known as the Benguet Revenue Code of 2005, levies a percentage tax.

2. Whether or not provinces are authorized to impose amusement taxes on admission fees to resorts, swimming pools, bath houses, hot springs, and tourist spots for being "amusement places" under the Local Government Code.

The power to tax "is an attribute of sovereignty,"[7] and as such, inheres in the State. Such, however, is not true for provinces, cities, municipalities and barangays as they are not the sovereign;[8] rather, they are mere "territorial and political subdivisions of the Republic of the Philippines".[9]

The rule governing the taxing power of provinces, cities, municipalities and barangays is summarized in *Icard v. City Council of Baguio*:[10]

It is settled that a municipal corporation unlike a sovereign state is clothed with no inherent power of taxation. <u>The charter or statute</u>

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[6] *Id.* at 123.

[7] *Reyes v. Almanzor*, 273 Phil. 558, 564 (1991).

[8] *Icard v. City Council of Baguio*, 83 Phil. 870, 873 (1949) and *City of Iloilo v. Villanueva*, 105 Phil. 337 (1959).

[9] CONSTITUTION, Art. X, Sec. 1.

[10] *Supra* note 8.

must plainly show an intent to confer that power or the municipality, cannot assume it. And the power when granted is to be construed in *strictissimi juris*. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions – all these – have no place in the interpretation of the taxing power of a municipal corporation.[11] [Underscoring supplied]

Therefore, the power of a province to tax is limited to the extent that such power is delegated to it either by the Constitution or by statute. Section 5, Article X of the 1987 Constitution is clear on this point:

Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments. [Underscoring supplied]

Per Section 5, Article X of the 1987 Constitution, "the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges."[12] Nevertheless, such authority is "subject to such guidelines and limitations as the Congress may provide".[13]

In conformity with Section 3, Article X of the 1987 Constitution,[14] Congress enacted Republic Act No. 7160,

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[11] *Id.*, citing *Cu Unjieng vs. Patstone*, 42 Phil. 818, 830 (1922); *Pacific Commercial Co.vs. Romualdez*, 49 Phil. 917, 924 (1927); *Batangas Transportation Co. vs. Provincial Treasurer of Batangas*, 52 Phil. 190,196 (1928); *Baldwin vs. Coty Council* 53 Ala., p. 437; *State vs. Smith* 31 Lowa, p. 493; 38 Am Jur pp. 68, 72-73.

[12] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 248 (2003), citing *Mactan Cebu International Airport Authority vs. Marcos*, G.R. No. 120082, September 11, 1996, 261 SCRA 667, 680, citing Cruz, Isagani A., *Constitutional Law* (1991) at 84.

[13] Constitution, Art. X, Sec. 5.

[14] Section 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure

otherwise known as the Local Government Code of 1991. Book II of the LGC governs local taxation and fiscal matters.

Relevant provisions of Book II of the LGC establish the parameters of the taxing powers of LGUS found below.

First, Section 130 provides for the following fundamental principles governing the taxing powers of LGUs:

1. Taxation shall be uniform in each LGU.
2. Taxes, fees, charges and other impositions shall:
   a. be equitable and based as far as practicable on the taxpayer's ability to pay;
   b. be levied and collected only for public purposes;
   c. not be unjust, excessive, oppressive, or confiscatory;
   d. not be contrary to law, public policy, national economic policy, or in the restraint of trade.
3. The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person.
4. The revenue collected pursuant to the provisions of the LGC shall inure solely to the benefit of, and be subject to the disposition by, the LGU levying the tax, fee, charge or other imposition unless otherwise specifically provided by the LGC.
5. Each LGU shall, as far as practicable, evolve a progressive system of taxation.

Second, Section 133 provides for the common limitations on the taxing powers of LGUs. Specifically, Section 133 (i) prohibits

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instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

the levy by LGUs of percentage or value-added tax (VAT) on sales, barters or exchanges or similar transactions on goods or services <u>except</u> as otherwise provided by the LGC.

As it is Pelizloy's contention that Section 59, Article X of the Tax Ordinance levies a prohibited percentage tax, it is crucial to understand first the concept of a percentage tax.

In *Commissioner of Internal Revenue v. Citytrust Investment Phils. Inc.,*[15] the Supreme Court defined percentage tax as a "tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services." Also, Republic Act No. 8424, otherwise known as the National Internal Revenue Code (NIRC), in Section 125, Title V,[16] lists amusement taxes as among the (other) percentage taxes which are levied regardless of whether or not a taxpayer is already liable to pay value-added tax (VAT).

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[15] 534 Phil. 517, 536 (2006), citing *Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, November 25, 2003.

[16] TITLE V

OTHER PERCENTAGE TAXES

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SECTION 125. Amusement Taxes. - There shall be collected from the proprietor, lessee or operator of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, Jai-Alai and racetracks, a tax equivalent to:

(a) Eighteen percent (18%) in the case of cockpits;
(b) Eighteen percent (18%) in the case of cabarets, night or day clubs;
(c) Ten percent (10%) in the case of boxing exhibitions: Provided, however, That boxing exhibitions wherein World or Oriental Championships in any division is at stake shall be exempt from amusement tax: Provided, further, That at least one of the contenders for World or Oriental Championship is a citizen of the Philippines and said exhibitions are promoted by a citizen/s of the Philippines or by a corporation or association at least sixty percent (60%) of the capital of which is owned by such citizens;

Amusement taxes are fixed at a certain percentage of the gross receipts incurred by certain specified establishments.

Thus, applying the definition in *CIR v. Citytrust* and drawing from the treatment of amusement taxes by the NIRC, amusement taxes are percentage taxes as correctly argued by Pelizloy.

However, provinces are not barred from levying amusement taxes even if amusement taxes are a form of percentage taxes. Section 133 (i) of the LGC prohibits the levy of percentage taxes "except as otherwise provided" by the LGC.

Section 140 of the LGC provides:

> SECTION 140. Amusement Tax - (a) The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.
>
> (b) In the case of theaters of cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.

(d) Fifteen percent (15%) in the case of professional basketball games as envisioned in Presidential Decree No. 871: Provided, however, That the tax herein shall be in lieu of all other percentage taxes of whatever nature and description; and

(e) Thirty percent (30%) in the case of Jai-Alai and racetracks of their gross receipts, irrespective, of whether or not any amount is charged for admission.

For the purpose of the amusement tax, the term "gross receipts" embraces all the receipts of the proprietor, lessee or operator of the amusement place. Said gross receipts also include income from television, radio and motion picture rights, if any. A person or entity or association conducting any activity subject to the tax herein imposed shall be similarly liable for said tax with respect to such portion of the receipts derived by him or it.

The taxes imposed herein shall be payable at the end of each quarter and it shall be the duty of the proprietor, lessee or operator concerned, as well as any party liable, within twenty (20) days after the end of each quarter, to make a true and complete return of the amount of the gross receipts derived during the preceding quarter and pay the tax due thereon.

(c) The holding of operas, concerts, dramas, recitals, painting and art exhibitions, flower shows, musical programs, literary and oratorical presentations, except pop, rock, or similar concerts shall be exempt from the payment of the tax herein imposed.

(d) The Sangguniang Panlalawigan may prescribe the time, manner, terms and conditions for the payment of tax. In case of fraud or failure to pay the tax, the Sangguniang Panlalawigan may impose such surcharges, interests and penalties.

(e) The proceeds from the amusement tax shall be shared equally by the province and the municipality where such amusement places are located. [Underscoring supplied]

Evidently, Section 140 of the LGC carves a clear exception to the general rule in Section 133 (i). Section 140 expressly allows for the imposition by provinces of amusement taxes on "the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement."

However, resorts, swimming pools, bath houses, hot springs, and tourist spots are not among those places expressly mentioned by Section 140 of the LGC as being subject to amusement taxes. Thus, the determination of whether amusement taxes may be levied on admissions to resorts, swimming pools, bath houses, hot springs, and tourist spots hinges on whether the phrase 'other places of amusement' encompasses resorts, swimming pools, bath houses, hot springs, and tourist spots.

Under the principle of *ejusdem generis*, "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."[17]

The purpose and rationale of the principle was explained by the Court in *National Power Corporation v. Angas*[18] as follows:

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[17] *Miranda v. Abaya*, 370 Phil. 642, 658, citing *Vera v. Cuevas*, G.R. Nos. L-33693-94, May 31, 1979, 90 SCRA 379.

[18] G.R. Nos. 60225-26, May 8, 1992, 208 SCRA 542 (1992).

The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms. [2 Sutherland, Statutory Construction, 3rd ed., pp. 395-400].[19]

In *Philippine Basketball Association v. Court of Appeals*,[20] the Supreme Court had an opportunity to interpret a starkly similar provision or the counterpart provision of Section 140 of the LGC in the Local Tax Code then in effect. Petitioner Philippine Basketball Association (PBA) contended that it was subject to the imposition by LGUs of amusement taxes (as opposed to amusement taxes imposed by the national government). In support of its contentions, it cited Section 13 of Presidential Decree No. 231, otherwise known as the Local Tax Code of 1973, (which is analogous to Section 140 of the LGC) providing the following:

Section 13. Amusement tax on admission. - The province shall impose a tax on admission to be collected from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusement xxx.

Applying the principle of *ejusdem generis*, the Supreme Court rejected PBA's assertions and noted that:

[I]n determining the meaning of the phrase 'other places of amusement', one must refer to the prior enumeration of theaters, cinematographs, concert halls and circuses with artistic expression as their common characteristic. Professional basketball games do not fall under the same category as theaters, cinematographs, concert halls and circuses as the latter basically belong to artistic forms of

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[19] *Id.* at 547.

[20] 392 Phil. 133, 141 (2000).

entertainment while the former caters to sports and gaming.[21] [Underscoring supplied]

However, even as the phrase 'other places of amusement' was already clarified in *Philippine Basketball Association*, Section 140 of the LGC adds to the enumeration of 'places of amusement' which may properly be subject to amusement tax. Section 140 specifically mentions 'boxing stadia' in addition to "theaters, cinematographs, concert halls [and] circuses" which were already mentioned in PD No. 231. Also, 'artistic expression' as a characteristic does not pertain to 'boxing stadia'.

In the present case, the Court need not embark on a laborious effort at statutory construction. Section 131 (c) of the LGC already provides a clear definition of 'amusement places':

> Section 131. *Definition of Terms.* - When used in this Title, the term:
>
> x x x x x x x x x
>
> (c) "Amusement Places" include theaters, cinemas, concert halls, circuses and other places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performances [Underscoring supplied]

Indeed, theaters, cinemas, concert halls, circuses, and boxing stadia are bound by a common typifying characteristic in that they are all venues primarily for the staging of spectacles or the holding of public shows, exhibitions, performances, and other events meant to be viewed by an audience. Accordingly, 'other places of amusement' must be interpreted in light of the typifying characteristic of being venues "where one seeks admission to entertain oneself by seeing or viewing the show or performances" or being venues primarily used to stage spectacles or hold public shows, exhibitions, performances, and other events meant to be viewed by an audience.

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[21] *Id.* at 366.

As defined in The New Oxford American Dictionary,[22] 'show' means "a spectacle or display of something, typically an impressive one";[23] while 'performance' means "an act of staging or presenting a play, a concert, or other form of entertainment."[24] As such, the ordinary definitions of the words 'show' and 'performance' denote not only visual engagement (*i.e.*, the seeing or viewing of things) but also active doing (*e.g.*, displaying, staging or presenting) such that actions are manifested to, and (correspondingly) perceived by an audience.

Considering these, it is clear that resorts, swimming pools, bath houses, hot springs and tourist spots cannot be considered venues primarily "where one seeks admission to entertain oneself by seeing or viewing the show or performances". While it is true that they may be venues where people are visually engaged, they are not primarily venues for their proprietors or operators to actively display, stage or present shows and/or performances.

Thus, resorts, swimming pools, bath houses, hot springs and tourist spots do not belong to the same category or class as theaters, cinemas, concert halls, circuses, and boxing stadia. It follows that they cannot be considered as among the 'other places of amusement' contemplated by Section 140 of the LGC and which may properly be subject to amusement taxes.

At this juncture, it is helpful to recall this Court's pronouncements in *Icard*:

> [T]he power [to tax] when granted [to a province] is to be construed in *strictissimi juris*. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the [province]. Inferences, implications, deductions – all these – have no place in the interpretation of the taxing power of a [province].[25]

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[22] THE NEW OXFORD AMERICAN DICTIONARY (2nd ed., 2005).

[23] *Id.* at 1571.

[24] *Id.* at 1264.

[25] *Supra* note 8.

In this case, the definition of 'amusement places' in Section 131 (c) of the LGC is a clear basis for determining what constitutes the 'other places of amusement' which may properly be subject to amusement tax impositions by provinces. There is no reason for going beyond such basis. To do otherwise would be to countenance an arbitrary interpretation/application of a tax law and to inflict an injustice on unassuming taxpayers.

The previous pronouncements notwithstanding, it will be noted that it is only the second paragraph of Section 59, Article X of the Tax Ordinance which imposes amusement taxes on "resorts, swimming pools, bath houses, hot springs, and tourist spots". The first paragraph of Section 59, Article X of the Tax Ordinance refers to "theaters, cinemas, concert halls, circuses, cockpits, dancing halls, dancing schools, night or day clubs, and other places of amusement". In any case, the issues raised by Pelizloy are pertinent only with respect to the second paragraph of Section 59, Article X of the Tax Ordinance. Thus, there is no reason to invalidate the first paragraph of Section 59, Article X of the Tax Ordinance. Any declaration as to the Province of Benguet's lack of authority to levy amusement taxes must be limited to admission fees to resorts, swimming pools, bath houses, hot springs and tourist spots.

Moreover, the second paragraph of Section 59, Article X of the Tax Ordinance is not limited to resorts, swimming pools, bath houses, hot springs, and tourist spots but also covers admission fees for boxing. As Section 140 of the LGC allows for the imposition of amusement taxes on gross receipts from admission fees to boxing stadia, Section 59, Article X of the Tax Ordinance must be sustained with respect to admission fees from boxing stadia.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The second paragraph of Section 59, Article X of the Benguet Provincial Revenue Code of 2005, in so far as it imposes amusement taxes on admission fees to resorts, swimming pools, bath houses, hot springs and tourist spots, is declared null and void. Respondent Province of Benguet is permanently

enjoined from enforcing the second paragraph of Section 59, Article X of the Benguet Provincial Revenue Code of 2005 with respect to resorts, swimming pools, bath houses, hot springs and tourist spots.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 183658. April 10, 2013]

ROYAL SAVINGS BANK, formerly Comsavings Bank, now GSIS FAMILY BANK, *petitioner, vs.* **FERNANDO ASIA, MIKE LATAG, CORNELIA MARANAN, JIMMY ONG, CONRADO MACARALAYA, ROLANDO SABA, TOMAS GALLEGA, LILIA FEDELIMO, MILAGROS HAGUTAY and NORMA GABATIC (Collectively referred to as respondents Asia, *et al.*) represented by their counsel on record, ATTY. ROGELIO U. CONCEPCION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; FORECLOSURE PROCEEDINGS INITIATED BY THE GOVERNMENT-OWNED FINANCIAL INSTITUTIONS (GFI) SHOULD CONTINUE UNTIL A JUDGMENT THEREIN BECOMES FINAL AND EXECUTORY, WITHOUT A RESTRAINING ORDER, TEMPORARY OR PERMANENT INJUNCTION AGAINST IT BEING ISSUED. BUT IF THE PROPERTY IS OCCUPIED BY A PARTY OTHER THAN THE JUDGMENT

DEBTOR, THE COURT MUST FIRST ORDER A HEARING TO DETERMINE THE NATURE OF SAID ADVERSE POSSESSION BEFORE IT ISSUES A WRIT OF POSSESSION; RATIONALE.— Assuming that petitioner is, as it claims, a GFI protected under P.D. 385, this Court is still of the opinion and thus rules that the RTC committed no error in granting respondents' Urgent Motion to Quash Writ of Possession. Indeed, while this Court had already declared in *Philippine National Bank v. Adil* that once the property of a debtor is foreclosed and sold to a GFI, it would be mandatory for the court to place the GFI in the possession and control of the property—pursuant to Section 4 of P.D. No. 385—this rule should not be construed as absolute or without exception. The evident purpose underlying P.D. 385 is sufficiently served by allowing foreclosure proceedings initiated by GFIs to continue until a judgment therein becomes final and executory, without a restraining order, temporary or permanent injunction against it being issued. But if a parcel of land is occupied by a party other than the judgment debtor, the proper procedure is for the court to order a hearing to determine the nature of said adverse possession before it issues a writ of possession. This is because a third party, who is not privy to the debtor, is protected by the law. Such third party may be ejected from the premises only after he has been given an opportunity to be heard, to comply with the time- honored principle of due process. In the same vein, under Section 33 of Rule 39 of the Rules on Civil Procedure, the possession of a mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure, unless a third party is actually holding the property adversely *vis-à-vis* the judgment debtor.

2. **ID.; CIVIL PROCEDURE; EXECUTION AND SATISFACTION OF JUDGMENTS; WRIT OF POSSESSION; THE OBLIGATION OF A COURT TO ISSUE A WRIT OF POSSESSION IN FAVOR OF THE PURCHASER IN AN EXTRAJUDICIAL FORECLOSURE SALE CEASES TO BE MINISTERIAL, ONCE IT APPEARS THAT THERE IS A THIRD PARTY WHO IS IN POSSESSION OF THE PROPERTY AND IS CLAIMING A RIGHT ADVERSE TO THAT OF THE DEBTOR; QUASHING OF THE WRIT OF POSSESSION, UPHELD.—** In the eyes of this Court, the RTC did not err in issuing the herein assailed Orders on the basis

of its initial finding that respondents are third parties who are actually holding the property adversely vis-à-vis the judgment debtor. The RTC did not err in applying the doctrine laid down in *Barican v. Intermediate Appellate Court,* in which we ruled that the obligation of a court to issue a writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial, once it appears that there is a third party who is in possession of the property and is claiming a right adverse to that of the debtor/mortgagor. We explained in *Philippine National Bank v. Austria* that the foregoing doctrinal pronouncements are not without support in substantive law, to wit: x x x. Notably, the Civil Code protects the actual possessor of a property, to wit: Art. 433.Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property. Under the aforequoted provision, one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term "judicial process" could mean no less than an ejectment suit or reivindicatory action, in which the ownership claims of th contending parties may be properly heard and adjudicated. We find that it was only proper for the RTC to quash the Writ of Possession until a determination is made as to who, between petitioner and respondents, has the better right to possess the property.

3. **ID.; ID.; ID.; ID.; NO COURT HAS THE POWER TO INTERFERE BY INJUNCTION IN THE ISSUANCE OR ENFORCEMENT OF A WRIT OF POSSESSION ISSUED BY ANOTHER COURT OF CONCURRENT JURISDICTION HAVING THE POWER TO ISSUE THAT WRIT EXCEPT IF THE COURT THAT QUASHED THE WRIT OF POSSESSION, IS THE SAME COURT THAT ISSUED THE SAME, ALBEIT THEN UNDER A DIFFERENT JUDGE.—** No court has the power to interfere by injunction in the issuance or enforcement of a writ of possession issued by another court of concurrent jurisdiction having the power to issue that writ. However, as correctly pointed out by respondents in their Comment, it was the same trial court and "not another court or co-equal court body that quashed the subject writ of possession." The pairing judge, who issued the Order quashing the Writ of Possession, issued

it in her capacity as the judge of Branch 222 of Quezon City- the same branch, albeit then under a different judge, that issued the Writ of Possession.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Alvin A. Carullo for respondents.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review[1] filed by Royal Savings Bank (petitioner), praying for the reversal of the Orders dated 4 October 2007[2] and 25 June 2008,[3] which were rendered by Branch 222 of the Regional Trial Court of Quezon City (RTC) in LRC No. Q-22780 (07). These Orders granted respondents' Urgent Motion to Quash the Writ of Possession and Writ of Execution[4] issued by the then presiding judge of the RTC in petitioner's favor.

Sometime in January 1974, Paciencia Salita (Salita) and her nephew, Franco Valenderia (Valenderia), borrowed the amount of ₱25,000 from petitioner. The latter loaned to them an additional ₱20,000 in May 1975. To secure the payment of the aforementioned amounts loaned, Salita executed a Real Estate Mortgage over her property, which was covered by Transfer Certificate of Title (TCT) No. 103538. Notwithstanding demands, neither Salita nor Valenderia were able to pay off their debts.

As a result of their failure to settle their loans, petitioner instituted an extra-judicial foreclosure proceeding against the

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[1] *Rollo*, pp. 9-36.

[2] *Id.* at 37-39; penned by Pairing Judge Jocelyn A. Solis Reyes.

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

[4] *Id.* at 57-59.

Real Estate Mortgage. Pursuant to Act No. 3135, the mortgaged property was sold at a public auction held on 16 October 1979, at which petitioner was the highest bidder. On 23 April 1983, the redemption period expired. Both Salita and Valenderia failed to redeem the foreclosed property. Thus, TCT No. 103538 was cancelled and a new title covering the same property, TCT No. 299440, was issued in petitioner's name.

Thereafter, on 13 August 1984, Salita filed with the RTC a case for Reconveyance, Annulment of Title and Damages against petitioner. She prayed for the nullification of foreclosure proceedings and the reconveyance of the property now covered by TCT No. 299440. The RTC granted her prayer.

Petitioner appealed to the Court of Appeals (CA), which reversed the Decision of the RTC. Since Salita did not appeal the CA ruling, it became final and executory. Accordingly, the Entry of Judgment was issued on 4 June 2002.

Pursuant to Section 7 of Act 3135, petitioner filed with the RTC an *Ex-Parte* Petition for the Issuance of a Writ of Possession.[5] The Court, through its Order dated 14 February 2007, required petitioner to present its evidence. Petitioner then submitted a Memorandum of Jurisprudence (In Lieu of Oral Testimony).[6]

In a Decision dated 28 May 2007,[7] the RTC ruled in favor of petitioner and ordered the issuance of the Writ of Possession in the latter's favor.

Respondents Fernando Asia, Mika Latag, Cornelia Maranan, Jimmy Ong, Conrado Macaralaya, Rolando Saba, Tomas Gallega, Lilia Fedelimo, Milagros Hagutay and Norma Gabatic claimed to have been in open, continuous, exclusive and notorious possession in the concept of owners of the land in question for 40 years.[8] Allegedly, they had no knowledge and notice of all

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[5] *Id.* at 42-47.

[6] *Id.* at 48-53.

[7] *Id.* at 54-55.

[8] *Id.* at 118.

proceedings involving the property until they were served a Notice to Vacate[9] by RTC Sheriff IV Neri Loy, on 20 July 2007.[10] They further claimed that, prior to the service of the Notice to Vacate, they had no knowledge or notice of the lower court's proceedings or the foreclosure suit of petitioner.[11]

The Notice to Vacate gave respondents three days or until 25 July 2007 to voluntarily vacate the property. In order to prevent the execution of the notice, they filed an Urgent Motion to Quash Writ of Possession and Writ of Execution[12] on even date.

Petitioner filed their Comment[13] on respondents' Motion to Quash on 14 August 2007.

In an Order dated 4 October 2007,[14] the RTC granted the Motion to Quash. Petitioner filed a Motion for Reconsideration (MR),[15] to which an Opposition was filed by respondents.[16] Petitioner claimed that, six months after the filing of the Opposition, there was still no action taken by the RTC on the MR. Thus, it filed a Motion for Early Resolution[17] on 16 June 2008. Through an Order dated 25 June 2008,[18] the RTC denied petitioner's MR.

Claiming that it raises no factual issues, petitioner came straight to this Court through a Petition for Review under Rule 45 of the Rules on Civil Procedure.

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[9] *Id.* at 60.

[10] *Id.* at 118.

[11] *Id.*

[12] *Rollo,* pp. 57-59.

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

[14] *Id.* at 37-39.

[15] *Id.* at 66-84.

[16] *Id.* at 85-87.

[17] *Id.* at 88-93.

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

Petitioner insists that because it is a government-owned financial institution, the general rules on real estate mortgage found in Act 3135 do not apply to it. It prays that this Court rule that Presidential Decree (P.D.) No. 385[19]—the law intended specifically to govern mortgage foreclosures initiated by government-owned financial institutions—should be applied to this case.

According to petitioner, when the RTC quashed the Writ of Possession,[20] the latter violated Section 2 of P.D. 385, which reads:

> **Section 2.** No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings.

Thus, petitioner is now saying that, as a government financial institution (GFI), it cannot be enjoined from foreclosing on its delinquent accounts in observance of the mandate of P.D. 385.

We are not persuaded.

Assuming that petitioner is, as it claims, a GFI protected under P.D. 385, this Court is still of the opinion and thus rules that the RTC committed no error in granting respondents' Urgent Motion to Quash Writ of Possession.

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[19] 31 January 1974; REQUIRING GOVERNMENT FINANCIAL INSTITUTIONS TO FORECLOSE MANDATORILY ALL LOANS WITH ARREARAGES, INCLUDING INTEREST AND CHARGES, AMOUNTING TO AT LEAST TWENTY PERCENT (20%) OF THE TOTAL OUTSTANDING OBLIGATION.

[20] *Rollo,* pp. 27-28.

Indeed, while this Court had already declared in *Philippine National Bank v. Adil*[21] that once the property of a debtor is foreclosed and sold to a GFI, it would be mandatory for the court to place the GFI in the possession and control of the property—pursuant to Section 4 of P.D. No. 385—this rule should not be construed as absolute or without exception.

The evident purpose underlying P.D. 385 is sufficiently served by allowing foreclosure proceedings initiated by GFIs to continue until a judgment therein becomes final and executory, without a restraining order, temporary or permanent injunction against it being issued. But if a parcel of land is occupied by a party other than the judgment debtor, the proper procedure is for the court to order a hearing to determine the nature of said adverse possession before it issues a writ of possession.[22] This is because a third party, who is not privy to the debtor, is protected by the law. Such third party may be ejected from the premises only after he has been given an opportunity to be heard, to comply with the time-honored principle of due process.[23]

In the same vein, under Section 33 of Rule 39 of the Rules on Civil Procedure, the possession of a mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure, unless a third party is actually holding the property adversely *vis-à-vis* the judgment debtor.[24]

Respondents insist that they are actual possessors in the concept of owners and that they have been occupying the land in the concept of owners for 40 years already.[25] Furthermore, respondents made it clear in the Motion to Quash that they

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[21] G.R. No. 52823, 2 November 1982, 118 SCRA 110.

[22] *Guevara, et al. v. Ramos, et al.*, G.R. No. L-24358, 31 March 1971, 38 SCRA 194; *Saavedra, et al. v. Siari Valley Estates, Inc., et al.*, 106 Phil. 432 (1959); *Omana v. Gatulayao*, 73 Phil. 66 (1941); *Gozon v. Dela Rosa*, 77 Phil. 919 (1947); *Santiago v. Sheriff of Manila*, 77 Phil. 740 (1946).

[23] *Unchuan v. CA*, G.R. No. 78775, 31 May 1988.

[24] *Philippine National Bank v. Court of Appeals*, 424 Phil. 757 (2002).

[25] *Id.* at 118.

were not "claiming rights as attorney-in-fact, nor lessee, nor anything from Mortgagor PACENCIA SALITA."[26] Thus, whatever rights Salita had over the property that were acquired by petitioner when the latter purchased it, cannot be used against respondents, as their claim is adverse to that of Salita.

In the eyes of this Court, the RTC did not err in issuing the herein assailed Orders on the basis of its initial finding that respondents are third parties who are actually holding the property adversely *vis-à-vis* the judgment debtor. The RTC did not err in applying the doctrine laid down in *Barican v. Intermediate Appellate Court,*[27] in which we ruled that the obligation of a court to issue a writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial, once it appears that there is a third party who is in possession of the property and is claiming a right adverse to that of the debtor/mortgagor.

We explained in *Philippine National Bank v. Austria*[28] that the foregoing doctrinal pronouncements are not without support in substantive law, to wit:

> x x x. Notably, the Civil Code protects the actual possessor of a property, to wit:
>
> Art. 433.Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.
>
> Under the aforequoted provision, one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term "judicial process" could mean no less than an ejectment suit or reivindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.

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[26] *Id.* at 56.

[27] 245 Phil. 316 (1988).

[28] G.R. No. 135219, 17 January 2002.

We find that it was only proper for the RTC to quash the Writ of Possession until a determination is made as to who, between petitioner and respondents, has the better right to possess the property.

Lastly, petitioner alleges that the pairing judge violated the hierarchy of courts when she quashed the writ of possession validly issued by the then presiding Judge of the RTC Quezon City, a co-equal body.[29]

No court has the power to interfere by injunction in the issuance or enforcement of a writ of possession issued by another court of concurrent jurisdiction having the power to issue that writ.[30] However, as correctly pointed out by respondents in their Comment, it was the same trial court and "not another court or co-equal court body that quashed the subject writ of possession."[31] The pairing judge, who issued the Order quashing the Writ of Possession, issued it in her capacity as the judge of Branch 222 of Quezon City—the same branch, albeit then under a different judge, that issued the Writ of Possession.

With respect to all the arguments raised by the parties to prove their supposed rightful possession or ownership of the property, suffice it to say that these matters should be threshed out in an appropriate action filed specifically for their resolution.

WHEREFORE, the instant Petition is **DENIED**. The 4 October 2007 and 25 June 2008 Orders issued by Branch 222 of Regional Trial Court of Quezon City in LRC No. Q-22780 (07) are **AFFIRMED.**

SO ORDERED.

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

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[29] *Rollo,* p. 21.

[30] *PDCP Development Bank v. Vestil,* 332 Phil. 507, 510 (1996); *Autocorp Group and Autographics, Inc. v Court of Appeals,* 481 Phil. 298 (2004)

[31] *Rollo,* p. 133.

FIRST DIVISION

[G.R. No. 187678. April 10, 2013]

SPOUSES IGNACIO F. JUICO and ALICE P. JUICO, *petitioners, vs.* **CHINA BANKING CORPORATION,** *respondent.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; MUTUALITY OF CONTRACTS; ANY STIPULATION REGARDING THE VALIDITY OR COMPLIANCE OF THE CONTRACT WHICH IS LEFT SOLELY TO THE WILL OF ONE OF THE PARTIES IS INVALID.—** The principle of mutuality of contracts is expressed in Article 1308 of the Civil Code, which provides: Article 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them. Article 1956 of the Civil Code likewise ordains that "[n]o interest shall be due unless it has been expressly stipulated in writing." The binding effect of any agreement between parties to a contract is premised on two settled principles: (1) that any obligation arising from contract has the force of law between the parties; and (2) that there must be mutuality between the parties based on their essential equality. Any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Any stipulation regarding the validity or compliance of the contract which is left solely to the will of one of the parties, is likewise, invalid.
2. **ID.; ID.; ID.; ESCALATION CLAUSE IS NOT VOID *PER SE* BUT THE SAME IS VIOLATIVE OF THE PRINCIPLE OF MUTUALITY OF CONTRACTS, THUS VOID, WHERE IT GRANTS THE CREDITOR AN UNBRIDLED RIGHT TO ADJUST THE INTEREST INDEPENDENTLY AND UPWARDLY, COMPLETELY DEPRIVING THE DEBTOR OF THE RIGHT TO ASSENT TO AN IMPORTANT MODIFICATION IN THE AGREEMENT.—** Escalation clauses refer to stipulations allowing an increase in the interest

rate agreed upon by the contracting parties. This Court has long recognized that there is nothing inherently wrong with escalation clauses which are valid stipulations in commercial contracts to maintain fiscal stability and to retain the value of money in long term contracts. Hence, such stipulations are not void *per se.* Nevertheless, an escalation clause "which grants the creditor an unbridled right to adjust the interest independently and upwardly, completely depriving the debtor of the right to assent to an important modification in the agreement" is void. A stipulation of such nature violates the principle of mutuality of contracts. Thus, this Court has previously nullified the unilateral determination and imposition by creditor banks of increases in the rate of interest provided in loan contracts.

3. ID.; ID.; ID.; ID.; AN ESCALATION CLAUSE IS VOID WHERE THE CREDITOR UNILATERALLY DETERMINES AND IMPOSES AN INCREASE IN THE STIPULATED RATE OF INTEREST WITHOUT THE EXPRESS CONFORMITY OF THE DEBTOR; LENDERS HAVE NO *CARTE BLANCHE* AUTHORITY TO RAISE INTEREST RATES TO LEVELS WHICH WILL EITHER ENSLAVE THEIR BORROWERS OR LEAD TO A HEMORRHAGING OF THEIR ASSETS.— It is now settled that an escalation clause is void where the creditor unilaterally determines and imposes an increase in the stipulated rate of interest without the express conformity of the debtor. Such unbridled right given to creditors to adjust the interest independently and upwardly would completely take away from the debtors the right to assent to an important modification in their agreement and would also negate the element of mutuality in their contracts. While a ceiling on interest rates under the Usury Law was already lifted under Central Bank Circular No. 905, nothing therein "grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets."

4. ID.; ID.; ID.; ID.; ID.; AN ESCALATION CLAUSE AUTHORIZING THE CREDITOR TO ADJUST THE RATE OF INTEREST BASED ON PREVAILING MARKET RATES IS VOID FOR IT GRANTS THE CREDITOR THE POWER

TO IMPOSE AN INCREASED RATE OF INTEREST WITHOUT WRITTEN NOTICE TO THE DEBTORS AND THEIR WRITTEN CONSENT; ONE-SIDED IMPOSITIONS DO NOT HAVE THE FORCE OF LAW BETWEEN THE PARTIES, BECAUSE SUCH IMPOSITIONS ARE NOT BASED ON THE PARTIES' ESSENTIAL QUALITY.— In interpreting a contract, its provisions should not be read in isolation but in relation to each other and in their entirety so as to render them effective, having in mind the intention of the parties and the purpose to be achieved. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. Here, the escalation clause in the promissory notes authorizing the respondent to adjust the rate of interest on the basis of a law or regulation issued by the Central Bank of the Philippines, should be read together with the statement after the first paragraph where no rate of interest was fixed as it would be based on prevailing market rates. While the latter is not strictly an escalation clause, its clear import was that interest rates would vary as determined by prevailing market rates. Evidently, the parties intended the interest on petitioners' loan, including any upward or downward adjustment, to be determined by the prevailing market rates and not dictated by respondent's policy. It may also be mentioned that since the deregulation of bank rates in 1983, the Central Bank has shifted to a market-oriented interest rate policy. There is no indication that petitioners were coerced into agreeing with the foregoing provisions of the promissory notes. In fact, petitioner Ignacio, a physician engaged in the medical supply business, admitted having understood his obligations before signing them. At no time did petitioners protest the new rates imposed on their loan even when their property was foreclosed by respondent. This notwithstanding, we hold that the escalation clause is still void because it grants respondent the power to impose an increased rate of interest without a written notice to petitioners and their written consent. Respondent's monthly telephone calls to petitioners advising them of the prevailing interest rates would not suffice. A detailed billing statement based on the new imposed interest with corresponding computation of the total debt should have been provided by the respondent to enable

petitioners to make an informed decision. An appropriate form must also be signed by the petitioners to indicate their conformity to the new rates. Compliance with these requisites is essential to preserve the mutuality of contracts. For indeed, one-sided impositions do not have the force of law between the parties, because such impositions are not based on the parties' essential equality.

5. ID.; ID.; ID.; ID.; ID.; UNLESS THE MODIFICATIONS IN THE RATE OF INTEREST FOR LOANS PURSUANT TO AN ESCALATION CLAUSE IS THE RESULT OF AN AGREEMENT BETWEEN THE PARTIES, THE SAME HAS NO BINDING EFFECT; UNILATERAL INCREASES IN THE INTEREST RATES, DECLARED INVALID; PENALTY CHARGES, REDUCED.— Modifications in the rate of interest for loans pursuant to an escalation clause must be the result of an agreement between the parties. Unless such important change in the contract terms is mutually agreed upon, it has no binding effect. In the absence of consent on the part of the petitioners to the modifications in the interest rates, the adjusted rates cannot bind them. Hence, we consider as invalid the interest rates in excess of 15%, the rate charged for the first year. Based on the August 29, 2000 demand letter of China Bank, petitioners' total principal obligation under the two promissory notes which they failed to settle is ₱10,355,000. However, due to China Bank's unilateral increases in the interest rates from 15% to as high as 24.50% and penalty charge of 1/10 of 1% per day or 36.5% per annum for the period November 4, 1999 to February 23, 2001, petitioners' balance ballooned to ₱19,201,776.63. Note that the original amount of principal loan almost doubled in only 16 months. The Court also finds the penalty charges imposed excessive and arbitrary, hence the same is hereby reduced to 1% per month or 12% per annum.

SERENO, *C.J.*, *concurring opinion*:

CIVIL LAW; OBLIGATIONS AND CONTRACTS; LOANS; INCREASES IN INTEREST RATES UNILATERALLY IMPOSED BY THE CREDITOR BANK WITHOUT THE DEBTOR'S ASSENT VIOLATES THE MUTUALITY OF CONTRACTS; ESCALATION CLAUSES IN LOAN AGREEMENT, CONDITIONS TO BE VALID.— [I]ncreases

in interest rates unilaterally imposed by China Bank without petitioners' assent violates the principle of mutuality of contracts. This principle renders void a contract containing a provision that makes its fulfillment exclusively dependent upon the uncontrolled will of one of the contracting parties. x x x However, x x x not all escalation clauses in loan agreements are void *per se*. It is actually the rule that "escalation clauses are valid stipulations in commercial contracts to maintain fiscal stability and to retain the value of money in long term contracts." In *The Consolidated Bank and Trust Corporation v. Court of Appeals,* citing *Polotan, Sr. v. Court of Appeals,* this Court already accepted that, given the fluctuating economic conditions, practical reasons allow banks to stipulate that interest rates on a loan will not be fixed and will instead depend on market conditions. x x x. Based on jurisprudence, x x x, these points must be considered by creditor and debtors in the drafting of valid escalation clauses. Firstly, as a matter of equity and consistent with P.D. No. 1684, the escalation clause must be paired with a de-escalation clause. Secondly, so as not to violate the principle of mutuality, the escalation must be pegged to the prevailing market rates, and not merely make a generalized reference to "any increase or decrease in the interest rate" in the event a law or a Central Bank regulation is passed. Thirdly, consistent with the nature of contracts, the proposed modification must be the result of an agreement between the parties. In this way, our credit system would be facilitated by firm loan provisions that not only aid fiscal stability, but also avoid numerous disputes and litigations between creditors and debtors.

APPEARANCES OF COUNSEL

R.A. Din, Jr. and Associates Law Offices for petitioners.
Lim Vigilia Alcala Dumlao and Alamaeda and Casiding for respondent.

DECISION

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the February 20, 2009 Decision[1] and April 27, 2009 Resolution[2] of the Court of Appeals (CA) in CA G.R. CV No. 80338. The CA affirmed the April 14, 2003 Decision[3] of the Regional Trial Court (RTC) of Makati City, Branch 147.

The factual antecedents:

Spouses Ignacio F. Juico and Alice P. Juico (petitioners) obtained a loan from China Banking Corporation (respondent) as evidenced by two Promissory Notes both dated October 6, 1998 and numbered 507-001051-3[4] and 507-001052-0,[5] for the sums of ₱6,216,000 and ₱4,139,000, respectively. The loan was secured by a Real Estate Mortgage (REM) over petitioners' property located at 49 Greensville St., White Plains, Quezon City covered by Transfer Certificate of Title (TCT) No. RT-103568 (167394) PR-41208[6] of the Register of Deeds of Quezon City.

When petitioners failed to pay the monthly amortizations due, respondent demanded the full payment of the outstanding balance with accrued monthly interests. On September 5, 2000, petitioners received respondent's last demand letter[7] dated August 29, 2000.

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[1] *Rollo*, pp. 23-38. Penned by Associate Justice Teresita Dy-Liacco Flores with Associate Justices Rosmari D. Carandang and Romeo F. Barza concurring.

[2] *Id.* at 47.

[3] *Id.* at 48-51. Penned by Judge Maria Cristina J. Cornejo.

[4] Records, p. 36.

[5] *Id.* at 35.

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

[7] *Id.* at 55-56.

As of February 23, 2001, the amount due on the two promissory notes totaled ₱19,201,776.63 representing the principal, interests, penalties and attorney's fees. On the same day, the mortgaged property was sold at public auction, with respondent as highest bidder for the amount of ₱10,300,000.

On May 8, 2001, petitioners received[8] a demand letter[9] dated May 2, 2001 from respondent for the payment of ₱8,901,776.63, the amount of deficiency after applying the proceeds of the foreclosure sale to the mortgage debt. As its demand remained unheeded, respondent filed a collection suit in the trial court. In its Complaint,[10] respondent prayed that judgment be rendered ordering the petitioners to pay jointly and severally: (1) ₱8,901,776.63 representing the amount of deficiency, plus interests at the legal rate, from February 23, 2001 until fully paid; (2) an additional amount equivalent to 1/10 of 1% per day of the total amount, until fully paid, as penalty; (3) an amount equivalent to 10% of the foregoing amounts as attorney's fees; and (4) expenses of litigation and costs of suit.

In their Answer,[11] petitioners admitted the existence of the debt but interposed, by way of special and affirmative defense, that the complaint states no cause of action considering that the principal of the loan was already paid when the mortgaged property was extrajudicially foreclosed and sold for ₱10,300,000. Petitioners contended that should they be held liable for any deficiency, it should be only for ₱55,000 representing the difference between the total outstanding obligation of ₱10,355,000 and the bid price of ₱10,300,000. Petitioners also argued that even assuming there is a cause of action, such deficiency cannot be enforced by respondent because it consists only of the penalty and/or compounded interest on the accrued interest which is generally not favored under the Civil Code.

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[8] *Id.* at 66.

[9] *Id.* at 63-64.

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

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

By way of counterclaim, petitioners prayed that respondent be ordered to pay ₱100,000 in attorney's fees and costs of suit.

At the trial, respondent presented Ms. Annabelle Cokai Yu, its Senior Loans Assistant, as witness. She testified that she handled the account of petitioners and assisted them in processing their loan application. She called them monthly to inform them of the prevailing rates to be used in computing interest due on their loan. As of the date of the public auction, petitioners' outstanding balance was ₱19,201,776.63[12] based on the following statement of account which she prepared:

STATEMENT OF ACCOUNT
As of FEBRUARY 23, 2001
IGNACIO F. JUICO

PN# 507-0010520 due on 04-07-2004

Principal balance of PN# 5070010520.	4,139,000.00
Interest on ₱4,139,000.00 fr. 04-Nov-99 04-Nov-2000 366 days @ 15.00%.	622,550.96
Interest on ₱4,139,000.00 fr. 04-Nov-2000 04-Dec-2000 30 days @ 24.50%.	83,346.99
Interest on ₱4,139,000.00 fr. 04-Dec-2000 04-Jan-2001 31 days @ 21.50%.	75,579.27
Interest on ₱4,139,000.00 fr. 04-Jan-2001 04-Feb-2001 31 days @ 19.50%.	68,548.64
Interest on ₱4,139,000.00 fr. 04-Feb-2001 23-Feb-2001 19 days @ 18.00%.	38,781.86
Penalty charge @ 1/10 of 1% of the total amount due (₱4,139,000.00 from 11-04-99 to 02-23-2001 @ 1/10 of 1% per day).	1,974,303.00
Sub-total.	7,002,110.73

PN# 507-0010513 due on 04-07-2004

Principal balance of PN# 5070010513.	6,216,000.00

[12] TSN, April 1, 2002, pp. 6-18, 30-33.

Interest on ₱6,216,000.00 fr. 06-Oct-99 04-Nov-2000 395 days @ 15.00%.	1,009,035.62
Interest on ₱6,216,000.00 fr. 04-Nov-2000 04-Dec-2000 30 days @ 24.50%.	125,171.51
Interest on ₱6,216,000.00 fr. 04-Dec-2000 04-Jan-2001 31 days @ 21.50%.	113,505.86
Interest on ₱6,216,000.00 fr. 04-Jan-2001 04-Feb-2001 31 days @ 19.50%.	102,947.18
Interest on ₱6,216,000.00 fr. 04-Feb-2001 23-Feb-2001 19 days @ 18.00%.	58,243.07
Penalty charge @ 1/10 of 1% of the total amount due (₱6,216,000.00 from 10-06-99 to 02-23-2001 @ 1/10 of 1% per day).	3,145,296.00
Subtotal.	10,770,199.23
Total.	17,772,309.96
Less: A/P applied to balance of principal	(55,000.00)
Less: Accounts payable L & D	(261,149.39)
	17,456,160.57
Add: 10% Attorney's Fee	1,745,616.06
Total amount due	19,201,776.63
Less: Bid Price	10,300,000.00
TOTAL DEFICIENCY AMOUNT AS OF FEB. 23, 2001	8,901,776.63[13]

Petitioners thereafter received a demand letter[14] dated May 2, 2001 from respondent's counsel for the deficiency amount of ₱8,901,776.63. Ms. Yu further testified that based on the Statement of Account[15] dated March 15, 2002 which she prepared, the outstanding balance of petitioners was ₱15,190,961.48.[16]

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[13] Records, pp. 8-9.

[14] *Id.* at 63-64.

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

[16] TSN, April 1, 2002, pp. 20-23.

On cross-examination, Ms. Yu reiterated that the interest rate changes every month based on the prevailing market rate and she notified petitioners of the prevailing rate by calling them monthly *before* their account becomes past due. When asked if there was any written authority from petitioners for respondent to increase the interest rate unilaterally, she answered that petitioners signed a promissory note indicating that they agreed to pay interest at the prevailing rate.[17]

Petitioner Ignacio F. Juico testified that prior to the release of the loan, he was required to sign a blank promissory note and was informed that the interest rate on the loan will be based on prevailing market rates. Every month, respondent informs him by telephone of the prevailing interest rate. At first, he was able to pay his monthly amortizations but when he started to incur delay in his payments due to the financial crisis, respondent pressured him to pay in full, including charges and interests for the delay. His property was eventually foreclosed and was sold at public auction.[18]

On cross-examination, petitioner testified that he is a Doctor of Medicine and also engaged in the business of distributing medical supplies. He admitted having read the promissory notes and that he is aware of his obligation under them before he signed the same.[19]

In its decision, the RTC ruled in favor of respondent. The *fallo* of the RTC decision reads:

> WHEREFORE, premises considered, the Complaint is hereby sustained, and Judgment is rendered ordering herein defendants to pay jointly and severally to plaintiff, the following:
>
> 1. ₱8,901,776.63 representing the amount of the deficiency owing to the plaintiff, plus interest thereon at the legal rate after February 23, 2001;

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[17] *Id.* at 27-35.

[18] TSN, April 4, 2003, pp. 8-17.

[19] *Id.* at 18-23.

2. An amount equivalent to 10% of the total amount due as and for attorney's fees, there being stipulation therefor in the promissory notes;

3. Costs of suit.

SO ORDERED.[20]

The trial court agreed with respondent that when the mortgaged property was sold at public auction on February 23, 2001 for ₱10,300,000 there remained a balance of ₱8,901,776.63 since before foreclosure, the total amount due on the two promissory notes aggregated to ₱19,201,776.63 inclusive of principal, interests, penalties and attorney's fees. It ruled that the amount realized at the auction sale was applied to the interest, conformably with Article 1253 of the Civil Code which provides that if the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered. This being the case, petitioners' principal obligation subsists but at a reduced amount of ₱8,901,776.63.

The trial court further held that Ignacio's claim that he signed the promissory notes in blank cannot negate or mitigate his liability since he admitted reading the promissory notes before signing them. It also ruled that considering the substantial amount involved, it is unbelievable that petitioners threw all caution to the wind and simply signed the documents without reading and understanding the contents thereof. It noted that the promissory notes, including the terms and conditions, are *pro forma* and what appears to have been left in blank were the promissory note number, date of the instrument, due date, amount of loan, and condition that interest will be at the prevailing rates. All of these details, the trial court added, were within the knowledge of the petitioners.

When the case was elevated to the CA, the latter affirmed the trial court's decision. The CA recognized respondent's right to claim the deficiency from the debtor where the proceeds of the sale in an extrajudicial foreclosure of mortgage are insufficient

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[20] *Rollo*, p. 51.

to cover the amount of the debt. Also, it found as valid the stipulation in the promissory notes that interest will be based on the prevailing rate. It noted that the parties agreed on the interest rate which was not unilaterally imposed by the bank but was the rate offered daily by all commercial banks as approved by the Monetary Board. Having signed the promissory notes, the CA ruled that petitioners are bound by the stipulations contained therein.

Petitioners are now before this Court raising the sole issue of whether the interest rates imposed upon them by respondent are valid.

Petitioners contend that the interest rates imposed by respondent are not valid as they were not by virtue of any law or Bangko Sentral ng Pilipinas (BSP) regulation or any regulation that was passed by an appropriate government entity. They insist that the interest rates were unilaterally imposed by the bank and thus violate the principle of mutuality of contracts. They argue that the escalation clause in the promissory notes does not give respondent the unbridled authority to increase the interest rate unilaterally. Any change must be mutually agreed upon.

Respondent, for its part, points out that petitioners failed to show that their case falls under any of the exceptions wherein findings of fact of the CA may be reviewed by this Court. It contends that an inquiry as to whether the interest rates imposed on the loans of petitioners were supported by appropriate regulations from a government agency or the Central Bank requires a reevaluation of the evidence on records. Thus, the Court would in effect, be confronted with a factual and not a legal issue.

The appeal is partly meritorious.

The principle of mutuality of contracts is expressed in Article 1308 of the Civil Code, which provides:

Article 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

Article 1956 of the Civil Code likewise ordains that "[n]o interest shall be due unless it has been expressly stipulated in writing."

The binding effect of any agreement between parties to a contract is premised on two settled principles: (1) that any obligation arising from contract has the force of law between the parties; and (2) that there must be mutuality between the parties based on their essential equality. Any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Any stipulation regarding the validity or compliance of the contract which is left solely to the will of one of the parties, is likewise, invalid.[21]

Escalation clauses refer to stipulations allowing an increase in the interest rate agreed upon by the contracting parties. This Court has long recognized that there is nothing inherently wrong with escalation clauses which are valid stipulations in commercial contracts to maintain fiscal stability and to retain the value of money in long term contracts.[22] Hence, such stipulations are not void *per se.*[23]

Nevertheless, an escalation clause "which grants the creditor an unbridled right to adjust the interest independently and upwardly, completely depriving the debtor of the right to assent to an important modification in the agreement" is void. A stipulation of such nature violates the principle of mutuality of contracts.[24] Thus, this Court has previously nullified the unilateral

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[21] *Sps. Almeda v. Court of Appeals,* 326 Phil. 309, 316 (1996).

[22] *Sps. Florendo v. Court of Appeals,* 333 Phil. 535, 543 (1996), citing *Banco Filipino Savings & Mortgage Bank v. Navarro,* No. L-46591, July 28, 1987, 152 SCRA 346, 353 and *Insular Bank of Asia and America v. Spouses Salazar,* No. L-82082, March 25, 1988, 159 SCRA 133, 137.

[23] *Equitable PCI Bank v. Ng Sheung Ngor,* G.R. No. 171545, December 19, 2007, 541 SCRA 223, 240.

[24] *Id.*

determination and imposition by creditor banks of increases in the rate of interest provided in loan contracts.[25]

In *Banco Filipino Savings & Mortgage Bank v. Navarro*,[26] the escalation clause stated: "I/We hereby authorize Banco Filipino to correspondingly increase the interest rate stipulated in this contract without advance notice to me/us in the event *a law* should be enacted increasing the lawful rates of interest that may be charged on this particular kind of loan." While escalation clauses in general are considered valid, we ruled that Banco Filipino may not increase the interest on respondent borrower's loan, pursuant to Circular No. 494 issued by the Monetary Board on January 2, 1976, because said circular is not a law although it has the force and effect of law and the escalation clause has no provision for reduction of the stipulated interest "in the event that the applicable maximum rate of interest is reduced by law or by the Monetary Board" (de-escalation clause).

Subsequently, in *Insular Bank of Asia and America v. Spouses Salazar*[27] we reiterated that escalation clauses are valid stipulations but their enforceability are subject to certain conditions. The increase of interest rate from 19% to 21% per annum made by petitioner bank was disallowed because it did not comply with the guidelines adopted by the Monetary Board to govern interest rate adjustments by banks and non-banks performing quasi-banking functions.

In the 1991 case of *Philippine National Bank v. Court of Appeals*,[28] the promissory notes authorized PNB to increase the stipulated interest per annum "within the limits allowed by law at any time depending on whatever policy [PNB] may adopt

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[25] See *Philippine Savings Bank v. Castillo,* G.R. No. 193178, May 30, 2011, 649 SCRA 527; *Philippine National Bank v. Court of Appeals,* G.R. No. 107569, November 8, 1994, 238 SCRA 20; *Philippine National Bank v. Court of Appeals,* 273 Phil. 789 (1991).

[26] *Supra* note 22, at 348, 354-355 & 358.

[27] *Supra* note 22, at 137-138.

[28] *Supra* note 25, at 797, 798.

in the future; Provided, that, the interest rate on this note shall be correspondingly decreased in the event that the applicable maximum interest rate is reduced by law or by the Monetary Board." This Court declared the increases (from 18% to 32%, then to 41% and then to 48%) unilaterally imposed by PNB to be in violation of the principle of mutuality essential in contracts.[29]

A similar ruling was made in a 1994 case[30] also involving PNB where the credit agreement provided that "[PNB] reserves the right to increase the interest rate within the limits allowed by law at any time depending on whatever policy it may adopt in the future: Provided, that the interest rate on this accommodation shall be correspondingly decreased in the event that the applicable maximum interest is reduced by law or by the Monetary Board x x x".

Again, in 1996, the Court invalidated escalation clauses authorizing PNB to raise the stipulated interest rate at any time without notice, within the limits allowed by law. The Court observed that there was no attempt made by PNB to secure the conformity of respondent borrower to the successive increases in the interest rate. The borrower's assent to the increases cannot be implied from their lack of response to the letters sent by PNB, informing them of the increases.[31]

In the more recent case of *Philippine Savings Bank v. Castillo*,[32] we sustained the CA in declaring as unreasonable the following escalation clause: "The rate of interest and/or bank charges herein stipulated, during the terms of this promissory note, its extensions, renewals or other modifications, may be increased, decreased or otherwise changed from time to time within the rate of interest and charges allowed under present or

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[29] As cited in *Philippine National Bank v. Court of Appeals,* 328 Phil. 54, 61-62 (1996).

[30] *Philippine National Bank v. Court of Appeals, supra* note 25, at 22.

[31] *Supra* note 29, at 63.

[32] *Supra* note 25, at 529, 533-535.

future law(s) and/or government regulation(s) as the [PSBank] may prescribe for its debtors." Clearly, the increase or decrease of interest rates under such clause hinges solely on the discretion of petitioner as it does not require the conformity of the maker before a new interest rate could be enforced. We also said that respondents' assent to the modifications in the interest rates cannot be implied from their lack of response to the memos sent by petitioner, informing them of the amendments, nor from the letters requesting for reduction of the rates. Thus:

> … the validity of the escalation clause did not give petitioner the unbridled right to unilaterally adjust interest rates. The adjustment should have still been subjected to the mutual agreement of the contracting parties. In light of the absence of consent on the part of respondents to the modifications in the interest rates, the adjusted rates cannot bind them notwithstanding the inclusion of a de-escalation clause in the loan agreement.[33]

It is now settled that an escalation clause is void where the creditor unilaterally determines and imposes an increase in the stipulated rate of interest without the express conformity of the debtor. Such unbridled right given to creditors to adjust the interest independently and upwardly would completely take away from the debtors the right to assent to an important modification in their agreement and would also negate the element of mutuality in their contracts.[34] While a ceiling on interest rates under the Usury Law was already lifted under Central Bank Circular No. 905, nothing therein "grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets."[35]

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[33] *Id.* at 537.

[34] *New Sampaguita Builders Construction, Inc. (NSBCI) v. Philippine National Bank,* 479 Phil. 483, 497-498 (2004).

[35] *Id.* at 498, citing *Imperial v. Jaucian*, 471 Phil. 484, 494 (2004), further citing *Spouses Solangon v. Salazar*, 412 Phil. 816, 822 (2001), and *Sps. Almeda v. Court of Appeals*, *supra* note 21, at 319.

The two promissory notes signed by petitioners provide:

I/We hereby authorize the CHINA BANKING CORPORATION to increase or decrease as the case may be, the interest rate/service charge presently stipulated in this note without any advance notice to me/us in the event a law or Central Bank regulation is passed or promulgated by the Central Bank of the Philippines or appropriate government entities, increasing or decreasing such interest rate or service charge.[36]

Such escalation clause is similar to that involved in the case of *Floirendo, Jr. v. Metropolitan Bank and Trust Company*[37] where this Court ruled:

The provision in the promissory note authorizing respondent bank to increase, decrease or otherwise change from time to time the rate of interest and/or bank charges "**without advance notice" to petitione**r, "in the event of change in the interest rate prescribed by law or the Monetary Board of the Central Bank of the Philippines," does not give respondent bank unrestrained freedom to charge any rate other than that which was agreed upon. Here, the monthly upward/downward adjustment of interest rate is left to the will of respondent bank alone. It violates the essence of mutuality of the contract.[38]

More recently in *Solidbank Corporation v. Permanent Homes, Incorporated*,[39] we upheld as valid an escalation clause which required a written notice to and conformity by the borrower to the increased interest rate. Thus:

The Usury Law had been rendered legally ineffective by Resolution No. 224 dated 3 December 1982 of the Monetary Board of the Central Bank, and later by Central Bank Circular No. 905 which took effect on 1 January 1983. These circulars removed the ceiling on interest rates for secured and unsecured loans regardless of maturity. The effect of these circulars is to allow the parties to agree on any interest that may be charged on a loan. The virtual repeal of the Usury Law

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[36] Records, pp. 35-36.

[37] G.R. No. 148325, September 3, 2007, 532 SCRA 43.

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

[39] G.R. No. 171925, July 23, 2010, 625 SCRA 275, 284-285.

is within the range of judicial notice which courts are bound to take into account. Although interest rates are no longer subject to a ceiling, the lender still does not have an unbridled license to impose increased interest rates. The lender and the borrower should agree on the imposed rate, and such imposed rate should be in writing.

The three promissory notes between Solidbank and Permanent all contain the following provisions:

> "5. We/I irrevocably authorize Solidbank to increase or decrease at any time the interest rate agreed in this Note or Loan on the basis of, among others, prevailing rates in the local or international capital markets. For this purpose, We/I authorize Solidbank to debit any deposit or placement account with Solidbank belonging to any one of us. The adjustment of the interest rate shall be effective from the date indicated in the written notice sent to us by the bank, or if no date is indicated, from the time the notice was sent.
>
> 6. Should We/I disagree to the interest rate adjustment, We/I shall prepay all amounts due under this Note or Loan within thirty (30) days from the receipt by anyone of us of the written notice. Otherwise, We/I shall be deemed to have given our consent to the interest rate adjustment."

The stipulations on interest rate repricing are valid because (1) the parties mutually agreed on said stipulations; (2) **repricing takes effect only upon Solidbank's written notice to Permanent of the new interest rate;** and (3) Permanent has the option to prepay its loan if Permanent and Solidbank do not agree on the new interest rate. The phrases "irrevocably authorize," "at any time" and "adjustment of the interest rate shall be effective from the date indicated in the written notice sent to us by the bank, or if no date is indicated, from the time the notice was sent," emphasize that Permanent should receive a written notice from Solidbank as a condition for the adjustment of the interest rates. (Emphasis supplied.)

In this case, the trial and appellate courts, in upholding the validity of the escalation clause, underscored the fact that there was actually no fixed rate of interest stipulated in the promissory notes as this was made dependent on prevailing rates in the market. The subject promissory notes contained the following condition written after the first paragraph:

With one year grace period on principal and thereafter payable in 54 equal monthly instalments to start on the second year. Interest at the prevailing rates payable quarterly in arrears.[40]

In *Polotan, Sr. v. CA (Eleventh Div.)*,[41] petitioner cardholder assailed the trial and appellate courts in ruling for the validity of the escalation clause in the Cardholder's Agreement. On petitioner's contention that the interest rate was unilaterally imposed and based on the standards and rate formulated solely by respondent credit card company, we held:

The contractual provision in question states that "if there occurs any change in the prevailing market rates, the new interest rate shall be the guiding rate in computing the interest due on the outstanding obligation without need of serving notice to the Cardholder other than the required posting on the monthly statement served to the Cardholder." This could not be considered an escalation clause for the reason that it neither states an increase nor a decrease in interest rate. Said clause simply states that the interest rate should be based on the prevailing market rate.

Interpreting it differently, while said clause does not expressly stipulate a reduction in interest rate, it nevertheless provides a leeway for the interest rate to be reduced in case the prevailing market rates dictate its reduction.

Admittedly, the second paragraph of the questioned proviso which provides that "the Cardholder hereby authorizes Security Diners to correspondingly increase the rate of such **interest in the event of changes in prevailing market rate**s x x x" is an escalation clause. However, **it cannot be said to be dependent solely on the will of private respondent as it is also dependent on the prevailing market rates.**

Escalation clauses are not basically wrong or legally objectionable as long as they are **not solely potestative but based on reasonable and valid grounds.** Obviously**, the fluctuation in the market rates is beyond the control of private respondent**.[42] (Emphasis supplied.)

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[40] *Supra* note 36.

[41] 357 Phil. 250 (1998).

[42] *Id.* at 260.

In interpreting a contract, its provisions should not be read in isolation but in relation to each other and in their entirety so as to render them effective, having in mind the intention of the parties and the purpose to be achieved. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.[43]

Here, the escalation clause in the promissory notes authorizing the respondent to adjust the rate of interest on the basis of a law or regulation issued by the Central Bank of the Philippines, should be read together with the statement after the first paragraph where no rate of interest was fixed as it would be based on prevailing market rates. While the latter is not strictly an escalation clause, its clear import was that interest rates would vary as determined by prevailing market rates. Evidently, the parties intended the interest on petitioners' loan, including any upward or downward adjustment, to be determined by the prevailing market rates and not dictated by respondent's policy. It may also be mentioned that since the deregulation of bank rates in 1983, the Central Bank has shifted to a market-oriented interest rate policy.[44]

There is no indication that petitioners were coerced into agreeing with the foregoing provisions of the promissory notes. In fact, petitioner Ignacio, a physician engaged in the medical supply business, admitted having understood his obligations before signing them. At no time did petitioners protest the new rates imposed on their loan even when their property was foreclosed by respondent.

This notwithstanding, we hold that the escalation clause is still void because it grants respondent the power to impose an increased rate of interest without a written notice to petitioners and their written consent. Respondent's monthly telephone

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[43] *Bangko Sentral ng Pilipinas v. Santamaria,* 443 Phil. 108, 119 (2003), citing Art. 1374, Civil Code.

[44] <www.bsp.gov.ph/downloads/publications/faqs/intrates.pdf> (visited April 3, 2013).

calls to petitioners advising them of the prevailing interest rates would not suffice. A detailed billing statement based on the new imposed interest with corresponding computation of the total debt should have been provided by the respondent to enable petitioners to make an informed decision. An appropriate form must also be signed by the petitioners to indicate their conformity to the new rates. Compliance with these requisites is essential to preserve the mutuality of contracts. For indeed, one-sided impositions do not have the force of law between the parties, because such impositions are not based on the parties' essential equality.[45]

Modifications in the rate of interest for loans pursuant to an escalation clause must be the result of an agreement between the parties. Unless such important change in the contract terms is mutually agreed upon, it has no binding effect.[46] In the absence of consent on the part of the petitioners to the modifications in the interest rates, the adjusted rates cannot bind them. Hence, we consider as invalid the interest rates in excess of 15%, the rate charged for the first year.

Based on the August 29, 2000 demand letter of China Bank, petitioners' total principal obligation under the two promissory notes which they failed to settle is ₱10,355,000. However, due to China Bank's unilateral increases in the interest rates from 15% to as high as 24.50% and penalty charge of 1/10 of 1% per day or 36.5% per annum for the period November 4, 1999 to February 23, 2001, petitioners' balance ballooned to ₱19,201,776.63. Note that the original amount of principal loan almost doubled in only 16 months. The Court also finds the penalty charges imposed excessive and arbitrary, hence the same is hereby reduced to 1% per month or 12% per annum.

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[45] *New Sampaguita Builders Construction, Inc. v. Philippine National Bank*, *supra* note 34, at 497.

[46] See *Philippine National Bank v. Rocamora,* G.R. No. 164549, September 18, 2009, 600 SCRA 395, 407, citing *Banco Filipino Savings & Mortgage Bank v. Navarro, supra* note 22.

Petitioners' Statement of Account, as of February 23, 2001, the date of the foreclosure proceedings, should thus be modified as follows:

Principal		₱10,355,000.00
Interest at 15% per annum ₱10,355,000 x .15 x 477 days/365 days		2,029,863.70
Penalty at 12% per annum ₱10,355,000 x .12 x 477days/365 days		1,623,890.96
	Sub-Total	14,008,754.66
Less: A/P applied to balance of principal		(55,000.00)
Less: Accounts payable L & D		(261,149.39)
		13,692,605.27
Add: Attorney's Fees		1,369,260.53
Total Amount Due		15,061,865.79
Less: Bid Price		10,300,000.00
TOTAL DEFICIENCY AMOUNT		4,761,865.79

WHEREFORE, the petition for review on *certiorari* is **PARTLY GRANTED.** The February 20, 2009 Decision and April 27, 2009 Resolution of the Court of Appeals in CA G.R. CV No. 80338 are hereby **MODIFIED.** Petitioners Spouses Ignacio F. Juico and Alice P. Juico are hereby **ORDERED** to pay jointly and severally respondent China Banking Corporation ₱4,761,865.79 representing the amount of deficiency inclusive of interest, penalty charge and attorney's fees. Said amount shall bear interest at 12% *per annum*, reckoned from the time of the filing of the complaint until its full satisfaction.

No pronouncement as to costs.

SO ORDERED.

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

Sereno, C.J., see concurring opinion.

CONCURRING OPINION

SERENO, *C.J.*:

I fully concur with the majority that the increases in interest rates unilaterally imposed by China Bank without petitioners' assent violates the principle of mutuality of contracts. This principle renders void a contract containing a provision that makes its fulfilment exclusively dependent upon the uncontrolled will of one of the contracting parties.[1] In this case, the provision reads:

> I/We hereby authorize the CHINA BANKING CORPORATION to increase or decrease as the case may be, the interest rate/service charge presently stipulated in this note without any advance notice to me/us in the event a law or Central Bank regulation is passed or promulgated by the Central Bank of the Philippines or appropriate government entities, increasing or decreasing such interest rate or service charge.

This Court dealt with a similarly worded provision in *Floirendo, Jr. v. Metropolitan Bank and Trust Company*.[2] It noted that the "provision in the promissory note authorizing respondent bank to increase, decrease or otherwise change from time to time the rate of interest and/or bank charges 'without advance notice' to petitioner, 'in the event of change in the interest rate prescribed by law or the Monetary Board of the Central Bank of the Philippines,' does not give respondent bank unrestrained freedom to charge any rate other than that which was agreed upon."

However, I write to clarify that not all escalation clauses in loan agreements are void *per se*.[3] It is actually the rule that "escalation clauses are valid stipulations in commercial contracts

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[1] See Decision citing *Garcia v. Rita Legarda, Inc.*, 128 Phil. 590, 594-595 (1967).

[2] G.R. No. 148325, 3 September 2007, 532 SCRA 43.

[3] *Spouses delos Santos v. Metropolitan Bank and Trust Company*, G.R. No. 153852, 24 October 2012.

to maintain fiscal stability and to retain the value of money in long term contracts."[4] In *The Consolidated Bank and Trust Corporation v. Court of Appeals*,[5] citing *Polotan, Sr. v. Court of Appeals*,[6] this Court already accepted that, given the fluctuating economic conditions, practical reasons allow banks to stipulate that interest rates on a loan will not be fixed and will instead depend on market conditions. In adjudging so, we differentiated a valid escalation clause from an otherwise invalid proviso in this wise:[7]

> Neither do we find error when the lower court and the Court of Appeals set aside as invalid the floating rate of interest exhorted by petitioner to be applicable. The pertinent provision in the trust receipt agreement of the parties fixing the interest rate states:
>
> > I, WE jointly and severally agree to any increase or decrease in the interest rate which may occur after July 1, 1981, when the Central Bank floated the interest rate, and to pay additionally the penalty of 1% per month until the amount/s or instalments/s due and unpaid under the trust receipt on the reverse side hereof is/are fully paid.
>
> We agree with respondent Court of Appeals that the foregoing stipulation is invalid, there being no reference rate set either by it or by the Central Bank, leaving the determination thereof at the sole will and control of petitioner.
>
> While it may be acceptable, for practical reasons given the fluctuating economic conditions, for banks to stipulate that interest rates on a loan not be fixed and instead be made dependent upon prevailing market conditions, there should always be a reference rate upon which to peg such variable interest rates. An example of such a valid variable interest rate was found in *Polotan, Sr. v. Court of Appeals.* In that case, the contractual provision stating that "if

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[4] *Insular Bank of Asia and America v. Spouses Salazar*, 242 Phil. 757, 761 (1988); *Philippine National Bank v. Spouses Rocamora,* G.R. No. 164549, 18 September 2009, 600 SCRA 395, 406.

[5] 408 Phil. 803 (2001).

[6] 357 Phil. 250 (1998).

[7] *Supra* note 5, at 811-812.

there occurs any change in the prevailing market rates, the new interest rate shall be the guiding rate in computing the interest due on the outstanding obligation without need of serving notice to the Cardholder other than the required posting on the monthly statement served to the Cardholder" was considered valid. The aforequoted provision was upheld notwithstanding that it may partake of the nature of an escalation clause, because at the same time it provides for the decrease in the interest rate in case the prevailing market rates dictate its reduction. In other words, unlike the stipulation subject of the instant case, the interest rate involved in the *Polotan* case is designed to be based on the prevailing market rate. On the other hand, a stipulation ostensibly signifying an agreement to "any increase or decrease in the interest rate," without more, cannot be accepted by this Court as valid for it leaves solely to the creditor the determination of what interest rate to charge against an outstanding loan. (Emphasis in the original and underscoring supplied)

Evidently, the point of difference in the cited escalation clauses lies in the use of the phrase "any increase or decrease in the interest rate" without reference to the **prevailing market rate** actually imposed by the regulations of the Central Bank.[8] It is thus not enough to state, as akin to China Bank's provision, that the bank may *increase or decrease the interest rate in the event a law or a Central Bank regulation is passed*. To adopt that stance will necessarily involve a determination of the interest rate by the creditor since the provision spells a vague condition — it only requires that any change in the imposable interest must conform to the upward or downward movement of borrowing rates.

And if that determination is not subjected to the mutual agreement of the contracting parties, then the resulting interest rates to be imposed by the creditor would be unilaterally determined. Consequently, the escalation clause violates the principle of mutuality of contracts.

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[8] *Lotto Restaurant Corporation v. BPI Family Savings Bank, Inc.*, G.R. No. 177260, 30 March 2011, 646 SCRA 699.

Based on jurisprudence, therefore, these points must be considered by creditors and debtors in the drafting of valid escalation clauses. Firstly, as a matter of equity and consistent with P.D. No. 1684, the escalation clause must be paired with a de-escalation clause.[9] Secondly, so as not to violate the principle of mutuality, the escalation must be pegged to the prevailing market rates, and not merely make a generalized reference to "any increase or decrease in the interest rate" in the event a law or a Central Bank regulation is passed. Thirdly, consistent with the nature of contracts, the proposed modification must be the result of an agreement between the parties. In this way, our credit system would be facilitated by firm loan provisions that not only aid fiscal stability, but also avoid numerous disputes and litigations between creditors and debtors.

SECOND DIVISION

[G.R. No. 187740. April 10, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL TOLENTINO *Y* CATACUTAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE TRIAL COURT ARE NOT TO BE DISTURBED ON APPEAL SINCE CONCLUSIONS AS TO THE CREDIBILITY OF WITNESSES IN RAPE CASES DEPENDS HEAVILY ON THE SOUND JUDGMENT OF

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[9] *Banco Filipino Savings and Mortgage Bank v. Judge Navarro*, 236 Phil. 370 (1987); *Equitable PCI Bank v. Ng Sheung Ngor*, G.R. No. 171545, 19 December 2007, 541 SCRA 223, 241.

THE TRIAL COURT WHICH IS IN A BETTER POSITION TO DECIDE THE QUESTION, HAVING HEARD THE WITNESSES AND OBSERVED THEIR DEPORTMENT AND THE MANNER OF TESTIFYING.— In the prosecution of rape cases, conviction or acquittal depends on the credence to be accorded to the complainant's testimony because of the fact that usually, the participants are the only eyewitnesses to the occurrences. Thus, the issue ultimately leads to credibility. On this score, findings of fact of the trial court are not to be disturbed on appeal since conclusions as to the credibility of witnesses in rape cases depends heavily on the sound judgment of the trial court which is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying. The factual findings of the RTC are further strengthened by the affirmation of the Court of Appeals.

2. **ID.; ID.; ID.; WHEN A WOMAN, ESPECIALLY A GIRL-CHILD, SAYS SHE HAD BEEN RAPED, SHE SAYS IN EFFECT ALL THAT IS NECESSARY TO PROVE THAT RAPE WAS REALLY COMMITTED; RATIONALE.—** The legal adage that when a woman, especially a girl-child, says she had been raped, she says in effect all that is necessary to prove that rape was really committed, finds yet another application in this case. The rationale of this jurisprudential principle is that, "no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her." During the direct examination, AAA recounted the rape incident and positively identified appellant as the perpetrator x x x. AAA 's testimony is indeed clear and straightforward. Her sworn statement taken before the police station jived in all material details with her testimony during trial. Moreover, the medico-legal's finding of fresh laceration bolstered AAA's claim that she was raped only a few hours before she underwent medical examination.

3. **ID.; ID.; ID.; THE FAILURE OF THE RAPE VICTIM TO SHOUT FOR HELP, ALTHOUGH HER SIBLINGS WERE SLEEPING BESIDE HER AND HER PARENTS WERE ON THE OTHER ROOM, DOES NOT DETRACT FROM THE**

CREDIBILITY OF HER CLAIMS WHERE SHE PROVED TO THE SATISFACTION OF THE COURT THAT THERE WAS A REAL THREAT TO HER LIFE AND HER FAMILY POSED BY AN ARMED ACCUSED-ASSAILANT.— AAA's failure to shout for help, although her siblings were sleeping beside her and her parents were on the other room, does not detract from the credibility of her claims. She explained to the court's satisfaction that appellant, while holding a knife, had threatened to kill her family if she reported the incident. An 11-year old child like AAA can only cower in fear and submission in the face of a real threat to her life and her family's posed by an armed assailant.

4. ID.; ID.; ALIBI; TO PROSPER, THE SAME MUST BE SUPPORTED BY A CREDIBLE CORROBORATION FROM DISINTERESTED WITNESSES AND THE ACCUSED MUST PROVE NOT THAT HE WAS SOMEWHERE ELSE WHEN THE CRIME WAS COMMITTED, BUT ALSO IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME OR WITHIN ITS IMMEDIATE VICINITY.— Appellant's alibi that he was sleeping at the time of the rape incident deserves scant consideration. It is an oft-repeated principle that alibi is an inherently weak argument that can be easily fabricated to suit the ends of those who seek its recourse. Thus, an alibi must be supported by the most convincing evidence – a credible corroboration from disinterested witnesses. Further, for alibi to prosper, appellants must prove not only that they were somewhere else when the crime was committed, but also that it was physically impossible for them to have been at the scene of the crime or within its immediate vicinity. Appellant's alibi, in the case at bar, was corroborated by his relatives and a neighbor who are not considered impartial witnesses. Moreover, there was no showing that it was physically impossible for appellant to have been at the *locus criminis* at the time of the commission of the rape. Appellant was allegedly seen sleeping in a wooden bed in the store situated adjacent to the store of AAA with an estimated distance of only 8 meters. Alibi cannot prevail over the victim's positive identification of the accused as the perpetrator of the crime, especially when the victim remained steadfast in her testimony when subjected to the rigors of cross-examination.

5. CRIMINAL LAW; RAPE; ELEMENTS; PROPER PENALTY.— Under Article 266-A of the Revised Penal Code, rape, which is punishable by reclusion perpetua is committed by having carnal knowledge of a woman under any of the following circumstances: 1) By a man who have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat or intimidation; b) hen the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the **offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present. Hence, the trial court correctly imposed the penalty of *reclusion perpetua* for the rape of AAA, who was then under 12 years old, as evidenced by her birth certificate.

6. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— We increase the amount of moral damages and civil indemnity from ₱50,000.00 each to ₱75,000.00, considering that the crime committed is statutory rape. We additionally award exemplary damages in the amount of ₱30,000.00. Exemplary damages are imposed in a criminal case as part of the civil liability when the crime was committed with one or more aggravating circumstances, minority in this case. Also, in line with current jurisprudence, all the monetary awards for damages shall earn interest at the legal rate of 6% *per annum* from date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

For consideration is an appeal by appellant Manuel Tolentino *y* Catacutan from the Decision[1] dated 28 November 2008 of

[1] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas-Peralta and Normandie B. Pizarro, concurring. *Rollo*, pp. 2-14.

the Court of Appeals in CA-G.R. CR-H.C. No. 02505, affirming with modification the 15 September 2006 Decision[2] of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 13, which found him guilty beyond reasonable doubt of the crime of rape.

On 26 April 2000, appellant was charged in an Information which reads as follows:

> That on or about the 20th day of January, 2000, in the municipality of Baliuag, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of the said [AAA],[3] 11 years of age, minor, against her will and without her consent.[4]

Appellant pleaded not guilty. Trial proceeded.

AAA's and appellant's families own separate watermelon stores located along a highway in Bulacan. Their stores are adjacent to each other. At around 3:00 a.m. of 20 January 2000, AAA, then 11 years old, was sleeping beside her 10-year old brother and 2-year old nephew inside the store when she was awakened by a mosquito bite and saw appellant lying on top of her. Her parents meanwhile were sleeping in an adjacent room. Appellant ordered AAA to follow him. AAA asked permission to urinate first before appellant brought her to a vacant lot at the back of the store. Appellant undressed her, laid on top of her and inserted his penis into her vagina while pointing a knife at her chest, and threatening to kill her family if she reports the incident. Afterwards, appellant took her earrings and watch and other valuables inside the house.[5]

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[2] Presided by Presiding Judge Andres B. Soriano. CA *rollo*, pp. 22-33.

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its Implementing Rules, the real name of the victim, together with that of her immediate family members is withheld, and fictitious initials instead are used to represent her, both to protect her privacy. *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] Records, p. 1.

[5] TSN, 5 October 2000, pp. 3-13; TSN, 5 December 2000, pp. 4-5.

BBB, AAA's mother, woke up at dawn and found their store in disarray. She immediately went out of the store and saw appellant, together with a certain Doro and Noel, inside a jeep. She asked Doro why the latter did not notice the robbing of her store and the person who did it. Before Doro could answer, BBB saw AAA stand up and say: "*Nanay, Nanay umalis na po tayo dito ninakaw po iyong hikaw ko, yung relo ko. Umalis na po tayo papatayin po tayo.*" It was at that point when AAA intimated to BBB that she was raped by appellant and who also threatened to kill her whole family. Upon learning of the rape incident, BBB fainted.[6] When she regained consciousness, there were already police officers inside the store.[7]

On the same day, AAA was brought to the Philippine National Police (PNP) Crime Laboratory to undergo medical examination. Dr. Ivan Richard Viray (Dr. Viray) conducted a physical examination on AAA. His findings were encapsulated in Medico-Legal Report No. MR-019-2000, as follows:

FINDINGS:
GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT:	Light built
MENTAL STATUS:	Coherent female child
BREAST:	Conical in shape with pinkish brown areola and nipples from which no secretions could be pressed out
ABDOMEN:	Flat and soft
PHYSICAL INJURIES:	None noted

GENITAL:

PUBIC HAIR:	Scanty growth
LABIA MAJORA:	Full, convex and coaptated
LABIA MINORA:	In between labia majora, pinkish brown in color
HYMEN:	Elastic fleshy type with the presence of shallow fresh laceration at 6 o'clock position

[6] TSN, 15 March 2001, pp. 5-7.

[7] TSN, 18 May 2001, p. 8.

POSTERIOR FOURCHETTE:	V-shape, congested with abrasion measuring .5 x .5 cm.
EXTERNAL VAGINAL ORIFICE:	Offers strong resistance to examining little fingers
VAGINAL CANAL:	Narrow with prominent rugosities
CERVIX:	N/A
PERI-URETHRAL & PERI-VAGINAL SMEARS:	Negative for both spermatozoa and gram (-) dipplococci
CONCLUSION:	Findings are compatible with recent loss of virginity. There are no external signs of application of any form of trauma.[8]

Dr. Viray testified that he found fresh laceration on the vagina that could have been caused only within twenty-four (24) hours.[9]

Appellant was apprehended almost immediately after the rape incident was reported.

Police Officer Maximo Santiago (Santiago) conducted an investigation of both accused and the victim at the police station. He directed both parties to present their underwear for examination. He did not find any bloodstain on appellant's underwear. He admitted that he caused the filing of the complaint against appellant despite his belief that appellant was innocent.[10] Santiago further narrated that AAA told him that appellant had 2 or 3 "*bolitas*" or "*bukol*" (lump) in his private part. Santiago immediately examined appellant and found no lumps in his private part.[11]

Appellant also testified on his behalf, raising denial and alibi as defenses. He denied raping AAA and averred that he slept from 8:00 p.m. of 19 January 2000 until he was awakened by the police between 3:00 to 4:00 a.m. of 20 January 2000. He was arrested and brought to the police station. He claimed that

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[8] Records, p. 40.

[9] TSN, 30 June 2000, p. 6.

[10] TSN, 12 November 2001, pp. 4-6.

[11] TSN, 9 October 2003, pp. 4-5.

there was a feud between the two families.[12] He later divulged that he recently almost got into a fistfight with appellant's stepfather over the installation of electrical power.[13]

Gloria Tolentino (Gloria), appellant's mother, corroborated his son's testimony. She recalled that while she was tending to her watermelon store at around 3:00 a.m., she saw appellant sleeping in a wooden bed. Gloria recounted that prior to the arrest, appellant and AAA's stepfather had an altercation and almost came to blows over the installation of electrical power.[14]

Luzviminda Francisco, appellant's aunt, also attested to the claim of appellant that he was sleeping on the wooden bed in the store at around 3:00 a.m. of 20 January 2000.[15]

Lastly, Macario dela Cruz, neighbor of appellant, stated that he went to check on his chickens located some 5 meters away from appellant's watermelon store at around 3:00 a.m. of 20 January 2000. He saw appellant sleeping on the wooden bed. He did not notice anything unusual at that time except when he saw the policemen come and arrest appellant.[16]

On 15 September 2006, the RTC rendered a Decision with the following dispositive portion:

> WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime of rape as charged herein and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA.*
>
> The accused is likewise directed to indemnify the private complainant in the amount of SEVENTY-FIVE THOUSAND (₱75,000.00) PESOS.[17]

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[12] TSN, 13 February 2003, pp. 6-10.

[13] TSN, 13 February 2006, pp. 6-7.

[14] TSN, 26 February 2002, pp. 5, and 14-15.

[15] TSN, 30 May 2005, pp. 7-10.

[16] TSN, 12 December 2005, pp. 7-12.

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

The trial court found the victim's accusation of rape as credible and found appellant guilty.

Appellant filed with the Court of Appeals a Notice of Appeal dated 19 September 2006.[18]

On 28 November 2008, the Court of Appeals promulgated a Decision, the dispositive portion of which reads:

> WHEREFORE, the appealed decision of the Regional Trial Court of Bulacan (Malolos, Branch 13) is AFFIRMED with MODIFICATIONS in that the award of [₱]75,000.00 as civil indemnity is REDUCED to [₱]50,000.00 and that accused-appellant is further ordered to pay to AAA the sum of [₱]50,000.00 as moral damages.[19]

Appellant filed a Notice of Appeal on 18 December 2008.[20]

Both parties opted not to file Supplemental Briefs.[21]

In his Brief, appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt. He questions the credibility of the victim's testimony. Appellant alleges that the victim's testimony is "highly incredible [and] not in consonance with reason and common experience."[22] Appellant argues that based on AAA's testimony, no force was employed in undressing AAA. Appellant emphasizes that the knife he allegedly used to threaten AAA was never found nor offered in evidence. Moreover, appellant stresses that AAA did not offer any resistance to the alleged rape and she did not try to escape from accused when she had the opportunity to do so. Under these circumstances, appellant submits that it is evident that the alleged threats were only imagined by AAA.[23]

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[18] *Id.* at 34.

[19] *Rollo*, p. 13.

[20] *Id.* at 15.

[21] *Id.* at 26 and 32.

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

[23] *Id.* at 51-54.

In the prosecution of rape cases, conviction or acquittal depends on the credence to be accorded to the complainant's testimony because of the fact that usually, the participants are the only eyewitnesses to the occurrences. Thus, the issue ultimately leads to credibility.[24]

On this score, findings of fact of the trial court are not to be disturbed on appeal since conclusions as to the credibility of witnesses in rape cases depends heavily on the sound judgment of the trial court which is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying.[25]

The factual findings of the RTC are further strengthened by the affirmation of the Court of Appeals.

The legal adage that when a woman, especially a girl-child, says she had been raped, she says in effect all that is necessary to prove that rape was really committed, finds yet another application in this case.[26] The rationale of this jurisprudential principle is that, "no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her."[27]

During the direct examination, AAA recounted the rape incident and positively identified appellant as the perpetrator, thus:

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[24] *People v. Lizano*, G.R. No. 174470, 27 April 2007, 522 SCRA 803, 808-809.

[25] *Id.* at 809.

[26] *People v. Dion*, G.R. No. 181035, 4 July 2011, 653 SCRA 117, 137 citing *People v. Saban*, 377 Phil. 37, 45 (1999); *People v. Dacallos*, G.R. No. 189807, 5 July 2010, 623 SCRA 630, 636; *People v. Pioquinto*, G.R. No. 168326, 11 April 2007, 520 SCRA 712, 720.

[27] *People v. Candaza*, 524 Phil. 589, 606 (2006) citing *People v. Rosare*, 332 Phil. 435, 451 (1996).

PROS. JOSON:

Q: Miss witness, during that time that you were sleeping, was there any occasion for you to be awaken[ed]?

x x x x x x x x x

Q: May we know the reason why you were awaken[ed] at that time?

A: I saw Manuel on top of me, sir.

Q: You are referring to accused Manuel Tolentino, the accused in this case?

A: Yes, sir.

Q: While the accused was on top of you, what happened after that?

A: "*Noon pong nakita ko siya na nakapatong sa akin, pinababa niya po ako. Tapos po, nagpunta po kami sa dilim at saka po niya ako hinubaran[,]*" sir.

Q: Miss witness, may we know the reason why you agreed with him to go to the dark place?

A: Because he was pointing a knife at me, sir.

Q: You said a knife was pointed at you. On what part of your body the knife was pointed at you?

A: Here, sir.

INTERPRETER:

Witness pointing to her breast.

PROS. JOSON:

Q: What kind of knife was pointed at you, Miss witness?

A: "*Lanseta[,]*" sir.

Q: At the time the accused pointed that knife to you, where was he?

A: He was behind me, sir.

Q: After that you said you [went] with him in the dark, while you were in the dark, what happened?

ATTY. PERONA:

Already answered, Your Honor.

COURT:
We will allow the witness to answer.

A: While we were in the dark place, that was the time that he raped me, sir.

PROS. JOSON:
Q: Miss witness, please narrate to the Honorable Court the detail how you were raped by the accused? Miss witness, let us begin to the time the accused undressed you. When he undressed you, what happened?
A: After undressing me, he went on top of me, sir.

Q: What was your apparel at that time?
A: I was wearing a night clothes, sir.

Q: Were you wearing skirt or short?

ATTY. PERONA:
Leading, Your Honor.

COURT:
Reform.

PROS. JOSON:
Q: Can you describe your exact apparel?
A: I have my pajama on with a blouse, sir.

Q: Do you have underwear?
A: Yes, sir.

Q: What [was] your underwear?
A: Panty, sir, and brassiere.

Q: You said the accused undressed you. When the accused undressed you, what happened after that?
A: After that, the accused went on top of me and raped me, sir.

Q: Why did you say that the accused raped you?
A: Because I was hurt when he raped me, sir.

PROS. JOSON:
We want to make it of record that the private complainant is crying.

Q: Miss witness, you said you were hurt at that time. What hurt you at that time?
A: His penis, sir.

Q: What was he doing with his penis?
A: He inserted his penis in my vagina, sir.

Q: Was he able to succeed?
A: Leading, Your Honor.

COURT:
Reform.

PROS. JOSON:
Q: Why did you say that the accused inserted his penis inside your vagina?
A: I felt it, sir.

Q: What did you feel?
A: It's hurting, sir.

Q: Aside from hurting, what did you feel?
A: I was scared, sir.

Q: Why were you scared?
A: Because I am afraid he might kill us all, sir.

Q: Why did you say that he might kill you all?
A: Because he already threatened me that if I will report the matter, he will kill us all, sir.

Q: What made you believe that the accused has the capacity to scare you?
A: Because of his knife which is pointed at me, sir.[28]

AAA's testimony is indeed clear and straightforward. Her sworn statement[29] taken before the police station jived in all material details with her testimony during trial. Moreover, the medico-legal's finding of fresh laceration bolstered AAA's claim that she was raped only a few hours before she underwent medical examination.

AAA's failure to shout for help, although her siblings were sleeping beside her and her parents were on the other room, does not detract from the credibility of her claims. She

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[28] TSN, 5 October 2000, pp. 6-10.

[29] Records, pp. 3-5.

explained to the court's satisfaction that appellant, while holding a knife, had threatened to kill her family if she reported the incident. An 11-year old child like AAA can only cower in fear and submission in the face of a real threat to her life and her family's posed by an armed assailant.

Appellant's alibi that he was sleeping at the time of the rape incident deserves scant consideration. It is an oft-repeated principle that alibi is an inherently weak argument that can be easily fabricated to suit the ends of those who seek its recourse. Thus, an alibi must be supported by the most convincing evidence — a credible corroboration from disinterested witnesses. Further, for alibi to prosper, appellants must prove not only that they were somewhere else when the crime was committed, but also that it was physically impossible for them to have been at the scene of the crime or within its immediate vicinity.[30]

Appellant's alibi, in the case at bar, was corroborated by his relatives and a neighbor who are not considered impartial witnesses. Moreover, there was no showing that it was physically impossible for appellant to have been at the *locus criminis* at the time of the commission of the rape. Appellant was allegedly seen sleeping in a wooden bed in the store situated adjacent to the store of AAA with an estimated distance of only 8 meters.[31]

Alibi cannot prevail over the victim's positive identification of the accused as the perpetrator of the crime,[32] especially when the victim remained steadfast in her testimony when subjected to the rigors of cross-examination.

Under Article 266-A of the Revised Penal Code, rape, which is punishable by *reclusion perpetua* is committed by having carnal knowledge of a woman under any of the following circumstances:

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[30] *People v. Lopez*, G.R. No. 176354, 3 August 2010, 626 SCRA 485, 498-499 citing *People v. Cantere*, 363 Phil. 468, 479 (1999) and *People v. Delim*, G.R. No. 175942, 13 September 2007, 533 SCRA 366, 379.

[31] TSN, 10 April 2003, p. 4.

[32] *People v. De Jesus*, G.R. No. 186528, 26 January 2011, 640 SCRA 660, 671 citing *People v. Dela Cruz*, G.R. No. 175929, 16 December 2008, 574 SCRA 78, 91.

> 1) By a man who 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 otherwise unconscious;
> c) By means of fraudulent machination or grave abuse of authority; and
> d) When **the offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present. (Emphasis supplied).

Hence, the trial court correctly imposed the penalty of *reclusion perpetua* for the rape of AAA, who was then under 12 years old, as evidenced by her birth certificate.[33] We increase the amount of moral damages and civil indemnity from ₱50,000.00 each to ₱75,000.00,[34] considering that the crime committed is statutory rape. We additionally award exemplary damages in the amount of ₱30,000.00. Exemplary damages are imposed in a criminal case as part of the civil liability when the crime was committed with one or more aggravating circumstances, minority in this case.[35] Also, in line with current jurisprudence,[36] all the monetary awards for damages shall earn interest at the legal rate of 6% *per annum* from date of finality of this Decision until fully paid.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated 28 November 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 02505 is **AFFIRMED WITH MODIFICATION**. Appellant Manuel Tolentino *y* Catacutan is ordered to pay AAA the following amount:

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[33] Records, p. 12.

[34] *People v. Lansangan*, G.R. No. 201587, 14 November 2012.

[35] *People v. Lupac*, G.R. No. 182230, 19 September 2012.

[36] *People v. Veloso*, G.R. No. 188849, 13 February 2013; *People v. Ending*, G.R. No. 183827, 12 November 2012; *People v. Banig*, G.R. No. 177137, 23 August 2012, 679 SCRA 133, 150-151.

1) Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity;

2) Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; and

3) Thirty Thousand Pesos (₱30,000.00) as exemplary damages.

All monetary awards for damages shall earn interest at the legal rate of 6% per *annum* from date of finality of this Decision until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 188633. April 10, 2013]

SANDOVAL SHIPYARDS, INC. and RIMPORT INDUSTRIES, INC. represented by ENGR. REYNALDO G. IMPORTANTE, *petitioners, vs.* **PHILIPPINE MERCHANT MARINE ACADEMY (PMMA),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE COURT WILL NOT REVIEW THE FINDINGS OF FACT OF LOWER COURTS; EXCEPTIONS.— In a Rule 45 Petition, parties may only raise questions of law, because this Court is not a trier of facts. Generally, this court will not review findings of fact of lower courts, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd

or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. **ID.; ID.; ID.; THE FACT THAT THE TRIAL JUDGE WHO PENNED THE DECISION WAS DIFFERENT FROM THE ONE WHO RECEIVED THE EVIDENCE DOES NOT WARRANT A FACTUAL REVIEW OF THE CASE; ELABORATED.—** The fact that the trial judge who penned the Decision was different from the one who received the evidence is not one of the exceptions that warrant a factual review of the case. Petitioners cannot carve out an exception when there is none. We have already addressed this matter in *Decasa v. CA,* from which we quote: x x x we have held in several cases that the fact that the judge who heard the evidence is not the one who rendered the judgment; and that for the same reason, the latter did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the records of the case does not render the judgment erroneous. Even though the judge who penned the decision was not the judge who heard the testimonies of the witnesses, such is not enough reason to overturn the findings of fact of the trial court on the credibility of witnesses. It may be true that the trial judge who conducted the hearing would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, but it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision. The efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial. That a judge did not hear a case does not necessarily render him less competent in assessing the credibility of

witnesses. He can rely on the transcripts of stenographic notes of their testimony and calibrate them in accordance with their conformity to common experience, knowledge and observation of ordinary men. Such reliance does not violate substantive and procedural due process of law.

3. **ID.; ACTIONS; CAUSE OF ACTION; DEFINED; DISTINGUISHED FROM RESCISSION; ALLEGATION OF NON-COMPLIANCE WITH THE OBLIGATION UNDER THE CONTRACT NECESSITATE THE DETERMINATION BY THE REGIONAL TRIAL COURT OF WHETHER THERE WAS INDEED A BREACH OF CONTRACT AND IF THERE WAS A BREACH, WHETHER IT WOULD WARRANT RESCISSION AND/OR DAMAGES.—** The RTC did not substitute the cause of action. A cause of action is an act or omission which violates the rights of another. In the Complaint before the RTC, the respondent alleged that petitioners failed to comply with their obligation under the Ship Building Contract. Such failure or breach of respondent's contractual rights is the cause of action. Rescission or damages are part of the reliefs. Hence, it was but proper for the RTC to first make a determination of whether there was indeed a breach of contract on the part of petitioners; second, if there was a breach, whether it would warrant rescission and/or damages.

4. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; RESCISSION OF CONTRACTS; SUBSTANTIAL BREACH OF THE CONTRACTS WARRANTS A RESCISSION THEREOF; RESCISSION ENTAILS THE MUTUAL RESTITUTION OF BENEFITS RECEIVED; MUTUAL RESTITUTION IS IMPOSSIBLE WHERE THE OTHER PARTY NEVER RECEIVED THE OBJECT OF THE CONTRACT, HENCE, CANNOT RETURN THE SAME.—** Both the RTC and the CA found that petitioners violated the terms of the contract by installing surplus diesel engines, contrary to the agreed plans and specifications, and by failing to deliver the lifeboats within the agreed time. The breach was found to be substantial and sufficient to warrant a rescission of the contract. Rescission entails a mutual restitution of benefits received. An injured party who has chosen rescission is also

entitled to the payment of damages. The factual circumstances, however, rendered mutual restitution impossible. Both the RTC and the CA found that petitioners delivered the lifeboats to Rosario. Although he was an engineer of respondent, it never authorized him to receive the lifeboats from petitioners. Hence, as the delivery to Rosario was invalid, it was as if respondent never received the lifeboats. As it never received the object of the contract, it cannot return the object. Unfortunately, the same thing cannot be said of petitioners. They admit that they received a total amount of 1,516,680 from respondent as payment for the construction of the lifeboats. For this reason, they should return the same amount to respondent.

5. **REMEDIAL LAW; PRE-TRIAL; FAILURE TO APPEAR; DISMISSAL OF THE COMPLAINT ON GROUND OF FAILURE OF THE PARTY TO ATTEND THE MEDIATION PROCEEDINGS IS TOO SEVERE TO BE IMPOSED WHERE THERE WAS NO FINDING THAT THE ABSENCE OF THE PARTY WAS IN WILLFUL OR FLAGRANT DISREGARD OF THE RULES ON MEDIATION, THAT THE DEFENSE WAS INDEED TO EFFECT A DELAY IN LITIGATION OR THAT THE PARTY LACKED INTEREST IN POSSIBLE AMICABLE SETTLEMENT OF THE CASE.—** Petitioners are likewise mistaken in their assertion that the trial court should have dismissed the Complaint for respondent's failure to attend the mediation session. In *Chan Kent v. Micarez,* in which the trial court dismissed the case for failure of the plaintiff and her counsel to attend the mediation proceedings, this Court held: To reiterate, A.M. No. 01-10-5-SC-PHILJA regards mediation as part of pre-trial where parties are encouraged to personally attend the proceedings. The personal non-appearance, however, of a party may be excused only when the representative, who appears in his behalf, has been duly authorized to enter into possible amicable settlement or to submit to alternative modes of dispute resolution. To ensure the attendance of the parties, A.M. No. 01-10-5-SC-PHILJA specifically enumerates the sanctions that the court can impose upon a party who fails to appear in the proceedings which includes censure, reprimand, contempt, and even dismissal of the action in relation tb Section 5, Rule 18 of the Rules of Court. The respective lawyers of the parties

may attend the proceedings and, if they do so, they are enjoined to cooperate with the mediator for the successful amicable settlement of disputes so as to effectively reduce docket congestion. Although the RTC has legal basis to order the dismissal of Civil Case No. 13-2007, the Court finds this sanction too severe to be imposed on the petitioner where the records of the case is devoid of evidence of willful or flagrant disregard of the rules on mediation proceedings. There is no clear demonstration that the absence of petitioner's representative during mediation proceedings on March 1, 2008 was intended to perpetuate delay in the litigation of the case. Neither is it indicative of lack of interest on the part of petitioner to enter into a possible amicable settlement of the case. Here, there was no finding that the absence of respondent was in willful or flagrant disregard of the rules on mediation, that the absence was intended to effect a delay in litigation, or that respondent lacked interest in a possible amicable settlement of the case. In fact, the CA found that all efforts had been exerted by the parties to amicably settle the case during the pretrial. Thus, RTC's nondismissal of respondent's Complaint was but appropriate.

APPEARANCES OF COUNSEL

Nexus Law Professional Co. for petitioners.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45, petitioners come before us seeking a reversal of the Decision[2] dated 26 February 2009 and Resolution[3] dated 06 July 2009 of

[1] *Rollo,* pp. 10-28.

[2] *Id.* at 37-46, penned by Associate Justice Josefina Guevara-Salonga, Chairman and concurred by Associate Justice Arcangelita M. Romilla-Lontok and Romeo F. Barza.

[3] *Id.* at 47-49.

the Court of Appeals (CA) in CA-G.R. CV No. 88094. The CA Decision partly granted the appeal of petitioners by deleting the attorney's fees awarded to respondent by the Regional Trial Court, Branch 146, Makati City (RTC) in Civil Case No. 99-052.[4] The CA Resolution denied their Motion for Reconsideration of its Decision.[5]

Philippine Merchant Marine Academy (respondent) entered into a Ship Building Contract (contract) with Sandoval Shipyards, Inc. through the latter's agent, Rimport Industries, Inc. (petitioners) on 19 December 1994. The contract states that petitioners would construct two units of 9.10-meter lifeboats (lifeboats) to be used as training boats for the students of respondent. These lifeboats should have 45-HP Gray Marine diesel engines and should be delivered within 45 working days from the date of the contract-signing and payment of the mobilization/organization fund. Respondent, for its part, would pay petitioners 1,685,200 in installments based on the progress accomplishment of the work as stated in the contract.[6]

As agreed upon, respondent paid petitioners 236,694.00 on 08 March 1995 as mobilization fund for the lifeboats; 504,947.20 on 15 March 1995 for its first progress billing; and 386,600.00 on 25 March 1995 as final payment for the lifeboats.[7] On 10 August 1995, Angel Rosario (Rosario), a faculty member of respondent who claimed to have been verbally authorized by its president, allegedly received the lifeboats at the Philippine Navy Wharf in good order and condition.[8]

In November 1995, respondent sent an inspection team to where the two lifeboats were docked to check whether the plans and work specifications had been complied with. The

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[4] *Id.* at 46.

[5] *Id.* at 49.

[6] *Id.* at 73.

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

[8] *Id.* at 77.

team found that petitioners had installed surplus Japan-made Isuzu C-240 diesel engines with plates marked "Isuzu Marine diesel engine" glued to the top of the cylinder heads instead of the agreed upon 45-HP Gray Marine diesel engines; that for the electric starting systems of the engines, there was no manual which was necessary in case the systems failed; and that the construction of the engine compartment was not in conformity with the approved plan. For these reasons, respondent's dean submitted a report and recommendation to the president of petitioners stating the latter's construction violations and asking for rectification.

Consequently, a meeting was held between representatives of respondent and petitioners on 01 December 1995. The latter were reminded that they should strictly comply with the agreed plan and specifications of the lifeboats, as there were no authorized alterations thereof. Petitioners were also advised to put into writing their request for an extension of time for the delivery of the lifeboats.[9] In compliance, they wrote a letter dated 18 December 1995, requesting an extension of time for the delivery, from 01 December 1995 to January 1996.[10]

On 18 July 1996, the Commission on Audit (COA), through its technical audit specialist Benedict S. Guantero (Guantero), conducted an ocular inspection of the lifeboats. His report indicated that the lifeboats were corroded and deteriorating because of their exposure to all types of weather elements; that the plankings and the benches were also deteriorating, as they were not coated with fiberglass; that the lifeboats had no mast sails or row locks installed on the boats; that the installed prime mover was an Isuzu engine, contrary to the agreed plans and specifications; and that the lifeboats had been paid in full except for the 10 percent retention.[11]

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[9] *Id.* at 39.

[10] *Id.* at 74.

[11] *Id.* at 39-40.

Despite repeated demands from respondent, petitioners refused to deliver the lifeboats that would comply with the agreed plans and specifications. As a result, respondent filed a Complaint for Rescission of Contract with Damages against petitioners before the RTC,[12] and trial ensued.

The RTC in its Decision[13] dated 10 April 2006 held that although the caption of the Complaint was "Rescission of Contract with Damages," the allegations in the body were for breach of contract. Petitioners were found to have violated the contract by installing surplus diesel engines, contrary to the agreed plan and specifications. Thus, petitioners were made jointly and severally liable for actual damages in the amount of 1,516,680 and were awarded a penalty of one percent of the total contract price for every day of delay. The RTC also directed petitioners to pay 200,000 as attorney's fees plus the costs of suit, because their unjustified refusal to pay respondent compelled it to resort to court action for the protection and vindication of its rights. It also ruled that petitioners were estopped from questioning respondent's noncompliance with mediation proceedings, because they nevertheless actively participated in the trial of the case.[14]

As a result, petitioners brought an ordinary appeal to the CA via Rule 41.[15] They opined that the RTC committed reversible errors when it ruled that, first, the case was one for breach of contract and not for rescission; second, when it did not dismiss the case as a sanction for respondent's deliberate failure to attend the mediation session; third, when it found that petitioners had not fully complied with their obligations in the contract; and fourth, when it awarded attorney's fees without explanation.[16]

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[12] *Id.* at 40.

[13] *Id.* at 73-79.

[14] *Id.* at 78.

[15] *Id.* at 85.

[16] *Id.* at 88-89.

The CA ruled that petitioners indeed committed a clear substantial breach of the contract, which warranted its rescission. Rescission requires a mutual restoration of benefits received. However, petitioners failed to deliver the lifeboats; their alleged delivery to Rosario was invalid, as he was not a duly authorized representative named in the contract. Hence, petitioners could not compel respondent to return something it never had possession or custody of. Nonetheless, the CA deleted the award of attorney's fees, as it found that the RTC failed to cite any specific factual basis to justify the award.[17]

Dissatisfied, petitioners filed a Motion for Reconsideration[18] dated 20 March 2009, arguing that respondent had agreed to substitute engines of equivalent quality in the form of surplus engines that were not secondhand or used, but were rather old stock kept in their warehouse.[19] Furthermore, they asserted that the acceptance of the lifeboats was implied by the act of respondent's president, who christened them with the names *MB Amihan* and *MB Habagat*.[20]

In its Resolution[21] dated 06 July 2009 the CA denied petitioners' Motion, ruling that the fact that the engines installed were different from what had been agreed was a breach of the specifications in the contract.[22] Additionally, documentary and testimonial evidenced proffered by both parties established that the lifeboats remained docked at Navotas in the possession of petitioners.[23]

Hence, this Rule 45 Petition before us. Petitioners rehash the arguments they posited before the CA with the additional contention that the judge who wrote the Decision was not present

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

[18] *Id.* at 50-56.

[19] *Id.* at 52-53.

[20] *Id.* at 53-54.

[21] *Id.* at 47-49.

[22] *Id.* at 48.

[23] *Id.* at 49.

during the trial and did not have the advantage of firsthand assessment of the testimonies of the witnesses. For this reason, the Court should reconsider Rosario's testimony and progress report, as well as the delivery receipt for the lifeboats. We required respondent to comment,[24] which it did.[25] Thereafter, petitioners filed their Reply.[26]

The issues brought before us by petitioners are as follows:

I. Whether a factual review is warranted, considering that the trial judge who penned the Decision was different from the judge who received the evidence of the parties;
II. Whether the case is for rescission and not damages/ breach of contract;
III. Whether failure to attend mediation proceedings warrants a dismissal of the case.

We deny the Petition.

In a Rule 45 Petition, parties may only raise questions of law, because this Court is not a trier of facts.[27] Generally, this court will not review findings of fact of lower courts, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

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[24] *Id.* at 102.

[25] *Id.* at 108-134.

[26] *Id.* at 140-147.

[27] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, 06 June 2011, 650 SCRA 656.

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[28]

The fact that the trial judge who penned the Decision was different from the one who received the evidence is not one of the exceptions that warrant a factual review of the case. Petitioners cannot carve out an exception when there is none. We have already addressed this matter in *Decasa v. CA*,[29] from which we quote:

x x x we have held in several cases that the fact that the judge who heard the evidence is not the one who rendered the judgment; and that for the same reason, the latter did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the records of the case does not render the judgment erroneous. Even though the judge who penned the decision was not the judge who heard the testimonies of the witnesses, such is not enough reason to overturn the findings of fact of the trial court on the credibility of witnesses. It may be true that the trial judge who conducted the hearing would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, but it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision. The efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial. That a judge did not hear a case does not necessarily render him less competent

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[28] *Id.*

[29] G.R. No. 172184, 10 July 2007, 527 SCRA 267.

in assessing the credibility of witnesses. He can rely on the transcripts of stenographic notes of their testimony and calibrate them in accordance with their conformity to common experience, knowledge and observation of ordinary men. Such reliance does not violate substantive and procedural due process of law.[30] (Citations omitted)

Petitioners also claim that the CA erred in upholding the RTC's substitution of respondent's cause of action from rescission to breach of contract. Had it not done so, then it would have merely ordered mutual restoration of what each of them received – the two lifeboats in exchange for 1,516.680.

The RTC did not substitute the cause of action. A cause of action is an act or omission which violates the rights of another.[31] In the Complaint before the RTC, the respondent alleged that petitioners failed to comply with their obligation under the Ship Building Contract. Such failure or breach of respondent's contractual rights is the cause of action. Rescission or damages are part of the reliefs.[32] Hence, it was but proper for the RTC to first make a determination of whether there was indeed a breach of contract on the part of petitioners; second, if there was a breach, whether it would warrant rescission and/or damages.

Both the RTC and the CA found that petitioners violated the terms of the contract by installing surplus diesel engines, contrary to the agreed plans and specifications, and by failing to deliver the lifeboats within the agreed time. The breach was found to be substantial and sufficient to warrant a rescission of the contract. Rescission entails a mutual restitution of benefits received.[33] An injured party who has chosen rescission is also entitled to the payment of damages.[34] The factual circumstances, however, rendered mutual restitution impossible. Both the RTC and the

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[30] *Id.* at 283-284.

[31] RULES OF COURT, Rule 2, Sec. 2.

[32] CIVIL CODE, Art. 1191.

[33] *Spouses Velarde v. CA*, G.R. No. 108346, 11 July 2001, 361 SCRA 56.

[34] *Supra* note 32.

CA found that petitioners delivered the lifeboats to Rosario. Although he was an engineer of respondent, it never authorized him to receive the lifeboats from petitioners. Hence, as the delivery to Rosario was invalid, it was as if respondent never received the lifeboats. As it never received the object of the contract, it cannot return the object. Unfortunately, the same thing cannot be said of petitioners. They admit that they received a total amount of ₱1,516,680 from respondent as payment for the construction of the lifeboats. For this reason, they should return the same amount to respondent.

Petitioners are likewise mistaken in their assertion that the trial court should have dismissed the Complaint for respondent's failure to attend the mediation session. In *Chan Kent v. Micarez,*[35] in which the trial court dismissed the case for failure of the plaintiff and her counsel to attend the mediation proceedings, this Court held:

> To reiterate, A.M. No. 01-10-5-SC-PHILJA regards mediation as part of pre-trial where parties are encouraged to personally attend the proceedings. The personal non-appearance, however, of a party may be excused only when the representative, who appears in his behalf, has been duly authorized to enter into possible amicable settlement or to submit to alternative modes of dispute resolution. To ensure the attendance of the parties, A.M. No. 01-10-5-SC-PHILJA specifically enumerates the sanctions that the court can impose upon a party who fails to appear in the proceedings which includes censure, reprimand, contempt, and even dismissal of the action in relation to Section 5, Rule 18 of the Rules of Court. The respective lawyers of the parties may attend the proceedings and, if they do so, they are enjoined to cooperate with the mediator for the successful amicable settlement of disputes so as to effectively reduce docket congestion.
>
> Although the RTC has legal basis to order the dismissal of Civil Case No. 13-2007, the Court finds this sanction too severe to be imposed on the petitioner where the records of the case is devoid of evidence of willful or flagrant disregard of the rules on mediation

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[35] G.R. No. 185758, 09 March 2011, 645 SCRA 176.

proceedings. There is no clear demonstration that the absence of petitioner's representative during mediation proceedings on March 1, 2008 was intended to perpetuate delay in the litigation of the case. Neither is it indicative of lack of interest on the part of petitioner to enter into a possible amicable settlement of the case.[36] (Citations omitted)

Here, there was no finding that the absence of respondent was in willful or flagrant disregard of the rules on mediation, that the absence was intended to effect a delay in litigation, or that respondent lacked interest in a possible amicable settlement of the case. In fact, the CA found that all efforts had been exerted by the parties to amicably settle the case during the pretrial.[37] Thus, RTC's nondismissal of respondent's Complaint was but appropriate.

WHEREFORE, in view of the foregoing, we **DENY** the Petition for Review on *Certiorari* dated 21 August 2009 and **AFFIRM** the Decision dated 26 February 2009 and Resolution dated 06 July 2009 of the Court of Appeals in CA-G.R. CV No. 88094.

SO ORDERED.

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

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[36] *Id.* at 183.

[37] *Rollo,* p. 44.

FIRST DIVISION

[G.R. No. 189351. April 10, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LOLITA QUESIDO *Y* BADARANG,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165, SECTION 21 (1), ARTICLE II) THEREOF; PROCEDURE FOR THE HANDLING OF SEIZED OR CONFISCATED ILLEGAL DRUGS; NON-COMPLIANCE WITH SECTION 21 DOES NOT NECESSARILY RENDER THE ARREST ILLEGAL OR THE ITEMS SEIZED INADMISSIBLE BECAUSE WHAT IS ESSENTIAL IS THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED WHICH WOULD BE UTILIZED IN THE DETERMINATION OF THE GUILT OR INNOCENCE OF THE ACCUSED.—** The relevant procedural rule referred to by appellant is Section 21(1), Article II of Republic Act No. 9165, which provides the procedure for the handling of seized or confiscated illegal drugs x x x. Nonetheless, despite the apparent mandatory language that is expressed in the foregoing rule, we have always reiterated in jurisprudence that non-compliance with Section 21 does not necessarily render the arrest illegal or the items seized inadmissible because what is essential is that the integrity and evidentiary value of the seized items are preserved which would be utilized in the determination of the guilt or innocence of the accused.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY, DEFINED; RATIONALE FOR THE CHAIN OF CUSTODY RULE.—** [S]ection 21, Article II of the Implementing Rules and Regulations of Republic Act No. 9165 recognizes instances when non-compliance with the aforementioned rule of procedure may be justified x x x. The procedure discussed above highlights the significance of preserving the chain of custody of illegal drugs used as evidence in a criminal prosecution. Section 1(b) of the Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002, defines "chain

of custody" as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition." In *Malillin v. People,* we expounded on the rationale for the chain of custody rule: Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

3. ID.; ID.; ID.; LINKS THAT THE PROSECUTION MUST PROVE TO ESTABLISH THE CHAIN OF CUSTODY IN A BUY-BUST OPERATION; SUBSTANTIALLY COMPLIED WITH.— In *People v. Remigio,* we restated the enumeration of the different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely: *First*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *Second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *Third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *Fourth*,

the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. In the case at bar, we find that the procedural guidelines laid out in Section 21(1), Article II of Republic Act No. 9165 were not strictly complied with. In spite of this, we can still conclude that the integrity and the evidentiary value of the illegal drugs used in evidence in this case were duly preserved in consonance with the chain of custody rule. x x x To reiterate, jurisprudence tells us that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible. Verily, the x x x narrative clearly shows that the chain of custody rule was substantially complied with by the law enforcement officers involved.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBLE TESTIMONY OF POLICE OFFICERS IN THE PROSECUTION OF CASE INVOLVING ILLEGAL DRUGS; IMPORTANCE THEREOF, ELABORATED.—** Furthermore, the testimonies of SPO1 Chua and PO3 Jimenez were properly given significant probative weight by the trial court and, subsequently, by the Court of Appeals. In *People v. Lapasaran,* we elaborated on the importance of the credible testimony of police officers in the prosecution of cases involving illegal drugs through the following: Moreover, this Court has often said that the prosecution of cases involving illegal drugs depends largely on the credibility of the police officers who conducted the buy-bust operation. It is fundamental that the factual findings of the trial courts and those involving credibility of witnesses are accorded respect when no glaring errors, gross misappreciation of facts, or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.

5. **ID.; ID.; ID.; ID.; THE TESTIMONY OF THE OFFICERS WHO CAUGHT THE ACCUSED RED-HANDED IS GIVEN MORE WEIGHT AND USUALLY PREVAILS OVER THE ACCUSED'S UNSUBSTANTIATED DENIAL OR CLAIM OF FRAME UP.—** For her defense, appellant could only

present a self-serving and unsubstantiated denial or claim of frame-up. In *Ampatuan v. People,* we viewed this flimsy excuse with disfavor and held: Further, the testimonies of the police officers who conducted the buy-bust are generally accorded full faith and credit, in view of the presumption of regularity in the performance of public duties. Hence, when lined against an unsubstantiated denial or claim of frame-up, the testimony of the officers who caught the accused red-handed is given more weight and usually prevails. In order to overcome the presumption of regularity, jurisprudence teaches us that there must be clear and convincing evidence that the police officers did not properly perform their duties or that they were prompted with ill-motive. In the case at bar, appellant did not cast any allegation of, much less proved, any ill motive on the part of the police officers who conducted the buy-bust operation that ensnared her. Thus, in view of the foregoing, this Court has no other recourse but to affirm her conviction.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court, appellant seeks to appeal the Decision[1] dated July 27, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03435 entitled, *People of the Philippines v. Lolita Quesido y Badarang*, which affirmed the Decision[2] dated May 7, 2008 of the Regional Trial Court (RTC) of Manila, Branch 35, in Criminal Case No. 06-248672. The trial court convicted appellant Lolita Quesido *y* Badarang of violation of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 and imposed upon her the penalty

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[1] *Rollo*, pp. 2-19; penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Sesinando E. Villon and Myrna Dimaranan Vidal, concurring.

[2] CA *rollo*, pp. 12-16, penned by Judge Eugenio C. Mendinueto.

of life imprisonment as well as a fine of five hundred thousand pesos (₱500,000.00).

The prosecution's version of the events leading to appellant's arrest and detention was summed as follows in its appellee's Brief:

About a week before the arrest of the accused-appellant on November 28, 2006, the District Anti-Illegal Drugs Special Operation Task Force, Manila Police District (DAID-SOTG) received a report from an anonymous caller, regarding the rampant use and selling of dangerous drugs of one alias "*Len-Len*" at Muslim and Quinta Market areas in Quiapo, Manila. This information was relayed by Col. Ortilla, the Chief of DAID-SOTG, to P/Insp. Julian Olonan. The latter, who was designated as the team leader, instructed SPO1 Federico Chua (SPO1 Chua), SPO1 Cabangon and PO2 Cabungcal to conduct surveillance, after which, the three (3) police officers proceeded to the target area. Upon confirmation, they secured an informant who could directly make a purchase from the target.

On November 28, 2006, before the actual buy-bust operation, the team conducted a briefing. SPO1 Chua was designated as the poseur-buyer while PO3 Jimenez and several others were back-up operatives. The team leader P/Insp. Julian Olonan, gave SPO1 Chua two (2) pieces of ₱100.00 bills, as the buy-bust money. SPO1 Chua in turn marked the said bills with the letter "x" at the upper portion for identification purposes. Thereafter, the operation was coordinated with the Philippine Drug Enforcement Agency (PDEA), and the team, together with the informant, proceeded to the target area to conduct the buy-bust operation.

At the target area, SPO1 Chua and the informant proceeded to a nearby shanty where they are supposed to buy the illegal drug. Near the shanty, they met with "*Len-Len*", the target person. At that point, the informant told "*Len-Len*", "*bosing kukuha ko*". The latter responded, "*aalis ako si Baby na bahala sa inyo*". The two then proceeded to the shanty where this certain "*Baby*", who was later identified as the accused-appellant, came out. The informant then talked to "*Baby*" and said, "*kukuha kami*". She then replied, "*asan ang pera?*" Afterward, SPO1 Chua handed the two (2) pre-marked ₱100.00 bills to "*Baby*". Upon receipt of the said money, "*Baby*" pulled out three (3) pieces of plastic sachets with white crystalline

substance from her pocket, out of which only one (1) was given to the poseur-buyer. When the same was handed to SPO1 Chua, he made a miss call to his companions, which was the pre-arranged signal that the sale was consummated. Thereafter, he introduced himself as a police officer and told her the offense she committed as well as the reason why she is being arrested. At the time when accused-appellant was being arrested, she became hysterical and started shouting as if she wanted to free herself. Fearing that they might be mobbed, SPO1 Chua held her arms and, with the assistance of the back-up operatives, moved her away from the place because the crowd was starting to approach them. In fact, a commotion took place during the arrest. At that time, the accused-appellant threw the other plastic sachets which were in her possession. Unfortunately, the police officers failed to recover them because accused-appellant started shouting which attracted a lot of people.

Accused-appellant was then brought to the DAID office on board a private jeep. She was turned over, together with the confiscated item, to the investigator. Meanwhile, the confiscated item was submitted to the crime laboratory with the corresponding request for laboratory examination. Qualitative examination of the subject specimen ultimately yielded positive results to the tests for shabu.[3] (Citations omitted.)

In her defense, appellant narrated a different version of the story which basically states that at around 2:00 in the afternoon of November 28, 2006, she was at home when two persons entered the same and then invited her to go with them to the police station.[4] Thereafter, she complied because she was already handcuffed by them.

Appellant was prosecuted for violation of Section 5, Article II of Republic Act No. 9165 as indicated in the Information[5] dated December 4, 2006, the pertinent portion of which reads:

That on or about November 28, 2006, in the City of Manila, Philippines, the said accused, without being authorized by law to sell, trade, deliver or give away to another any dangerous drug, did

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[3] *Id.* at 64-67.

[4] *Id.* at 31.

[5] Records, p. 1.

then and there willfully, unlawfully and knowingly sell one (1) heat sealed transparent plastic sachet containing ZERO POINT ZERO TWO EIGHT (0.028) gram of white crystalline substance, known as "*SHABU*" containing methylamphetamine hydrochloride, a dangerous drug.

Appellant pleaded "not guilty" to the aforementioned charge upon her arraignment on January 16, 2007.[6] At the conclusion of the pre-trial conference, both parties agreed to dispense with the presentation of prosecution witness Police Senior Inspector Elisa G. Reyes (PSI Reyes), Forensic Chemical Officer of the Manila Police District (MPD), and simply stipulated on the content of her testimony.[7] The prosecution proceeded to present as its witnesses Senior Police Officer (SPO) 1 Federico Chua and Police Officer (PO) 3 Renato Jimenez. On the other hand, the defense presented appellant as its sole witness whose testimony merely consisted of a denial of the charge against her.

In its Decision dated May 7, 2008, the trial court found appellant guilty of violation of Section 5, Article II of Republic Act No. 9165 and held:

WHEREFORE, finding accused Lolita Quesido *y* Badarang GUILTY beyond reasonable doubt of the offense charged, she is hereby sentenced to suffer the penalty of life imprisonment; to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos; and the cost of suit.

Let a commitment order be issued for the immediate transfer of the custody of accused to the Correctional Institute for Women, Mandaluyong City, pursuant to SC OCA Circulars Nos. 4-92-A and 26-2000.

The plastic sachet with *shabu* (Exh. "C"), a dangerous drug, is hereby confiscated and forfeited in favor of the Government.

The Branch Clerk of Court is directed to turn over the same to the PDEA for proper disposal thereof.[8]

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[6] *Id.* at 12.

[7] *Id.* at 13-14.

[8] CA *rollo*, p. 16.

Appellant challenged her conviction with the Court of Appeals but her appeal was turned down by the appellate court in its Decision dated July 27, 2009, which in turn affirmed the ruling of the trial court and disposed of the case in this manner:

> **WHEREFORE**, the appeal is **DISMISSED**. The assailed Decision dated May 7, 2008, in Criminal Case No. 06-248672, of the RTC, Branch 35, Manila, finding herein accused-appellant Lolita Quesido *y* Badarang guilty beyond reasonable doubt of Violation of Section 5, Article II, Republic Act No. 9165, is **AFFIRMED**.[9]

Hence, appellant, through counsel, filed the present appeal which submits a lone assignment of error for consideration:

> THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION WITNESSES' FAILURE TO COMPLY WITH THE PROCEDURAL REQUIREMENTS OF REPUBLIC ACT NO. 9165.[10]

In the instant petition, appellant argues that the arresting officers failed to strictly comply with the procedural requirements of Republic Act No. 9165 and she insists that the chain of custody for the supposed seized drug was not properly established.

The argument does not merit consideration.

The relevant procedural rule referred to by appellant is Section 21(1), Article II of Republic Act No. 9165, which provides the procedure for the handling of seized or confiscated illegal drugs:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory

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[9] *Rollo*, p. 18.

[10] CA *rollo*, p. 31.

equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

Nonetheless, despite the apparent mandatory language that is expressed in the foregoing rule, we have always reiterated in jurisprudence that non-compliance with Section 21 does not necessarily render the arrest illegal or the items seized inadmissible because what is essential is that the integrity and evidentiary value of the seized items are preserved which would be utilized in the determination of the guilt or innocence of the accused.[11]

Furthermore, Section 21, Article II of the Implementing Rules and Regulations of Republic Act No. 9165 recognizes instances when non-compliance with the aforementioned rule of procedure may be justified:

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

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected

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[11] *People v. Aneslag*, G.R. No. 185386, November 21, 2012.

public official who shall be required to sign the copies of the inventory and be given a copy thereof; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]** (Emphasis supplied.)

The procedure discussed above highlights the significance of preserving the chain of custody of illegal drugs used as evidence in a criminal prosecution. Section 1(b) of the Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002, defines "chain of custody" as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition."

In *Malillin v. People*,[12] we expounded on the rationale for the chain of custody rule:

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required

[12] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 631-633.

to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

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

In *People v. Remigio*,[13] we restated the enumeration of the different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely:

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

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

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

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

In the case at bar, we find that the procedural guidelines laid out in Section 21(1), Article II of Republic Act No. 9165 were not strictly complied with. In spite of this, we can still conclude

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[13] G.R. No. 189277, December 5, 2012, citing *People v. Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

that the integrity and the evidentiary value of the illegal drugs used in evidence in this case were duly preserved in consonance with the chain of custody rule.

A review of the testimony of SPO1 Chua, the arresting officer, would reveal that the first crucial link in the chain of custody was substantially complied with, thus:

COURT:

x x x x x x x x x

Q After the sale was consummated, you said you executed a pre-arranged signal?
A Yes, sir.

Q By means of your cellphone?
A Yes, Your Honor.

Q By means of a miss call?
A Yes, Your Honor.

Q And then what happened?
A After releasing the miss call I immediately arrested Lolita Quesido.

Q How did you arrest her?
A I introduced myself as a police officer, Your Honor.

Q After that what else did you do?
A I told her the offense she committed and the reason why she is being arrested, Your Honor.

Q What did you tell her exactly?
A I told her, "*o pulis ito, hinuhuli kita sa pagbebenta ng shabu*."

Q Then what else?
A She suddenly became hysterical, Your Honor.

Q How did you make the arrest?
A I held her arm, Your Honor.

Q What else did you do aside from holding her in her arm?
A After I have held her arm she became hysterical, I was trying to immediately remove her from that place because there are a lot of people.

Q Why, did these people notice you?
A Yes, Your Honor, because she was becoming hysterical.

Q What was she doing?
A She was shouting, Your Honor.

Q What was she shouting?
A A shout resembling that she was resisting, Your Honor.

Q What specific words, you said she was shouting?
A She was shouting as if she wants to set herself free, Your Honor.

Q Precisely, was she shouting or not?
A She was shouting as if she was calling the attention of the people in the area, Your Honor.

Q What is it that she was shouting?
A She was asking for help, Your Honor.

Q What are the exact words she uttered?
A I cannot exactly recall, Your Honor, because I was bothered by the persons around us. My reaction, Your Honor, was to get out of the area because I might be mobbed.

Q Why are these persons around, what are they doing?
A They were already approaching us, Your Honor, because that place is very troublesome and were surrounded by bad elements.

Q Were you able to move her out of that place?
A I was able to place her out for about 5 to 7 meters when my companions arrived.

x x x x x x x x x

Q At that time you already were able to recover the buy bust money?
A Yes, Your Honor.

Q As well as the plastic sachet?
A The one that she gave to me[,] I was in possession of it, Your Honor.

Q From the place where you arrested the accused and up to the time that you reached the station or headquarters, who was in possession of that last sachet?
A I was the one, Your Honor.

Q How did you keep it?
A I placed it in my pocket, Your Honor.

Q How about the buy bust money?
A Including the buy bust money, Your Honor.

Q Upon reaching the headquarters, what did you do?
A The small transparent plastic sachet before I turned that over to the investigator, I placed our markings, Your Honor.

Q You said you marked it with the initial of the accused?
A Yes, Your Honor.

Q How did you come to know that those were the initials of the accused?
A When we were at the office, Your Honor, we asked her of her full name which she gave it.[14]

From the foregoing testimony, it appears that the arresting officer was justified in marking the seized plastic sachet of *shabu* at the police station instead of at the scene of the buy-bust operation which is what is required by proper procedure. Given the factual milieu, SPO1 Chua had no choice but to immediately extricate himself and the appellant from the crime scene in order to forestall a potentially dangerous situation.

After marking the seized illegal drug, SPO1 Chua turned it over to PO3 Jimenez, the investigating officer, thereby completing the second link of the chain of custody. The testimony of PO3 Jimenez attests to this act:

PROSECUTOR BAUTISTA

x x x x x x x x x

Q I'm not after the marked money, the specimen, the alleged transparent plastic sachet that was bought by police officer Chua, if shown to you, will you be able to identify it?
A Yes, sir.

Q Why?
A Because it was marked in my presence, sir.

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[14] TSN, July 19, 2007, pp. 26-30.

Q What markings?
A "LQB", sir.

Q I'm showing to you this plastic sachet, the white crystalline substance, please tell us if that is the same plastic sachet you are referring to?
A This is the specimen, sir.[15]

Subsequently, PO3 Jimenez prepared a letter-request[16] for the laboratory examination of the seized illegal drugs which was transmitted along with the seized plastic sachet with white crystalline substance to the Crime Laboratory Office of the MPD. Based on Chemistry Report No. D-1361-06[17] issued by PSI Reyes, the specimen submitted for examination tested positive for the presence of methylamphetamine hydrochloride or *shabu*. The seized plastic sachet of *shabu* was then presented in court by the prosecution and marked as Exhibit "C".

To reiterate, jurisprudence tells us that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible.[18] Verily, the foregoing narrative clearly shows that the chain of custody rule was substantially complied with by the law enforcement officers involved.

Furthermore, the testimonies of SPO1 Chua and PO3 Jimenez were properly given significant probative weight by the trial court and, subsequently, by the Court of Appeals. In *People v. Lapasaran,*[19] we elaborated on the importance of the credible testimony of police officers in the prosecution of cases involving illegal drugs through the following:

Moreover, this Court has often said that the prosecution of cases involving illegal drugs depends largely on the credibility of the police officers who conducted the buy-bust operation. It is fundamental

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[15] TSN, August 9, 2007, p. 5.

[16] Records, p. 6.

[17] *Id.* at 7.

[18] *People v. Hambora*, G.R. No. 198701, December 10, 2012.

[19] G.R. No. 198820, December 10, 2012.

that the factual findings of the trial courts and those involving credibility of witnesses are accorded respect when no glaring errors, gross misappreciation of facts, or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals. (Citation omitted.)

For her defense, appellant could only present a self-serving and unsubstantiated denial or claim of frame-up. In *Ampatuan v. People*,[20] we viewed this flimsy excuse with disfavor and held:

Further, the testimonies of the police officers who conducted the buy-bust are generally accorded full faith and credit, in view of the presumption of regularity in the performance of public duties. Hence, when lined against an unsubstantiated denial or claim of frame-up, the testimony of the officers who caught the accused red-handed is given more weight and usually prevails. In order to overcome the presumption of regularity, jurisprudence teaches us that there must be clear and convincing evidence that the police officers did not properly perform their duties or that they were prompted with ill-motive. (Citations omitted.)

In the case at bar, appellant did not cast any allegation of, much less proved, any ill motive on the part of the police officers who conducted the buy-bust operation that ensnared her. Thus, in view of the foregoing, this Court has no other recourse but to affirm her conviction.

WHEREFORE, premises considered, the Decision dated July 27, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03435 is **AFFIRMED.**

SO ORDERED.

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

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[20] G.R. No. 183676, June 22, 2011, 652 SCRA 615, 628.

FIRST DIVISION

[G.R. No. 190475. April 10, 2013]

JAIME ONG *Y* ONG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ANTI-FENCING LAW (P.D. 1612); FENCING, DEFINED; ESSENTIAL ELEMENTS; PRESENT.— Fencing is defined in Section 2(a) of P.D. 1612 as the "act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft." The essential elements of the crime of fencing are as follows: (1) a crime of robbery or theft has been committed; (2) the accused, who is not a principal or on accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, items, object or anything of value, which has been derived from the proceeds of the crime of robbery or theft; (3) the accused knew or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and (4) there is, on the part of one accused, intent to gain for oneself or for another. We agree with the RTC and the CA that the prosecution has met the requisite quantum of evidence in proving that all the elements of fencing are present in this case.

2. ID.; ID.; ESTABLISHMENT DEALING IN THE BUYING AND SELLING OF GOODS FROM AN UNLICENSED DEALER IS REQUIRED TO OBTAIN A CLEARANCE FROM THE POLICE STATION BEFORE OFFERING THE ITEM FOR SALE TO THE PUBLIC; NOT COMPLIED WITH.— Ong knew the requirement of the law in selling second hand tires. Section 6 of P.D. 1612 requires stores, establishments or entities dealing in the buying and selling of any good, article, item,

object or anything else of value obtained from an unlicensed dealer or supplier thereof to secure the necessary clearance or permit from the station commander of the Integrated National Police in the town or city where that store, establishment or entity is located before offering the item for sale to the public. In fact, Ong has practiced the procedure of obtaining clearances from the police station for some used tires he wanted to resell but, in this particular transaction, he was remiss in his duty as a diligent businessman who should have exercised prudence.

3. ID.; ID.; CREATES A *PRIMA FACIE* PRESUMPTION OF FENCING FROM EVIDENCE OF POSSESSION BY THE ACCUSED OF ANY GOOD, ARTICLE, ITEMS, OBJECT OR ANYTHING OF VALUE, WHICH HAS BEEN THE SUBJECT OF ROBBERY OR THEFT; IMPOSABLE PENALTY IS BASED ON THE VALUE OF THE PROPERTY RECOVERED; CONVICTION OF THE ACCUSED FOR VIOLATION OF P.D. 1612 AFFIRMED WITH MODIFICATION ON THE PENALTY IMPOSED.— Fencing is *malum prohibitum*, and P.O. 1612 creates a prima facie presumption of fencing from evidence of possession by the accused of any good, article, item, object or anything of value, which has been the subject of robbery or theft; and prescribes a higher penalty based on the value of the property. The RTC and the CA correctly computed the imposable penalty based on ₱5,075 for each tire recovered, or in the total amount of ₱65,975. Records show that Azajar had purchased forty-four (44) tires from Philtread in the total amount of ₱223,401.81. Section 3 (p) of Rule 131 of the Revised Rules of Court provides a disputable presumption that private transactions have been fair and regular. Thus, the presumption of regularity in the ordinary course of business is not overturned in the absence of the evidence challenging the regularity of the transaction between Azajar and Philtread.

4. ID.; ID.; CONVICTION OF THE ACCUSED FOR VIOLATION OF P.D. 1612 AFFIRMED WITH MODIFICATION ON THE PENALTY IMPOSED.— [A]fter a careful perusal of the records and the evidence adduced by the parties, we do not find sufficient basis to reverse the ruling of the -CA affirming the trial court's conviction of Ong for violation of P.O. 1612 and modifying the minimum penalty imposed by reducing it to six (6) years of *prision correccional.*

APPEARANCES OF COUNSEL

YF Lim and Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before the Court is an appeal from the Decision[1] dated 18 August 2009 of the Court of Appeals (CA), which affirmed the Decision[2] dated 06 January 2006 of the Regional Trial Court (RTC), Branch 37, Manila. The RTC had convicted accused Jaime Ong *y* Ong (Ong) of the crime of violation of Presidential Decree No. (P.D.) 1612, otherwise known as the Anti-Fencing Law.

Ong was charged in an Information[3] dated 25 May 1995 as follows:

That on or about February 17, 1995, in the City of Manila, Philippines, the said accused, with intent of gain for himself or for another, did then and there wilfully, unlawfully and feloniously receive and acquire from unknown person involving thirteen (13) truck tires worth ₱65,975.00, belonging to FRANCISCO AZAJAR *Y* LEE, and thereafter selling One (1) truck tire knowing the same to have been derived from the crime of robbery.

CONTRARY TO LAW.

Upon arraignment, Ong entered a plea of "not guilty." Trial on the merits ensued, and the RTC found him guilty beyond reasonable doubt of violation of P.D. 1612. The dispositive portion of its Decision reads:

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[1] CA Decision in CA-G.R. CR No. 30213 penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Portia Aliño-Hormachuelos and Fernanda Lampas Peralta; *rollo*, pp. 41-58.

[2] RTC Decision in Criminal Case No. 143578 penned by Judge Vicente A. Hidalgo, *id.* at 32-40.

[3] Information dated 25 May 1995, *id.* at 31.

WHEREFORE, premises considered, this Court finds that the prosecution has established the guilt of the accused JAIME ONG *y* ONG beyond reasonable doubt for violation of Presidential Decree No. 1612 also known as Anti-Fencing Law and is hereby sentenced to suffer the penalty of imprisonment of 10 years and 1 day to 16 years with accessory penalty of temporary disqualification.

SO ORDERED.[4]

Dissatisfied with the judgment, Ong appealed to the CA. After a review of the records, the RTC's finding of guilt was affirmed by the appellate court in a Decision dated 18 August 2009.

Ong then filed the instant appeal before this Court.

THE FACTS

The version of the prosecution, which was supported by the CA, is as follows:

Private complainant was the owner of forty-four (44) *Firestone* truck tires, described as T494 1100 by 20 by 14. He acquired the same for the total amount of ₱223,401.81 from Philtread Tire and Rubber Corporation, a domestic corporation engaged in the manufacturing and marketing of *Firestone* tires. Private complainant's acquisition was evidenced by Sales Invoice No. 4565 dated November 10, 1994 and an Inventory List acknowledging receipt of the tires specifically described by their serial numbers. Private complainant marked the tires using a piece of chalk before storing them inside the warehouse in 720 San Jose St., corner Sta. Catalina St., Barangay San Antonio Valley 1, Sucat, Parañaque, owned by his relative Teody Guano. Jose Cabal, Guano's caretaker of the warehouse, was in charge of the tires. After appellant sold six (6) tires sometime in January 1995, thirty-eight (38) tires remained inside the warehouse.

On February 17, 1995, private complainant learned from caretaker Jose Cabal that all thirty-eight (38) truck tires were stolen from the warehouse, the gate of which was forcibly opened. Private complainant, together with caretaker Cabal, reported the robbery to the Southern Police District at Fort Bonifacio.

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[4] *Id.* at 40.

Pending the police investigation, private complainant canvassed from numerous business establishments in an attempt to locate the stolen tires. On February 24, 1995, private complainant chanced upon *Jong's Marketing*, a store selling tires in Paco, Manila, owned and operated by appellant. Private complainant inquired if appellant was selling any Model T494 1100 by 20 by 14 ply *Firestone* tires, to which the latter replied in the affirmative. Appellant brought out a tire fitting the description, which private complainant recognized as one of the tires stolen from his warehouse, based on the chalk marking and the serial number thereon. Private complainant asked appellant if he had any more of such tires in stock, which was again answered in the affirmative. Private complainant then left the store and reported the matter to Chief Inspector Mariano Fegarido of the Southern Police District.

On February 27, 1995, the Southern Police District formed a team to conduct a buy-bust operation on appellant's store in Paco, Manila. The team was composed of six (6) members, led by SPO3 Oscar Guerrero and supervised by Senior Inspector Noel Tan. Private complainant's companion Tito Atienza was appointed as the poseur-buyer.

On that same day of February 27, 1995, the buy-bust team, in coordination with the Western Police District, proceeded to appellant's store in Paco, Manila. The team arrived thereat at around 3:00 in the afternoon. Poseur-buyer Tito Atienza proceeded to the store while the rest of the team posted themselves across the street. Atienza asked appellant if he had any T494 1100 by 20 by 14 *Firestone* truck tires available. The latter immediately produced one tire from his display, which Atienza bought for ₱5,000.00. Atienza asked appellant if he had any more in stock. Appellant then instructed his helpers to bring out twelve (12) more tires from his warehouse, which was located beside his store. After the twelve (12) truck tires were brought in, private complainant entered the store, inspected them and found that they were the same tires which were stolen from him, based on their serial numbers. Private complainant then gave the prearranged signal to the buy-bust team confirming that the tires in appellant's shop were the same tires stolen from the warehouse.

After seeing private complainant give the pre-arranged signal, the buy-bust team went inside appellant's store. However, appellant insisted that his arrest and the confiscation of the stolen truck tires be witnessed by representatives from the *barangay* and his own

lawyer. Resultantly, it was already past 10:00 in the evening when appellant, together with the tires, was brought to the police station for investigation and inventory. Overall, the buy-bust team was able to confiscate thirteen (13) tires, including the one initially bought by poseur-buyer Tito Atienza. The tires were confirmed by private complainant as stolen from his warehouse.[5]

For his part, accused Ong solely testified in his defense, alleging that he had been engaged in the business of buying and selling tires for twenty-four (24) years and denying that he had any knowledge that he was selling stolen tires in Jong Marketing. He further averred that on 18 February 1995, a certain Ramon Go (Go) offered to sell thirteen (13) Firestone truck tires allegedly from Dagat-dagatan, Caloocan City, for ₱3,500 each. Ong bought all the tires for ₱45,500, for which he was issued a Sales Invoice dated 18 February 1995 and with the letterhead Gold Link Hardware & General Merchandise (Gold Link).[6]

Ong displayed one (1) of the tires in his store and kept all the twelve (12) others in his bodega. The poseur-buyer bought the displayed tire in his store and came back to ask for more tires. Ten minutes later, policemen went inside the store, confiscated the tires, arrested Ong and told him that those items were stolen tires.[7]

The RTC found that the prosecution had sufficiently established that all thirteen (13) tires found in the possession of Ong constituted a *prima facie* evidence of fencing. Having failed to overcome the presumption by mere denials, he was found guilty beyond reasonable doubt of violation of P.D. 1612.[8]

On appeal, the CA affirmed the RTC's findings with modification by reducing the minimum penalty from ten (10) years and one (1) day to six (6) years of *prision correccional*.[9]

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[5] *Id* at. 43-46.

[6] *Id.* at 46.

[7] *Id.*

[8] *Id.* at 47.

[9] *Id.* at 57.

OUR RULING

The Petition has no merit.

Fencing is defined in Section 2(a) of P.D. 1612 as the "act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft."

The essential elements of the crime of fencing are as follows: (1) a crime of robbery or theft has been committed; (2) the accused, who is not a principal or on accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the crime of robbery or theft; (3) the accused knew or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and (4) there is, on the part of one accused, intent to gain for oneself or for another.[10]

We agree with the RTC and the CA that the prosecution has met the requisite quantum of evidence in proving that all the elements of fencing are present in this case.

First, the owner of the tires, private complainant Francisco Azajar (Azajar), whose testimony was corroborated by Jose Cabal - the caretaker of the warehouse where the thirty-eight (38) tires were stolen – testified that the crime of robbery had been committed on 17 February 1995. Azajar was able to prove ownership of the tires through Sales Invoice No. 4565[11] dated

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[10] *Capili v. Court of Appeals*, 392 Phil. 577, 592 (2000); *Tan v. People*, 372 Phil. 93, 102-103 (1999) citing *Dizon-Pamintuan v. People*, G.R. No. 111426, 11 July 1994, 234 SCRA 63, 71-72.

[11] Exhibit "A", records p. 250.

10 November 1994 and an Inventory List.[12] Witnesses for the prosecution likewise testified that robbery was reported as evidenced by their *Sinumpaang Salaysay*[13] taken at the Southern Police District at Fort Bonifacio.[14] The report led to the conduct of a buy-bust operation at Jong Markerting, Paco, Manila on 27 February 1995.

Second, although there was no evidence to link Ong as the perpetrator of the robbery, he never denied the fact that thirteen (13) tires of Azajar were caught in his possession. The facts do not establish that Ong was neither a principal nor an accomplice in the crime of robbery, but thirteen (13) out of thirty-eight (38) missing tires were found in his possession. This Court finds that the serial numbers of stolen tires corresponds to those found in Ong's possession.[15] Ong likewise admitted that he bought the said tires from Go of Gold Link in the total amount of ₱45,500 where he was issued Sales Invoice No. 980.[16]

Third, the accused knew or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft. The words "should know" denote the fact that a person of reasonable prudence and intelligence would ascertain the fact in performance of his duty to another or would govern his conduct upon assumption that such fact exists.[17] Ong, who was in the business of buy and sell of tires for the past twenty-four (24) years,[18] ought to

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[12] Exhibits "A-1" and "A-2", *id.* at 251.

[13] Sinumpaang Salaysay dated 20 February 1995, Exhibits "G' and "I", *id.* at 263, 266.

[14] TSN 23 November 1995, pp. 22-26.

[15] Exhibits "A-1" and "A-2" *vis-à-vis* Exhibits "N-1" and "N-6". Records. pp. 251 and 272.

[16] Exhibit "2-A", *id.* at 316.

[17] *Tan v. People*, *supra* at 106.

[18] TSN 14 December 2004, p. 3.

have known the ordinary course of business in purchasing from an unknown seller. Admittedly, Go approached Ong and offered to sell the thirteen (13) tires and he did not even ask for proof of ownership of the tires.[19] The entire transaction, from the proposal to buy until the delivery of tires happened in just one day.[20] His experience from the business should have given him doubt as to the legitimate ownership of the tires considering that it was his first time to transact with Go and the manner it was sold is as if Go was just peddling the thirteen (13) tires in the streets.

In *Dela Torre v. COMELEC*,[21] this Court had enunciated that:

> [C]ircumstances normally exist to forewarn, for instance, a reasonably vigilant buyer that the object of the sale may have been derived from the proceeds of robbery or theft. Such circumstances include the time and place of the sale, both of which may not be in accord with the usual practices of commerce. The nature and condition of the goods sold, and the fact that the seller is not regularly engaged in the business of selling goods may likewise suggest the illegality of their source, and therefore should caution the buyer. This justifies the presumption found in Section 5 of P.D. No. 1612 that *"mere possession of any goods, . . ., object or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing"* — a presumption that is, according to the Court, *"reasonable for no other natural or logical inference can arise from the established fact of . . . possession of the proceeds of the crime of robbery or theft."xxx.*[22]

Moreover, Ong knew the requirement of the law in selling second hand tires. Section 6 of P.D. 1612 requires stores, establishments or entities dealing in the buying and selling of any good, article, item, object or anything else of value obtained from an unlicensed dealer or supplier thereof to secure the

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[19] TSN 28 April 2005, p. 6.

[20] *Id.* at 4.

[21] 327 Phil. 1144 (1996).

[22] *Id.* at 1154-1155.

necessary clearance or permit from the station commander of the Integrated National Police in the town or city where that store, establishment or entity is located before offering the item for sale to the public. In fact, Ong has practiced the procedure of obtaining clearances from the police station for some used tires he wanted to resell but, in this particular transaction, he was remiss in his duty as a diligent businessman who should have exercised prudence.

In his defense, Ong argued that he relied on the receipt issued to him by Go. Logically, and for all practical purposes, the issuance of a sales invoice or receipt is proof of a legitimate transaction and may be raised as a defense in the charge of fencing; however, that defense is disputable.[23] In this case, the validity of the issuance of the receipt was disputed, and the prosecution was able to prove that Gold Link and its address were fictitious.[24] Ong failed to overcome the evidence presented by the prosecution and to prove the legitimacy of the transaction. Thus, he was unable to rebut the *prima facie* presumption under Section 5 of P.D. 1612.

Finally, there was evident intent to gain for himself, considering that during the buy-bust operation, Ong was actually caught selling the stolen tires in his store, Jong Marketing.

Fencing is *malum prohibitum*, and P.D. 1612 creates a *prima facie* presumption of fencing from evidence of possession by the accused of any good, article, item, object or anything of value, which has been the subject of robbery or theft; and prescribes a higher penalty based on the value of the property.[25]

The RTC and the CA correctly computed the imposable penalty based on ₱5,075 for each tire recovered, or in the total amount of ₱65,975. Records show that Azajar had purchased forty-four (44) tires from Philtread in the total amount of ₱223,401.81.[26]

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[23] *D.M. Consunji, Inc. v. Esguerra*, 328 Phil. 1168, 1181 (1996).

[24] TSN 21 June 2001, pp. 3-9; Exhibit "M", records, p. 270.

[25] *Dizon-Pamintuan v. People*, *supra* at 72.

[26] *Supra* note 6.

Section 3 (p) of Rule 131 of the Revised Rules of Court provides a disputable presumption that private transactions have been fair and regular. Thus, the presumption of regularity in the ordinary course of business is not overturned in the absence of the evidence challenging the regularity of the transaction between Azajar and Philtread.

In fine, after a careful perusal of the records and the evidence adduced by the parties, we do not find sufficient basis to reverse the ruling of the CA affirming the trial court's conviction of Ong for violation of P.D. 1612 and modifying the minimum penalty imposed by reducing it to six (6) years of *prision correccional*.

WHEREFORE, premises considered, the Petition is **DENIED** for lack of merit. Accordingly, the assailed Decision of the Court of Appeals in CA-G.R. CR No. 30213 is hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 191696. April 10, 2013]

ROGELIO DANTIS, *petitioner, vs.* **JULIO MAGHINANG, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE COURT IS NOT A TRIER OF FACTS AND THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING UPON THE COURT EXCEPT WHEN THE FACTUAL

CONCLUSIONS OF THE COURT OF APPEALS ARE INCONGRUENT WITH THAT OF THE REGIONAL TRIAL COURT.— [T]he CA and the RTC reached different conclusions on the question of whether or not there was an oral contract of sale. The RTC ruled that Rogelio Dantis was the sole and rightful owner of the parcel of land covered by TCT No. T-125918 and that no oral contract of sale was entered into between Emilio Dantis and Julio Maghinang, Sr. involving the 352-square meter portion of the said property. The CA was of the opposite view. The determination of whether there existed an oral contract of sale is essentially a question of fact. In petitions for review under Rule 45, the Court, as a general rule, does not venture to re-examine the evidence presented by the contending parties during the trial of the case considering that it is not a trier of facts and the findings of fact of the CA are conclusive and binding upon this Court. The rule, however, admits of several exceptions. One of which is when the findings of the CA are contrary to those of the trial court. Considering the incongruent factual conclusions of the CA and the RTC, this Court is constrained to reassess the factual circumstances of the case and reevaluate them in the interest of justice.

2. **ID.; EVIDENCE; BURDEN OF PROOF; IN CIVIL CASES HE WHO ALLEGES A FACT HAS THE BURDEN OF PROVING IT AND A MERE ALLEGATION IS NOT EVIDENCE.—** It is an age-old rule in civil cases that he who alleges a fact has the burden of proving it and a mere allegation is not evidence. After carefully sifting through the evidence on record, the Court finds that Rogelio was able to establish a prima facie case in his favor tending to show his exclusive ownership of the parcel of land under TCT No. T-125918 with an area of 5,657 square meters, which included the 352-square meter subject lot.

3. **ID.; ID.; ID.; ID.; HE WHO ALLEGES THE AFFIRMATIVE OF THE ISSUE HAS A BURDEN OF PROOF, AND UPON THE PLAINTIFF, THE BURDEN OF PROOF NEVER PARTS. HOWEVER, IN THE COURSE OF TRIAL IN A CIVIL CASE, ONCE PLAINTIFF MAKES OUT A PRIMA FACIE CASE IN HIS FAVOR, THE DUTY OR THE BURDEN OF EVIDENCE SHIFTS TO DEFENDANT TO CONTROVERT PLAINTIFF'S *PRIMA FACIE* CASE,**

OTHERWISE, A VERDICT MUST BE RETURNED IN FAVOR OF PLAINTIFF.— In light of Rogelio's outright denial of the oral sale together with his insistence of ownership over the subject lot, it behooved upon Julio, Jr. to contravene the former's claim and convince the court that he had a valid defense. The burden of evidence shifted to Julio, Jr. to prove that his father bought the subject lot from Emilio Dantis. In *Jison v. Court of Appeals*, the Court held: Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. The concept of "preponderance of evidence" refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth. Julio, Jr. failed to discharge this burden. His pieces of evidence, Exhibit "3" and Exhibit "4", cannot prevail over the array of documentary and testimonial evidence that were adduced by Rogelio. The totality of Julio, Jr.'s evidence leaves much to be desired.

4. **ID.; ID.; HEARSAY EVIDENCE; EVIDENCE IS HEARSAY WHEN ITS PROBATIVE FORCE DEPENDS ON THE COMPETENCY AND CREDIBILITY OF SOME PERSONS OTHER THAN THE WITNESS BY WHOM IT IS SOUGHT TO BE PRODUCED; WHERE THE AFFIANT OR MAKER DID NOT TAKE THE WITNESS STAND, THE AFFIDAVIT IS CONSIDERED INADMISSIBLE HEARSAY EVIDENCE.** —[E]xhibit "3", the affidavit of Ignacio, is hearsay evidence and, thus, cannot be accorded any evidentiary weight. Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. The exclusion of hearsay evidence is anchored on three reasons: 1) absence of cross-examination; 2) absence of demeanor evidence; and 3) absence of oath. Jurisprudence dictates that an affidavit is merely hearsay

evidence where its affiant/maker did not take the witness stand. The sworn statement of Ignacio is of this kind. The affidavit was not identified and its averments were not affirmed by affiant Ignacio. Accordingly, Exhibit "3" must be excluded from the judicial proceedings being an inadmissible hearsay evidence. It cannot be deemed a declaration against interest for the matter to be considered as an exception to the hearsay rule because the declarant was not the seller (Emilio), but his father (Ignacio).

5. **ID.; ID.; RULES OF ADMISSIBILITY; DOCUMENTARY EVIDENCE; SECONDARY EVIDENCE; REQUISITES TO BE ADMISSIBLE; PROOF OF THE DUE EXECUTION OF THE DOCUMENT AND ITS SUBSEQUENT LOSS WOULD CONSTITUTE THE BASIS FOR THE INTRODUCTION OF SECONDARY EVIDENCE.—** Exhibit "4", on the other hand, is considered secondary evidence being a mere photocopy which, in this case, cannot be admitted to prove the contents of the purported undated handwritten receipt. The best evidence rule requires that the highest available degree of proof must be produced. For documentary evidence, the contents of a document are best proved by the production of the document itself to the exclusion of secondary or substitutionary evidence, pursuant to Rule 130, Section 3. A secondary evidence is admissible only upon compliance with Rule 130, Section 5, which states that: when the original has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. Accordingly, the offeror of the secondary evidence is burdened to satisfactorily prove the predicates thereof, namely: (1) the execution or existence of the original; (2) the loss and destruction of the original or its non-production in court; and (3) the unavailability of the original is not due to bad faith on the part of the proponent/offeror. Proof of the due execution of the document and its subsequent loss would constitute the basis for the introduction of secondary evidence. In *MCC Industrial Sales Corporation v. Ssangyong Corporation*, it was held that where the missing document is the foundation of the action, more strictness in proof is required than where the document is only collaterally involved. Guided by these norms, the Court holds that Julio,

Jr. failed to prove the due execution of the original of Exhibit "4" as well as its subsequent loss. A nexus of logically related circumstance rendered Julio, Jr.'s evidence highly suspect. Also, his testimony was riddled with improbabilities and contradictions which tend to erode his credibility and raise doubt on the veracity of his evidence.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; CONTRACT OF SALE; ESSENTIAL ELEMENTS; ABSENCE OF ANY OF THE ESSENTIAL ELEMENTS SHALL NEGATE THE EXISTENCE OF A PERFECTED CONTRACT OF SALE.— Assuming, in *gratia argumenti*, that Exhibit "4" is admissible in evidence, there will still be no valid and perfected oral contract for failure of Julio, Jr. to prove the concurrence of the essential requisites of a contract of sale by adequate and competent evidence. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of, and to deliver, a determinate thing, and the other to pay therefor a price certain in money or its equivalent. A contract of sale is a consensual contract and, thus, is perfected by mere consent which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. Until the contract of sale is perfected, it cannot, as an independent source of obligation, serve as a binding juridical relation between the parties. The essential elements of a contract of sale are: a) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; b) determinate subject matter; and c) price certain in money or its equivalent. The absence of any of the essential elements shall negate the existence of a perfected contract of sale. Seemingly, Julio, Jr. wanted to prove the sale by a receipt when it should be the receipt that should further corroborate the existence of the sale. At best, his testimony only alleges but does not prove the existence of the verbal agreement. Julio, Jr. miserably failed to establish by preponderance of evidence that there was a meeting of the minds of the parties as to the subject matter and the purchase price.

7. ID.; ID.; ID.; ID.; ID.; A DEFINITE AGREEMENT ON THE MANNER OF PAYMENT OF THE PURCHASE PRICE IS AN ESSENTIAL ELEMENT BEFORE A VALID AND

BINDING CONTRACT OF SALE COULD EXIST.— The chief evidence of Julio, Jr. to substantiate the existence of the oral contract of sale is Exhibit "4". x x x. A perusal of the x x x document would readily show that it does not specify a determinate subject matter. Nowhere does it provide a description of the property subject of the sale, including its metes and bounds, as well as its total area. The Court notes that while Julio, Jr. testified that the land subject of the sale consisted of 352 square meters, Exhibit "4", however, states that it's more than 400 square meters. Moreover, Exhibit "4" does not categorically declare the price certain in money. Neither does it state the mode of payment of the purchase price and the period for its payment. In *Swedish Match, AB v. Court of Appeals*, the Court ruled that the manner of payment of the purchase price was an essential element before a valid and binding contract of sale could exist. Albeit the Civil Code does not explicitly provide that the minds of the contracting parties must also meet on the terms or manner of payment of the price, the same is needed, otherwise, there is no sale. An agreement anent the manner of payment goes into the price so much so that a disagreement on the manner of payment is tantamount to a failure to agree on the price. x x x. Such being the situation, it cannot, therefore, be said that a definite and firm sales agreement between the parties had been perfected over the lot in question. Indeed, this Court has already ruled before that a definite agreement on the manner of payment of the purchase price is an essential element in the formation of a binding and enforceable contract of sale. The fact, therefore, that the petitioners delivered to the respondent the sum of 10,000. as part of the down-payment that they had to pay cannot be considered as sufficient proof of the perfection of any purchase and sale agreement between the parties herein under Art. 1482 of the new Civil Code, as the petitioners themselves admit that some essential matter the terms of payment still had to be mutually covenanted.

8. ID.; ID.; ID.; ID.; NO BASIS FOR THE APPLICATION OF THE STATUTE OF FRAUDS ABSENT A PERFECTED CONTRACT OF SALE.— The CA held that partial performance of the contract of sale givmg of a downpayment coupled with the delivery of the res - took the oral contract out of the scope of the Statute of Frauds. This conclusion arose from its

erroneous finding that there was a perfected contract of sale. The above disquisition, however, shows that there was none. There is, therefore, no basis for the application of the Statute of Frauds. The application of the Statute of Frauds presupposes the existence of a perfected contract. As to the delivery of the res, it does not appear to be a voluntary one pursuant to the purported sale. If Julio, Jr. happened to be there, it was because his ancestors tenanted the land. It must be noted that when Julio, Jr. built his house, Rogelio protested.

APPEARANCES OF COUNSEL

Vicente D. Millora for petitioner.
Roldan E. Villacorta for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the January 25, 2010 Decision[1] and the March 23, 2010 Resolution[2] of the Court of Appeals *(CA),* in CA-G.R. CV No. 85258, reversing the March 2, 2005 Decision[3] of the Regional Trial Court, Branch 18, Malolos, Bulacan *(RTC),* in an action for quieting of title and recovery of possession with damages.

The Facts

The case draws its origin from a complaint[4] for quieting of title and recovery of possession with damages filed by petitioner Rogelio Dantis *(Rogelio)* against respondent Julio Maghinang, Jr. *(Julio, Jr.)* before the RTC, docketed as Civil Case No.

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[1] Penned by Associate Justice Mario L. Guariña III with Associate Justice Sesinando E. Villon and Associate Justice Franchito N. Diamante, concurring; *rollo*, pp. 89-97.

[2] *Id.* at 117.

[3] Penned by Judge Victoria C. Fernandez-Bernardo, record, pp. 236-240.

[4] *Id.* at 3-7.

280-M-2002. Rogelio alleged that he was the registered owner of a parcel of land covered by Transfer Certificate of Title *(TCT)* No. T-125918*,* with an area of 5,657 square meters, located in Sta. Rita, San Miguel, Bulacan; that he acquired ownership of the property through a deed of extrajudicial partition of the estate of his deceased father, Emilio Dantis (*Emilio*), dated December 22, 1993; that he had been paying the realty taxes on the said property; that Julio, Jr. occupied and built a house on a portion of his property without any right at all; that demands were made upon Julio, Jr. that he vacate the premises but the same fell on deaf ears; and that the acts of Julio, Jr. had created a cloud of doubt over his title and right of possession of his property. He, thus, prayed that judgment be rendered declaring him to be the true and real owner of the parcel of land covered by TCT No. T-125918; ordering Julio, Jr. to deliver the possession of that portion of the land he was occupying; and directing Julio, Jr. to pay rentals from October 2000 and attorney's fees of ₱100,000.00.

He added that he was constrained to institute an ejectment suit against Julio, Jr. before the Municipal Trial Court of San Miguel, Bulacan (*MTC*), but the complaint was dismissed for lack of jurisdiction and lack of cause of action.

In his Answer,[5] Julio, Jr. denied the material allegations of the complaint. By way of an affirmative defense, he claimed that he was the actual owner of the 352 square meters (subject lot) of the land covered by TCT No. T-125918 where he was living; that he had been in open and continuous possession of the property for almost thirty (30) years; the subject lot was once tenanted by his ancestral relatives until it was sold by Rogelio's father, Emilio, to his father, Julio Maghinang, Sr. *(Julio, Sr.);* that later, he succeeded to the ownership of the subject lot after his father died on March 10, 1968; and that he was entitled to a separate registration of the subject lot on the basis of the documentary evidence of sale and his open and uninterrupted possession of the property.

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[5] *Id.* at 28-31.

As synthesized by the RTC from the respective testimonies of the principal witnesses, their diametrically opposed positions are as follows:

Plaintiff Rogelio Dantis testified that he inherited 5,657 square meters of land, identified as Lot 6-D-1 of subdivision plan Psd-031421-054315, located at Sta. Rita, San Miguel, Bulacan, through an Extrajudicial Partition of Estate of Emilio Dantis, executed in December 1993 which land was titled later on under his name, Rogelio Dantis, married to Victoria Payawal, as shown by copy of Transfer Certificate of Title No. T-125918, issued by the Register of Deeds of Bulacan on September 29, 1998, declared for taxation purposes as Tax Declaration with ARP No. C20-22-043-07-046. According to him, defendant and his predecessor-in-interest built the house located on said lot. When he first saw it, it was only a small hut but when he was about 60 years old, he told defendant not to build a bigger house thereon because he would need the land and defendant would have to vacate the land. Plaintiff, however, has not been in physical possession of the premises.

Defendant Julio Maghinang, Jr., presented by plaintiff as adverse witness, testified that he has no title over the property he is occupying. He has not paid realty taxes thereon. He has not paid any rental to anybody. He is occupying about 352 square meters of the lot. He presented an affidavit executed on September 3, 1953 by Ignacio Dantis, grandfather of Rogelio Dantis and the father of Emilio Dantis. The latter was, in turn, the father of Rogelio Dantis. The affidavit, according to affiant Ignacio Dantis, alleged that Emilio Dantis agreed to sell 352 square meters of the lot to Julio Maghinang on installment. Defendant was then 11 years old in 1952.

Defendant Julio Maghinang, Jr. likewise testified for the defendant's case as follows: He owns that house located at Sta. Rita, San Miguel, Bulacan, on a 352 square meter lot. He could not say that he is the owner because there is still question about the lot. He claimed that his father, Julio Maghinang (Sr.), bought the said lot from the parents of Rogelio Dantis. He admitted that the affidavit was not signed by the alleged vendor, Emilio Dantis, the father of Rogelio Dantis. The receipt he presented was admittedly a mere photocopy. He spent ₱50,000.00 as attorney's fees. Since 1953, he has not declared the property as his nor paid the taxes thereon because there is a problem.[6]

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

On March 2, 2005, the RTC rendered its decision declaring Rogelio as the true owner of the entire 5,657-square meter lot located in Sta. Rita, San Miguel, Bulacan, as evidenced by his TCT over the same. The RTC did not lend any probative value on the documentary evidence of sale adduced by Julio, Jr. consisting of: 1) an affidavit allegedly executed by Ignacio Dantis *(Ignacio)*, Rogelio's grandfather, whereby said affiant attested, among others, to the sale of the subject lot made by his son, Emilio, to Julio, Sr. (*Exhibit "3"*)[7]; and 2) an undated handwritten receipt of initial downpayment in the amount of ₱100.00 supposedly issued by Emilio to Julio, Sr. in connection with the sale of the subject lot (*Exhibit "4"*).[8] The RTC ruled that even if these documents were adjudged as competent evidence, still, they would only serve as proofs that the purchase price for the subject lot had not yet been completely paid and, hence, Rogelio was not duty-bound to deliver the property to Julio, Jr. The RTC found Julio, Jr. to be a mere possessor by tolerance. The dispositive portion of the RTC decision reads:

WHEREFORE, Judgment is hereby rendered as follows:

1. quieting the title and removing whatever cloud over the title on the parcel of land, with area of 5,647 sq. meters, more or less, located at Sta. Rita, San Miguel, Bulacan, covered by Transfer Certificate of Title No. T-125918 issued by the Register of Deeds of Bulacan in the name of "Rogelio Dantis, married to Victoria Payawal";

2. declaring that Rogelio Dantis, married to Victoria Payawal, is the true and lawful owner of the aforementioned real property; and

3. ordering defendant Julio Maghinang, Jr. and all persons claiming under him to peacefully vacate the said real property and surrender the possession thereof to plaintiff or latter's successors-in-interest.

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[7] *Id.* at 205.

[8] *Id.* at 206.

No pronouncement as to costs in this instance.

SO ORDERED.[9]

Julio, Jr. moved for a reconsideration of the March 2, 2005 Decision, but the motion was denied by the RTC in its May 3, 2005 Order.[10] Feeling aggrieved, Julio, Jr. appealed the decision to the CA.

On January 25, 2010, the CA rendered the assailed decision in CA-G.R. CV NO. 85258, finding the appeal to be impressed with merit. It held that Exhibit "4" was an indubitable proof of the sale of the 352-square meter lot between Emilio and Julio, Sr. It also ruled that the partial payment of the purchase price, coupled with the delivery of the *res*, gave efficacy to the oral sale and brought it outside the operation of the statute of frauds. Finally, the court *a quo* declared that Julio, Jr. and his predecessors-in-interest had an equitable claim over the subject lot which imposed on Rogelio and his predecessors-in-interest a personal duty to convey what had been sold after full payment of the selling price. The decretal portion of the CA decision reads:

IN VIEW OF THE FOREGOING, the decision appealed from is reversed. The heirs of Julio Maghinang Jr. are declared the owners of the 352-square meter portion of the lot covered by TCT No. T-125968 where the residence of defendant Julio Maghinang is located, and the plaintiff is ordered to reconvey the aforesaid portion to the aforesaid heirs, subject to partition by agreement or action to determine the exact metes and bounds and without prejudice to any legal remedy that the plaintiff may take with respect to the unpaid balance of the price.

SO ORDERED.[11]

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[9] *Id.* at 239-240.

[10] *Id.* at 247.

[11] *Rollo*, p. 96.

The motion for reconsideration[12] filed by Rogelio was denied by the CA in its March 23, 2010 Resolution. Unfazed, he filed this petition for review on *certiorari* before this Court.

Issues:

The fundamental question for resolution is whether there is a perfected contract of sale between Emilio and Julio, Sr. The determination of this issue will settle the rightful ownership of the subject lot.

Rogelio submits that Exhibit "3" and Exhibit "4" are devoid of evidentiary value and, hence, deserve scant consideration. He stresses that Exhibit "4" is inadmissible in evidence being a mere photocopy, and the existence and due execution thereof had not been established. He argues that even if Exhibit "4" would be considered as competent and admissible evidence, still, it would not be an adequate proof of the existence of the alleged oral contract of sale because it failed to provide a description of the subject lot, including its metes and bounds, as well as its full price or consideration.[13]

Rogelio argues that while reconveyance may be availed of by the owner of a real property wrongfully included in the certificate of title of another, the remedy is not obtainable herein since he is a transferee in good faith, having acquired the land covered by TCT No. T-125918, through a Deed of Extrajudicial Partition of Estate.[14] He asserts that he could not be considered a trustee as he was not privy to Exhibit "4". In any event, he theorizes that the action for reconveyance on the ground of implied trust had already prescribed since more than 10 years had lapsed since the execution of Exhibit "4" in 1953. It is the petitioner's stance that Julio, Jr. did not acquire ownership over the subject lot by acquisitive prescription contending that prescription does not lie against a real property covered by a

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[12] *Id.* at 98-115.

[13] *Id.* at 37-39.

[14] Record, pp. 126-127.

Torrens title. He opines that his certificate of title to the subject lot cannot be collaterally attacked because a Torrens title is indefeasible and must be respected unless challenged in a direct proceeding.[15]

The Court's Ruling

In the case at bench, the CA and the RTC reached different conclusions on the question of whether or not there was an oral contract of sale. The RTC ruled that Rogelio Dantis was the sole and rightful owner of the parcel of land covered by TCT No. T-125918 and that no oral contract of sale was entered into between Emilio Dantis and Julio Maghinang, Sr. involving the 352-square meter portion of the said property. The CA was of the opposite view. The determination of whether there existed an oral contract of sale is essentially a question of fact.

In petitions for review under Rule 45, the Court, as a general rule, does not venture to re-examine the evidence presented by the contending parties during the trial of the case considering that it is not a trier of facts and the findings of fact of the CA are conclusive and binding upon this Court. The rule, however, admits of several exceptions. One of which is when the findings of the CA are contrary to those of the trial court.[16] Considering the incongruent factual conclusions of the CA and the RTC, this Court is constrained to reassess the factual circumstances of the case and reevaluate them in the interest of justice.

The petition is meritorious.

It is an age-old rule in civil cases that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.[17] After carefully sifting through the evidence on record, the Court finds that Rogelio was able to establish a *prima facie* case in his favor tending to show his exclusive ownership of the parcel of

[15] *Rollo*, pp. 40-44.

[16] *Hyatt Elevators and Escalators Corp. v. Cathedral Heights Building Complex Association, Inc.,* G.R. No. 173881, December 1, 2010, 636 SCRA 401, 406.

[17] *Heirs of Cipriano Reyes v. Calumpang,* 536 Phil. 795, 811 (2006).

land under TCT No. T-125918 with an area of 5,657 square meters, which included the 352-square meter subject lot. From the records, it appears that TCT No. T-125918 is a derivative of TCT No. T-256228, which covered a bigger area of land measuring 30,000 square meters registered in the name of Emilio Dantis; that Emilio died intestate on November 13, 1952; that Emilio's five heirs, including Rogelio, executed an extra-judicial partition of estate on December 22, 1993 and divided among themselves specific portions of the property covered by TCT No. T-256228, which were already set apart by metes and bounds; that the land known as Lot 6-D-1 of the subdivision plan Psd-031421-054315 with an area of 5,657 sq. m. went to Rogelio, the property now covered by TCT No. T-125918; and that the property was declared for realty tax purpose in the name of Rogelio for which a tax declaration was issued in his name; and that the same had not been transferred to anyone else since its issuance.

In light of Rogelio's outright denial of the oral sale together with his insistence of ownership over the subject lot, it behooved upon Julio, Jr. to contravene the former's claim and convince the court that he had a valid defense. The burden of evidence shifted to Julio, Jr. to prove that his father bought the subject lot from Emilio Dantis. In *Jison v. Court of Appeals*,[18] the Court held:

> Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's prima facie case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. The concept of "preponderance of evidence" refers to evidence which is of greater weight, or more

[18] 350 Phil. 138 (1998).

convincing, that which is offered in opposition to it; at bottom, it means probability of truth.[19]

Julio, Jr. failed to discharge this burden. His pieces of evidence, Exhibit "3" and Exhibit "4", cannot prevail over the array of documentary and testimonial evidence that were adduced by Rogelio. The totality of Julio, Jr.'s evidence leaves much to be desired.

To begin with, Exhibit "3", the affidavit of Ignacio, is hearsay evidence and, thus, cannot be accorded any evidentiary weight. Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. The exclusion of hearsay evidence is anchored on three reasons: 1) absence of cross-examination; 2) absence of demeanor evidence; and 3) absence of oath.[20]

Jurisprudence dictates that an affidavit is merely hearsay evidence where its affiant/maker did not take the witness stand.[21] The sworn statement of Ignacio is of this kind. The affidavit was not identified and its averments were not affirmed by affiant Ignacio. Accordingly, Exhibit "3" must be excluded from the judicial proceedings being an inadmissible hearsay evidence. It cannot be deemed a declaration against interest for the matter to be considered as an exception to the hearsay rule because the declarant was not the seller (Emilio), but his father (Ignacio).

Exhibit "4", on the other hand, is considered secondary evidence being a mere photocopy which, in this case, cannot be admitted to prove the contents of the purported undated handwritten receipt. The best evidence rule requires that the highest available degree of proof must be produced. For documentary evidence, the contents of a document are best

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[19] *Id.* at 173.

[20] *Estrada v. Hon. Desierto*, 408 Phil. 194, 220 (2001).

[21] *Unchuan v. Lozada*, G.R. No. 172671, April 16, 2009, 585 SCRA 421, 435.

proved by the production of the document itself to the exclusion of secondary or substitutionary evidence, pursuant to Rule 130, Section 3.[22]

A secondary evidence is admissible only upon compliance with Rule 130, Section 5, which states that: when the original has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. Accordingly, the offeror of the secondary evidence is burdened to satisfactorily prove the predicates thereof, namely: (1) the execution or existence of the original; (2) the loss and destruction of the original or its non-production in court; and (3) the unavailability of the original is not due to bad faith on the part of the proponent/offeror. Proof of the due execution of the document and its subsequent loss would constitute the basis for the introduction of secondary evidence.[23] In *MCC Industrial Sales Corporation v. Ssangyong Corporation,*[24] it was held that where the missing document is the foundation of the action, more strictness in proof is required than where the document is only collaterally involved.

Guided by these norms, the Court holds that Julio, Jr. failed to prove the due execution of the original of Exhibit "4" as well as its subsequent loss. A nexus of logically related circumstance rendered Julio, Jr.'s evidence highly suspect. Also, his testimony was riddled with improbabilities and contradictions which tend to erode his credibility and raise doubt on the veracity of his evidence.

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[22] Sec. 3. Original document must be produced; exceptions. – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, x x x.

[23] *Santos v. Court of Appeals*, 420 Phil. 110, 120 (2001).

[24] G.R. No. 170633, October 17, 2007, 536 SCRA 408, 463.

First, the claim of Julio, Jr. that Emilio affixed his signature on the original of Exhibit "4" in 1953 is highly improbable because record shows that *Emilio died even before that year*, specifically, on November 13, 1952. Excerpts from Julio, Jr.'s testimony relative to this matter are as follows:

Atty. Vicente Millora
(On Cross-examination)

Q: You don't remember how old you were when this according to you you witnessed Emilio Dantis signed this?
A: Eleven years old, Sir.

Q: **So that was 1953**?
A: **Yes, Sir.**

Q: And you were then…?
A: I was born October 1942, Sir.

Q: You were eleven (11) years old?
A: Yes, Sir.

Q: And you mean to say that you witnessed the signing allegedly of the original of Exhibit "4" when you were eleven (11) years old?
A: Yes, Sir.

Q: And you remember what was signed in this receipt. From your memory can you tell the title of this Exhibit "4"?
A: What I can say that it is a Sale, Sir.

Q: So, when you said that you witnessed an alleged sale you are referring to Exhibit "4"?
A: Yes, Sir.[25] (Emphasis supplied)

Second, Julio, Jr.'s testimony pertinent to the alleged loss of the original of Exhibit "4" is laden with inconsistencies that detract from his credibility. His testimony bears the earmarks of falsehood and, hence, not reliable. Julio, Jr. testified in this wise:

Atty. Roldan Villacorta
(On Direct examination)

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[25] TSN, dated February 17, 2004, pp. 19-20.

Q: Mr. Witness, I noticed that this document marked as Exhibit "4" is only a photocopy, where is the original of this document?
A: The original was with the safekeeping of **my parents** because of the lapse of time the original was misplaced, Sir.[26]

The above testimony of Julio, Jr. tends to give the impression that the original of the document was lost while it was in the possession of his parents. During cross-examination, however, he testified that it was lost while it was in his possession.

Atty. Vicente Millora
(On Cross-examination)

Q: x x x Where did you keep that document?
A: **I was the one keeping that document** because I live in different places, [the said] it was lost or misplaced, Sir.

Q: In other words, it was lost while the same was in your possession??
A: Yes, Sir.[27] (Emphasis supplied)

Still, later, Julio, Jr. claimed that his sister was the one responsible for the loss of the original of Exhibit "4" after borrowing the same from him.

Atty. Vicente Millora
(On Cross-examination)

Q: So, who is your sister to whom you gave the original?
A: Benedicta Laya, Sir.

Q: In other words now, you did not lost the document or the original of Exhibit "4" but you gave it to your sister, am I correct?
A: I just lent to her the original copy, Sir.

Q: So, you lent this original of Exhibit "4" to **your sister** and your sister never returned the same to you?
A: Yes, Sir, because it was lost, that was the only one left in her custody.

Interpreter:

Witness referring to the xerox copy.

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[26] *Id.* at 14.

[27] *Id.* at 17.

Atty. Vicente Millora

Q: In other words, it was your sister who lost the original, is that correct?
A: Yes, Sir, when I lent the original.[28] (Emphasis supplied)

The Court also notes the confused narration of Julio, Jr. regarding the last time he saw the original of Exhibit "4."

Atty. Vicente Millora
(On Cross-examination)

Q: And when did you last see the original?
A: When my mother died in 1993 that was the last time I tried to see the original of the document after her interment, Sir.

Q: Where did you see this document?
A: From the safekeeping of my mother, Sir.[29]

x x x x x x x x x

Q: When did you get this Exhibit "4" now, the photocopy from your sister?
A: When the interment of my mother in September 1993, Sir.

Q: Now, let us reform. Which one did you get after the interment of your mother, this Exhibit "4" or the original?
A: I asked that xerox copy because I have lost the original and I could not find the same, Sir.

Q: So, from the safe of your mother after her interment, what used you found and got this Exhibit "4"?
A: Yes, Sir, from my sister.

Q: So, not from your mother safe?
A: The original was taken from the safe of my mother, Sir.

Q: So after your mother's death you never saw the original?
A: I did not see it anymore because the original was lost before she died, Sir.[30] (Underscoring supplied)

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[28] *Id.* at 18.

[29] *Id.* at 17.

[30] *Id.* at 19.

Third, it is quite strange that two receipts were prepared for the initial payment of ₱100.00 in connection with the sale of the subject lot. The Court notes that the contents of Exhibit "4" were similar to those of Annex "A"[31] of Julio, Jr.'s Answer, dated June 9, 2002. Annex "A", however, was typewritten and the name of the recipient indicated therein was a certain Cornelio A. Dantis, whose identity and participation in the alleged sale was never explained.

Fourth, apart from the lone testimony of Julio, Jr., no other witness who knew or read Exhibit "4", much less saw it executed, was presented. In the absence of any shred of corroborative evidence, the Court cannot help but entertain doubts on the truthfulness of Julio, Jr.'s naked assertion.

Assuming, in *gratia argumenti,* that Exhibit "4" is admissible in evidence, there will still be no valid and perfected oral contract for failure of Julio, Jr. to prove the concurrence of the essential requisites of a contract of sale by adequate and competent evidence.

By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of, and to deliver, a determinate thing, and the other to pay therefor a price certain in money or its equivalent.[32] A contract of sale is a consensual contract and, thus, is perfected by mere consent which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.[33] Until the contract of sale is perfected, it cannot, as an independent source of obligation, serve as a binding juridical relation between the parties.[34] The essential elements of a contract of sale are: a) consent or meeting of the minds, that is, consent to transfer

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[31] Record, p. 32.

[32] Art. 1458 of the Civil Code.

[33] Art. 1319 of the Civil Code.

[34] *Montecalvo v. Heirs of Eugenia T. Primero*, G.R. No. 165168, July 9, 2010, 624 SCRA 575, 589.

ownership in exchange for the price; b) determinate subject matter; and c) price certain in money or its equivalent.[35] The absence of any of the essential elements shall negate the existence of a perfected contract of sale.[36]

Seemingly, Julio, Jr. wanted to prove the sale by a receipt when it should be the receipt that should further corroborate the existence of the sale. At best, his testimony only alleges but does not prove the existence of the verbal agreement. Julio, Jr. miserably failed to establish by preponderance of evidence that there was a meeting of the minds of the parties as to the subject matter and the purchase price.

The chief evidence of Julio, Jr. to substantiate the existence of the oral contract of sale is Exhibit "4". For a better understanding and resolution of the issue at hand, Exhibit "4" is being reproduced here:

Alamin ng sino mang
Makababasa

Akong si Emilio Dantis may sapat na Gulang may asawa naninirahan sa Sta Rita San Miguel Bul. ay kusang nagsasasay ng sumosunod.

Na ako Tumanggap Kay Julio Maghinang ng ₱100.00 peso cuartang Pilipino, bilang paunang bayad sa Lupa niyang nilote sa akin 400 apat na raan mahigit na metro cudrado.

Testigo

Tumangap,
Emilio a Dantis

A perusal of the above document would readily show that it does not specify a determinate subject matter. Nowhere does it provide a description of the property subject of the sale, including its metes and bounds, as well as its total area. The Court notes that while Julio, Jr. testified that the land subject of the sale

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[35] *Coronel v. Court of Appeals*, 331 Phil. 294, 308-309 (1996).

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

consisted of 352 square meters, Exhibit "4", however, states that it's more than 400 square meters. Moreover, Exhibit "4" does not categorically declare the price certain in money. Neither does it state the mode of payment of the purchase price and the period for its payment.

In *Swedish Match, AB v. Court of Appeals*,[37] the Court ruled that the manner of payment of the purchase price was an essential element before a valid and binding contract of sale could exist. Albeit the Civil Code does not explicitly provide that the minds of the contracting parties must also meet on the terms or manner of payment of the price, the same is needed, otherwise, there is no sale.[38] An agreement anent the manner of payment goes into the price so much so that a disagreement on the manner of payment is tantamount to a failure to agree on the price.[39] Further, in *Velasco v. Court of Appeals*,[40] where the parties already agreed on the object of sale and on the purchase price, but not on how and when the downpayment and the installment payments were to be paid, this Court ruled:

> Such being the situation, it cannot, therefore, be said that a definite and firm sales agreement between the parties had been perfected over the lot in question. Indeed, this Court has already ruled before that a definite agreement on the manner of payment of the purchase price is an essential element in the formation of a binding and enforceable contract of sale. The fact, therefore, that the petitioners delivered to the respondent the sum of ₱10,000.00 as part of the down-payment that they had to pay cannot be considered as sufficient proof of the perfection of any purchase and sale agreement between the parties herein under Art. 1482 of the new Civil Code, as the petitioners themselves admit that some essential matter – the terms of payment – still had to be mutually covenanted.[41]

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[37] 483 Phil. 735, 752 (2004).

[38] *San Miguel Properties Philippines, Inc. v. Huang*, 391 Phil. 636, 646 (2000).

[39] *Platinum Plans Phil. Inc. v. Cucueco*, 522 Phil. 133, 150 (2006).

[40] 151-A Phil. 868 (1973).

[41] *Id.* at 887.

The CA held that partial performance of the contract of sale – giving of a downpayment coupled with the delivery of the res - took the oral contract out of the scope of the Statute of Frauds. This conclusion arose from its erroneous finding that there was a perfected contract of sale. The above disquisition, however, shows that there was none. There is, therefore, no basis for the application of the Statute of Frauds. The application of the Statute of Frauds presupposes the existence of a perfected contract.[42] As to the delivery of the res, it does not appear to be a voluntary one pursuant to the purported sale. If Julio, Jr. happened to be there, it was because his ancestors tenanted the land. It must be noted that when Julio, Jr. built his house, Rogelio protested.

WHEREFORE, the petition is **GRANTED**. The assailed January 25, 2010 Decision and the March 23, 2010 Resolution of the Court Appeals, in CA-G.R. CV No. 85258, are **REVERSED** and **SET ASIDE**. The March 2, 2005 Decision of the Regional Trial Court of Malolos, Bulacan, Branch 18, in Civil Case No. 280-M-2002, is **REINSTATED**.

SO ORDERED.

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

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[42] *Rosencor Development Corp. v. Inquing*, 406 Phil. 565, 577 (2001).

THIRD DIVISION

[G.R. No. 193756. April 10, 2013]

VENANCIO S. REYES, EDGARDO C. DABBAY, WALTER A. VIGILIA, NEMECIO M. CALANNO, ROGELIO A. SUPE, JR., ROLAND R. TRINIDAD, and AURELIO A. DULDULAO, *petitioners, vs.* **RP GUARDIANS SECURITY AGENCY, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; TEMPORARY DISPLACEMENT OR TEMPORARY OFF-DETAIL OF SECURITY GUARD DOES NOT NORMALLY RESULT IN A CONSTRUCTIVE DISMISSAL EXCEPT WHEN THE FLOATING STATUS LASTS FOR MORE THAN SIX (6) MONTHS AFTER THE TERMINATION OF HIS SERVICE CONTRACT.— There is no doubt that petitioners were constructively dismissed. The LA, the NLRC and the CA were one in their conclusion that respondent was guilty of illegal dismissal when it placed petitioners on floating status beyond the reasonable six-month period after the termination of their service contract with Banco de Oro. Temporary displacement or temporary off-detail of security guard is, generally, allowed in a situation where a security agency's client decided not to renew their service contract with the agency and no post is available for the relieved security guard. Such situation does not normally result in a constructive dismissal. Nonetheless, when the floating status lasts for more than six (6) months, the employee may be considered to have been constructively dismissed. No less than the Constitution guarantees the right of workers to security of tenure, thus, employees can only be dismissed for just or authorized causes and after they have been afforded the due process of law.

2. ID.; ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO BACKWAGES AND REINSTATEMENT; AWARD OF ONE DOES NOT BAR THE OTHER.— Settled is the rule that that 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 up to the time of actual reinstatement. If reinstatement is not possible, however, the award of separation pay is proper. Backwages and reinstatement are separate and distinct reliefs given to an illegally dismissed employee in order to alleviate the economic damage brought about by the employee's dismissal. "Reinstatement is a restoration to a state from which one has been removed or separated" while "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal." Therefore, the award of one does not bar the other.

3. **ID.; ID.; ID.; SEPARATION PAY IN THE AMOUNT OF ONE MONTH FOR EVERY YEAR OF SERVICE SHOULD BE PAID TO ILLEGALLY DISMISSED EMPLOYEE WHERE REINSTATEMENT IS NO LONGER FEASIBLE BECAUSE THE EMPLOYER HAD ALREADY CEASED OPERATION OF ITS BUSINESS.—** [T]he entitlement of the dismissed employee to separation pay of one month for every year of service should not be confused with Section 6.5 (4) of DOLE D.O. No. 14 which grants a separation pay of one- half month for every year service x x x. The said provision contemplates a situation where a security guard is removed for authorized causes such as when the security agency experiences a surplus of security guards brought about by lack of clients. In such a case, the security agency has the option to resort to retrenchment upon compliance with the procedural requirements of "two-notice rule" set forth in the Labor Code and to pay separation pay of one-half month for every year of service. In this case, respondent would have been liable for reinstatement and payment of backwages. Reinstatement, however, was no longer feasible because, as found by the LA, respondent had already ceased operation of its business. Thus, backwages and separation pay, in the amount of one month for every year of service, should be paid in lieu of reinstatement.

4. **ID.; ID.; ID.; AWARD OF ATTORNEY'S FEES EQUIVALENT TO TEN PERCENT (10%) OF THE MONETARY AWARD, PROPER.—** As to their claim of attorney's fees, petitioners

were compelled to file an action for the recovery of their lawful wages and other benefits and, in the process, incurred expenses. Hence, petitioners are entitled to attorney's fees equivalent to ten percent (10%) of the monetary award.

APPEARANCES OF COUNSEL

M.G. Silvestre Law Office for petitioners.
Gana Manlangit & Perez Law Office for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review under Rule 45 of the Rules of Court, assailing the May 18, 2010 Amended Decision[1] and the September 13, 2010 Resolution[2] of the Court of Appeals *(CA),* in C.A.-GR. SP No. 106643, which modified the April 9, 2008 Decision[3] of the National Labor Relations Commission *(NLRC)* in NLRC LAC Case No. 11-002990-07, insofar as the award of backwages, the computation of separation pay, and the refund for the trust fund contributions are concerned.

The Facts:

Petitioners Venancio S. Reyes, Edgardo C. Dabbay, Walter A. Vigilia, Nemesio M. Calanno, Rogelio A. Supe, Jr., Roland R. Trinidad, and Aurelio A. Duldulao *(petitioners)* were hired by respondent RP Guardians Security Agency, Inc. *(respondent)* as security guards. They were deployed to various clients of respondent, the last of which were the different branches of Banco Filipino Savings and Mortgage Bank *(Banco Filipino).*

In September 2006, respondent's security contract with Banco Filipino was terminated. In separate letters,[4] petitioners were

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[1] *Rollo*, pp. 49-53. Penned by Associate Amelita G. Tolentino and concurred in by Associate Justices Arturo G. Tayag and Franchito N. Diamante.

[2] *Id.* at 55-56.

[3] *Id.* at 72-77.

[4] *Id.* at 117-118.

individually informed of the termination of the security contract with Banco de Oro. In two (2) memoranda, dated September 21, 2006[5] and September 29, 2006,[6] petitioners were directed to turnover their duties and responsibilities to the incoming security agency and were advised that they would be placed on floating status while waiting for available post. Petitioners waited for their next assignment, but several months lapsed and they were not given new assignments.

Consequently, on April 10, 2007, petitioners filed a complaint[7] for constructive dismissal.

In its position paper,[8] respondent claimed that there was no dismissal, of petitioners, constructive or otherwise, and asserted that their termination was due to the expiration of the service contract which was coterminus with their contract of employment.

On August 20, 2007, the Labor Arbiter *(LA)* rendered a decision[9] in favor of petitioners ordering respondent to pay petitioners separation pay, backwages, refund of trust fund, moral and exemplary damages, and attorneys fees.

Aggrieved, respondent appealed to the NLRC.

On April 9, 2008, the NLRC promulgated its decision[10] sustaining the finding of constructive dismissal by the LA, and the awards she made in the decision. The award of moral and exemplary damages, however, were deleted.

Upon denial of its motion for reconsideration,[11] respondent filed a petition for *certiorari* before the CA.

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[5] *Id.* at 119.

[6] *Id.* at 120.

[7] *Rollo*, p. 90.

[8] *Id.* at 109-116.

[9] *Id.* at 82-89. Penned by Labor Arbiter Teresita D. Castillon-Lora.

[10] *Id.* at 72-77.

[11] *Id.* at 79-81.

On February 26, 2010, the CA rendered a decision[12] dismissing the petition and affirming the assailed NLRC decision and resolution.

On motion for reconsideration, the CA issued the Amended Decision[13] dated May 18, 2010, modifying its earlier decision. Citing Section 6.5 (4) of Department Order No. 14 of the Department of Labor and Employment *(DOLE D.O. No. 14)*, otherwise known as *Guidelines Governing the Employment and Working Conditions of Security Guards and Similar Personnel in the Private Security Industry,* the CA reduced the computation of the separation pay from one month pay per year of service to one-half month pay for every year of service; reduced the refund of trust fund contribution from Sixty *(₱60.00)* Pesos to Thirty *(₱30.00)*Pesos*;* and deleted the award of backwages and attorney's fees.

Hence, this petition anchored on the following:

GROUNDS FOR THE PETITION

8.0 The Court of Appeals has decided a question of substance in a way that is not in accord with law and with applicable decisions of the Supreme Court concerning the Petitioner's basic right to fair play, justice and due process, with more reason that a conclusion of law cannot be made in the motion for reconsideration.

8.1 The first decision promulgated by the Court of Appeals on February 26, 2010 affirming the decision of the NLRC awarding both backwages and separation pay of one month pay for every year of service can only be set aside upon proof of grave abuse of discretion, fraud or error of law.

8.2 Petitioners are entitled to backwages for the period covered from the time the Labor Arbiter rendered the decision in their favor on August 20, 2007 until said

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[12] *Id.* at 58-71. Penned by Associate Amelita G. Tolentino and concurred in by Associate Justices Arturo G. Tayag and Franchito N. Diamante.

[13] *Id.* at 49-53.

> **decision was reversed by the Court of Appeals in its Amended Decision promulgated on May 18, 2010.**[14]

There is no doubt that petitioners were constructively dismissed. The LA, the NLRC and the CA were one in their conclusion that respondent was guilty of illegal dismissal when it placed petitioners on floating status beyond the reasonable six-month period after the termination of their service contract with Banco de Oro. Temporary displacement or temporary off-detail of security guard is, generally, allowed in a situation where a security agency's client decided not to renew their service contract with the agency and no post is available for the relieved security guard.[15] Such situation does not normally result in a constructive dismissal. Nonetheless, when the floating status lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.[16] No less than the Constitution[17] guarantees the right of workers to security

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[14] *Id.* at 27.

[15] *Salvoza v. National Labor Relations Commission*, G.R. No. 182086, November 24, 2010, 636 SCRA 184, 197-198.

[16] *Sentinel Security Agency, Inc. v. National Labor Relations Commission*, 356 Phil. 434, 443 (1998).

[17] Article 13, Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

of tenure, thus, employees can only be dismissed for just or authorized causes and after they have been afforded the due process of law.[18]

Settled is the rule that that 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 up to the time of actual reinstatement.[19] If reinstatement is not possible, however, the award of separation pay is proper.[20]

Backwages and reinstatement are separate and distinct reliefs given to an illegally dismissed employee in order to alleviate the economic damage brought about by the employee's dismissal.[21] "Reinstatement is a restoration to a state from which one has been removed or separated" while "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal." Therefore, the award of one does not bar the other.[22]

In the case of *Aliling v. Feliciano,*[23] citing *Golden Ace Builders v. Talde,*[24] the Court explained:

> Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible

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[18] Article 277 Labor Code.

[19] Article 279 of the Labor Code.

[20] *Torillo v. Leogardo, Jr.*, 274 Phil. 758, 765 (1991).

[21] *St. Michael's Institute v. Santos*, 422 Phil. 723, 736 (2001).

[22] *De Guzman v. National Labor Relations Commission*, 371 Phil. 192, 202 (1999).

[23] G.R. No. 185829, April 25, 2012, 671 SCRA 186.

[24] G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289-290, citing *Macasero v. Southern Industrial Gases Philippines,* G.R. No. 178524, January 30, 2009, 577 SCRA 500.

because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages. [Emphasis Supplied]

Furthermore, the entitlement of the dismissed employee to separation pay of one month for every year of service should not be confused with Section 6.5 (4) of DOLE D.O. No. 14 which grants a separation pay of one-half month for every year service, to wit:

6.5 Other Mandatory Benefits. In appropriate cases, security guards/ similar personnel are entitled to the mandatory benefits as listed below, although the same may not be included in the monthly cost distribution in the contracts, except the required premiums for their coverage:

a. Maternity benefit as provided under the SSS Law;

b. Separation pay if the termination of employment is for authorized cause as provided by law and as enumerated below:

Half-Month Pay Per Year of Service, but in no case less than One Month Pay, if separation is due to:

1. Retrenchment or reduction of personnel effected by management to prevent serious losses;
2. Closure or cessation of operation of an establishment not due to serious losses or financial reverses;
3. Illness or disease not curable within a period of 6 months and continued employment is prohibited by law or prejudicial to the employee's health or that of co-employees; or
4. Lack of service assignment for a continuous period of 6 months.

The said provision contemplates a situation where a security guard is removed for authorized causes such as when the security agency experiences a surplus of security guards brought about by lack of clients. In such a case, the security agency has the option to resort to retrenchment upon compliance with the procedural requirements of "two-notice rule" set forth in the Labor Code and to pay separation pay of one-half month for every year of service.

In this case, respondent would have been liable for reinstatement and payment of backwages. Reinstatement, however, was no longer feasible because, as found by the LA, respondent had already ceased operation of its business.[25] Thus, backwages and separation pay, in the amount of one month for every year of service, should be paid in lieu of reinstatement.

As to their claim of attorney's fees, petitioners were compelled to file an action for the recovery of their lawful wages and other benefits and, in the process, incurred expenses. Hence, petitioners are entitled to attorney's fees equivalent to ten percent (10%) of the monetary award.[26]

Finally, as to the refund of the trust fund contribution, a perusal of the records shows that the amount deducted for the trust fund contribution from each petitioner varies. Some petitioners were deducted the amount of ₱15.00 every payday while others were deducted ₱30.00 every payday. Thus, the Court deems it proper to refer the computation of the same to the LA.

WHEREFORE, the petition is **GRANTED**. The May 18, 2010 Amended Decision and the September 13, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 106643 are **REVERSED** and **SET ASIDE**. The April 9, 2008 Decision of the National

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[25] Page 7 of the Labor Arbiter's Decision, *rollo*, p. 88.

[26] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, 540 Phil. 65, 85(2006); *Rutaquio v. National Labor Relations Commission*, 375 Phil. 405, 418 (1999).

Labor Relations Commission, modifying the August 20, 2007 Decision of the Labor Arbiter, is **REINSTATED.**

The case is **REMANDED** to the Labor Arbiter for further proceedings to make a detailed computation of the exact amount of monetary benefits due petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 194564. April 10, 2013]

SERGIO SOMBOL, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; FORMAL REQUIREMENTS; A DECISION SHOULD STATE CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT BASED; COMPLIED WITH.— The accused argues that the RTC decision violated Section 14, Article VIII of the Constitution; and Section 2, Rule 120 of the Rules of Court. We disagree. A reading of the RTC decision clearly shows that the trial court clearly and distinctly stated the facts and the law on which it was based. It summarized the contents of the testimonies of the witnesses for both the prosecution and the defense; concluded that the positive testimonies of the prosecution witnesses were to be believed over Sombol's statement, which contradicted that of his own defense witness; and ruled that, in the absence of the element of unlawful aggression, the justifying circumstance of self-defense may

not be appreciated in the accused's favor. Hence, there is no merit in the accused's argument that the trial court's decision failed to comply with the formal requirements of the Constitution and the Rules of Court.

2. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; FOR UNLAWFUL AGGRESSION TO BE PRESENT, THERE MUST BE AN ACTUAL PHYSICAL ASSAULT, OR AT LEAST A THREAT TO INFLICT REAL IMMINENT INJURY, NOT MERELY THREATENING AND INTIMIDATING ACTION, UPON A PERSON; ATTENDANCE OF UNLAWFUL AGGRESSION, NOT PROVED.—** The elements of self-defense are set forth in Article 11, par. 1 of the Revised Penal Code: Art. 11. *Justifying circumstances*. – The following do not incur any criminal liability: 1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur: *First*. Unlawful aggression; *Second.* Reasonable necessity of the means employed to prevent or repel it; *Third.* Lack of sufficient provocation on the part of the person defending himself. For the first element of unlawful aggression to be present, jurisprudence dictates that there must be "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person … It presupposes actual, sudden, unexpected or imminent danger — not merely threatening and intimidating action. It is present only when the one attacked faces real and immediate threat to one's life." Applying this test to the instant case, we find that Sombol failed to prove the attendance of unlawful aggression. ·While he testified to the effect that Arcibal attacked him with a soldering iron, this self-serving testimony was belied by the testimonies of two prosecution witnesses who never mentioned any attack; and by the testimony of Polo, his own defense witness, who categorically stated that Arciba! did nothing with the soldering iron.

3. **ID.; ID.; ID.; ID.; PLEA OF SELF DEFENSE FAILS WHERE HE FAILED TO PROVE THE EXISTENCE OF UNLAWFUL AGGRESSION; THE TRIAL COURT'S FINDINGS OF GUILT, AFFIRMED.—** As Sombol failed to prove the existence of unlawful aggression, his plea of self-defense necessarily fails. Unlawful aggression is a *conditio sine qua non* for self-

defense to be appreciated. Without unlawful aggression, the accused has nothing to prevent or repel, and there is then no basis for appreciating the other two requisites. As Sombol has admitted to having inflicted the fatal injury upon the victim and has failed to prove the justifying circumstance of self-defense, we rule that the RTC correctly found him guilty of the crime of homicide, and that the CA committed no reversible error in affirming the trial court's decision.

APPEARANCES OF COUNSEL

Renato M. Rances for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Rule 45 Petition for Review[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 00530.

The Facts

In an Information dated 7 November 2000, accused Sergio Sombol (Sombol) was charged with the crime of homicide, as follows:

That on or about the 2nd day of August, 2000 at around 5:30 o'clock in the afternoon, more or less, at Barangay Catmon, Municipality of St. Bernard, Province of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and

[1] *Rollo*, pp. 5-25; Petition dated 24 November 2010.

[2] *Id.* at 27-35; CA Decision dated 25 July 2008, penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Priscilla Baltazar-Padilla and Edgardo L. delos Santos.

[3] *Id.* at 41-44; CA Resolution dated 20 October 2010, penned by Associate Justice Edgardo L. delos Santos and concurred in by Associate Justices Pampio A. Abarintos and Agnes Reyes-Carpio.

feloniously, attack, assault and stab one Rogelio Arcibal, with the use of a sharp-pointed bolo known as "*sundang*" which the accused had provided himself for such purpose, thereby inflicting upon the latter the following injuries:

Findings: Stab wound 3 cm. (R) upper quadrant with omental Herniation, penetrating peritoneal cavity, perforating the ileum # 7, incising the mesentery with massive bleeding.

which cause[d] the death of the said victim, to the damage and prejudice of his heirs and of social order.

CONTRARY TO LAW.[4]

The evidence for the prosecution showed that on 2 August 2000, about 5:30 in the afternoon, Primo Bungcaras was at a waiting shed with Richard Alcala, Manuel Bacus and Wendel Tanquezon.[5] A few minutes later, they were joined by the victim, Rogelio Arcibal (Arcibal); and soon, by the accused, Sombol.[6]

Sombol tapped the right shoulder of Arcibal and said, "*Unsa Gee ika-17?*" (What Gee the seventeenth?).[7] The former then pulled out a sharp pointed weapon and stabbed Arcibal in the stomach. The victim staggered, leaned, and sat on a chair at the waiting shed. Sombol was about to attack Arcibal again, but was prevented by the timely intervention of Wendel Tanquezon.[8]

After the incident, Arcibal was brought to the hospital, but he succumbed to his wounds and died soon afterwards.[9]

On the other hand, the defense presented as witnesses Fortunato Polo (Polo) and the accused himself.

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[4] *Id.* at 45-46; RTC Decision dated 24 August 2006.

[5] *Id.* at 46.

[6] *Id.*

[7] *Id.* at 47.

[8] *Id.*

[9] *Id.*

Polo testified that on 2 August 2000, Primo Bungcaras, Richard Alcala, Wendel Tanquezon and Tanquezon's brother were drinking at a waiting shed.[10] Arcibal then arrived, followed shortly by Sombol.

Sombol tapped Arcibal on the shoulder and said "*Unsa to ika-17?*" (What was that the seventeenth?) After confirming in a low voice what Sombol said, Arcibal stood up, picked up a soldering iron, and walked towards the former. According to Polo's testimony, Arcibal did not do anything with the soldering iron, but Sombol pulled out a knife and stabbed the victim.[11]

Sombol testified to the same facts, but he further alleged that he had been attacked by Arcibal with a soldering iron, and that the former stabbed the victim in self-defense.[12]

After trial, the Regional Trial Court (RTC) of San Juan, Southern Leyte, found Sombol guilty beyond reasonable doubt of the crime of homicide. The lower court ruled that he had not acted in self-defense. Relying on the testimony of defense witness Polo, the RTC found that "Sergio Sombol pulled out a knife from his waist and stabbed Rogelio Arcibal on the stomach despite the fact that the later did nothing with the soldering iron."[13] As unlawful aggression had not been proven, the trial court refused to give credence to Sombol's plea of self-defense. It then disposed of the case as follows:

> Hence, the Court finds accused Sergio Sombol guilty beyond reasonable doubt as principal of the crime of Homicide, defined and penalized by Article 249 of the Revised Penal Code, and, applying the Indeterminate Sentence Law, sentences him to suffer the penalty of imprisonment from Eight (8) Years and One (1) Day of *Prision Mayor*, as minimum, to Fourteen (14) Years and Eight (8) Months of *Reclusion Temporal*, as maximum, with all the accessory penalties attached by law.

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[10] *Id.* at 48.

[11] *Id.*

[12] *Id.* at 49.

[13] *Id.* at 50.

Accused Sergio Sombol is hereby directed to indemnify the heirs/ family of Rogelio Arcibal in the amount of Php 50,000.00 by way of civil indemnity and Php 50,632.24 as actual damages, and to pay the costs.

SO ORDERED.[14]

On appeal, the CA reviewed the records and found no unlawful aggression on the victim's part. As unlawful aggression is a *sine qua non* requirement for appreciating the plea of self-defense, the CA ruled that "absent unlawful aggression, there is no self-defense to speak of."[15] Thus, it affirmed the trial court's finding of guilt, but reduced the amount of actual damages from ₱50,632.24 to ₱40,870.74, as it was the latter amount that was substantiated by the prosecution.[16] The *fallo* of the CA's decision reads:

WHEREFORE, premises considered, the assailed Decision rendered by the Regional Trial Court – Branch 26 in Southern Leyte is hereby **AFFIRMED WITH MODIFICATION by reducing the award of actual damages from ₱50,632.34 to ₱40,870.74.** The other aspects of the *fallo* of the assailed decision stand.

SO ORDERED.[17]

The accused moved for a reconsideration,[18] but his motion was denied by the CA.[19] He then filed the instant Petition for Review[20] before this Court.

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[14] *Id.* at 52.

[15] *Id.* at 32.

[16] *Id.* at 33-34.

[17] *Id.* at 34.

[18] *Id.* at 36-39; Motion for Reconsideration dated 22 August 2008.

[19] *Id.* at 41-44; Resolution dated 20 October 2010.

[20] *Id.* at 5-25; Petition dated 24 November 2010.

The Issues

Sombol raises two issues in support of the instant petition:

1. The RTC violated the constitutional requirement that a decision should state clearly and distinctly the facts and the law on which it is based;
2. The RTC erred in failing to appreciate the justifying circumstance of self-defense in his favor.

The Court's Ruling

We deny the instant petition and affirm the trial court's finding of guilt.

I.
The RTC Decision adequately stated the facts and law on which it was based.

The accused argues that the RTC decision violated Section 14, Article VIII of the Constitution;[21] and Section 2, Rule 120 of the Rules of Court.[22]

We disagree.

A reading of the RTC decision clearly shows that the trial court clearly and distinctly stated the facts and the law on which

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[21] Sec 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. x x x.

[22] Sec. 2. *Contents of the judgment*. – If the judgment is of conviction, it shall state (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice, or accessory; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.

it was based. It summarized the contents of the testimonies of the witnesses for both the prosecution and the defense;[23] concluded that the positive testimonies of the prosecution witnesses were to be believed over Sombol's statement, which contradicted that of his own defense witness;[24] and ruled that, in the absence of the element of unlawful aggression, the justifying circumstance of self-defense may not be appreciated in the accused's favor.[25]

Hence, there is no merit in the accused's argument that the trial court's decision failed to comply with the formal requirements of the Constitution and the Rules of Court.

II.
The RTC correctly disregarded the accused's plea of self-defense.

The accused further argues that he should be acquitted from the charge of homicide, as he only acted in lawful self-defense.

The elements of self-defense are set forth in Article 11, par. 1 of the Revised Penal Code:

> Art. 11. *Justifying circumstances.* – The following do not incur any criminal liability:
>
> 1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:
> *First*. Unlawful aggression;
> *Second.* Reasonable necessity of the means employed to prevent or repel it;
> *Third.* Lack of sufficient provocation on the part of the person defending himself.

For the first element of unlawful aggression to be present, jurisprudence dictates that there must be "an actual physical assault, or at least a threat to inflict real imminent injury, upon

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[23] *Rollo*, pp. 46-49; RTC Decision dated 24 August 2006.

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

[25] *Id.* at 51.

a person … It presupposes actual, sudden, unexpected or imminent danger — not merely threatening and intimidating action. It is present only when the one attacked faces real and immediate threat to one's life."[26]

Applying this test to the instant case, we find that Sombol failed to prove the attendance of unlawful aggression.

While he testified to the effect that Arcibal attacked him with a soldering iron,[27] this self-serving testimony was belied by the testimonies of two prosecution witnesses who never mentioned any attack;[28] and by the testimony of Polo, his own defense witness, who categorically stated that Arcibal did nothing with the soldering iron.[29]

As Sombol failed to prove the existence of unlawful aggression, his plea of self-defense necessarily fails. Unlawful aggression is a *conditio sine qua non* for self-defense to be appreciated.[30] Without unlawful aggression, the accused has nothing to prevent or repel, and there is then no basis for appreciating the other two requisites.[31]

As Sombol has admitted to having inflicted the fatal injury upon the victim[32] and has failed to prove the justifying circumstance of self-defense, we rule that the RTC correctly found him guilty of the crime of homicide, and that the CA committed no reversible error in affirming the trial court's decision.

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[26] *People v. Gabrino*, G.R. No. 189981, 9 March 2011, 645 SCRA 187-201.

[27] *Rollo*, p. 49; RTC Decision dated 24 August 2006.

[28] *Id.* at 46-47.

[29] *Id.* at 48.

[30] *People v. Agacer*, G.R. No. 177751, 14 December 2011, 662 SCRA 461.

[31] *Colinares v. People*, G.R. No. 182748, 13 December 2011, 662 SCRA 266.

[32] *Rollo*, p. 49; RTC Decision dated 24 August 2006.

WHEREFORE, the instant appeal is hereby **DENIED**. The challenged Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 00530 dated 25 July 2008 and 20 October 2010, respectively, are hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 197117. April 10, 2013]

FIRST LEPANTO TAISHO INSURANCE CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; WITHHOLDING TAXES; FOR TAXATION PURPOSES, THE DIRECTORS ARE CONSIDERED EMPLOYEES OF A CORPORATION AND THE NON-INCLUSION OF THEIR NAMES IN THE COMPANY'S ALPHA LIST DOES NOT *IPSO FACTO* CREATE A PRESUMPTION THAT THEY ARE NOT EMPLOYEES OF THE CORPORATION, BECAUSE THE IMPOSITION OF WITHHOLDING TAX ON COMPENSATION HINGES UPON THE NATURE OF WORK PERFORMED BY SUCH INDIVIDUALS IN THE COMPANY.—** For taxation purposes, a director is considered an employee under Section 5 of Revenue Regulation No. 12-86, to wit: An individual, performing services for a corporation, whether as an officer and director or merely as a director whose duties are confined to attendance at and participation in the meetings of the Board

of Directors, is an employee. The non-inclusion of the names of some of petitioner's directors in the company's Alpha List does not *ipso facto* create a presumption that they are not employees of the corporation, because the imposition of withholding tax on compensation hinges upon the nature of work performed by such individuals in the company. Moreover, contrary to petitioner's attestations, Revenue Regulation No. 2-98, specifically, Section 2.57.2. A (9) thereof, cannot be applied to this case as the latter is a later regulation while the accounting books examined were for taxable year 1997.

2. ID.; ID.; IMPOSITION OF DEFICIENCY WITHHOLDING TAXES, AFFIRMED.— As to the deficiency withholding tax assessment on transportation, subsistence and lodging, and representation expense, commission expense, direct loss expense, occupancy cost, service/contractor and purchases, the Court finds no cogent reason to deviate from the findings of the CTA *En Banc*. As correctly observed by the CTA Second Division and the CTA *En Banc*, petitioner was not able to sufficiently establish that the transportation expenses reflected in their books were reimbursement from actual transportation expenses incurred by its employees in connection with their duties as the only document presented was a Schedule of Transportation Expenses without pertinent supporting documents. Without said documents, such as but not limited to, receipts, transportation-related vouchers and/or invoices, there is no way of ascertaining whether the amounts reflected in the schedule of expenses were disbursed for transportation. With regard to commission expense, no additional documentary evidence, like the reinsurance agreements contracts, was presented to support petitioner's allegation that the expenditure originated from reinsurance activities that gave rise to reinsurance commissions, not subject to withholding tax. As to occupancy costs, records reveal that petitioner failed to compute the correct total occupancy cost that should be subjected to withholding tax, hence, petitioner is liable for the deficiency. As to the deficiency final withholding tax assessments for payments of dividends and computerization expenses incurred by petitioner to foreign entities, particularly Matsui Marine & Fire Insurance Co. Ltd. (*Matsui*), the Court agrees with CIR that petitioner failed to present evidence to show the supposed remittance to Matsui.

3. ID.; ID.; DEFICIENCY WITHHOLDING TAX ON SERVICE/ CONTRACTOR AND PURCHASES; THE TAXPAYER IS STILL REQUIRED TO PRESENT EVIDENCE TO PROVE CORRECT PAYMENT OF TAXES WITHHELD NOTWITHSTANDING THE PARTIES STIPULATION THEREON; STIPULATIONS CANNOT DEFEAT THE RIGHT OF THE STATE TO COLLECT THE CORRECT TAXES DUES ON AN INDIVIDUAL OR JURIDICAL PERSON BECAUSE TAXES ARE THE LIFEBLOOD OF OUR NATION SO ITS COLLECTION SHOULD BE ACTIVELY PURSUED WITHOUT UNNECESSARY IMPEDIMENT.— As to service/contractors and purchases, petitioner contends that both parties already stipulated that it correctly withheld the taxes due. Thus, petitioner is of the belief that it is no longer required to present evidence to prove the correct payment of taxes withheld. As correctly ruled by the CTA Second Division and *En Banc*, however, stipulations cannot defeat the right of the State to collect the correct taxes due on an individual or juridical person because taxes are the lifeblood of our nation so its collection should be actively pursued without unnecessary impediment.

4. ID.; ID.; DELINQUENCY INTEREST; THE FAILURE TO PAY THE DEFICIENCY TAX ASSESSED WITHIN THE TIME PRESCRIBED FOR ITS PAYMENT JUSTIFIES THE IMPOSITION OF INTEREST AT THE RATE OF TWENTY PERCENT PER ANNUM.— The Court likewise holds the imposition of delinquency interest under Section 249 (c) (3) of the 1997 NIRC to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.

5. REMEDIAL LAW; APPEALS; FINDINGS AND CONCLUSION OF THE COURT OF TAX APPEALS, BEING A HIGHLY SPECIALIZED COURT CREATED FOR THE PURPOSE OF RECEIVING TAX AND CUSTOM CASES ARE ACCORDED GREAT RESPECT AND ARE GENERALLY UPHELD BY THE COURT.— It is worthy to note that tax revenue statutes are not generally intended to be liberally

construed. Moreover, the CTA being a highly specialized court particularly created for the purpose of reviewing tax and customs cases, it is settled that its findings and conclusions are accorded great respect and are generally upheld by this Court, unless there is a clear showing of a reversible error or an improvident exercise of authority. Absent such errors, the challenged decision should be maintained.

APPEARANCES OF COUNSEL

Somera Penano & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by First Lepanto Taisho Corporation, *now* FLT Prime Insurance Corporation *(petitioner)*, assailing the March 1, 2011 Decision[2] and the May 27, 2011 Resolution[3] of the Court of Tax Appeals *(CTA) En Banc*, in CTA E.B. No. 563, which affirmed the May 21, 2009 Decision of the CTA-Second Division.

The Facts:

Petitioner is a non-life insurance corporation and considered as a "Large Taxpayer under Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 12-94 effective 1994."[4]

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[1] *Rollo*, pp. 12-51.

[2] *Id.* at 52-82. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C.Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manak concurring.

[3] *Id.* at 84-86.

[4] *Id.* at 53.

After submitting its corporate income tax return for taxable year ending December 31, 1997, petitioner received a Letter of Authority, dated October 30, 1998, from respondent Commissioner of Internal Revenue *(CIR)* to allow it to examine their books of account and other accounting records for 1997 and other unverified prior years.

On December 29, 1999, CIR issued internal revenue tax assessments for deficiency income, withholding, expanded withholding, final withholding, value-added, and documentary stamp taxes for taxable year 1997.

On February 24, 2000, petitioner protested the said tax assessments.

During the pendency of the case, particularly on February 15, 2008, petitioner filed its Motion for Partial Withdrawal of Petition for Review of Assessment Notice Nos. ST-INC-97-0220-99; ST-VAT-97-0222-99 and ST-DST-97-0217-00, in view of the tax amnesty program it had availed. The CTA Second Division granted the said motion in a Resolution,[5] dated March 31, 2008.

Consequently, on May 21, 2009, the CTA Second Division partially granted the petition.[6] It directed petitioner to pay CIR a reduced tax liability of ₱1,994,390.86. The dispositive portion reads:

> **WHEREFORE**, in view of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency withholding tax on compensation, expanded withholding tax and final tax in the reduced amount of ₱1,994,390.86, computed as follows:

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[5] *Id.* at 125-126.

[6] *Id.* at 128-152. Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring.

	Basic Tax	Surcharges	Interest	Total
Deficiency Withholding Tax on Compensation ST-WC-97-0221-99	₱774,200.55	₱193,550.14	₱312.227.34	₱1,279,978.03
Deficiency Expanded Withholding Tax ST- EWT-97-0218-99	132,724.02	33,181.01	53,526.27	219,431.30
Deficiency Final Withholding Tax ST-FT-97-0219-99	299,391.84	74,847.96	120,741.73	494,981.53
TOTALS	₱1,206,316.41	₱301,579.11	₱486,495.34	₱1,994,390.86

Petitioner's Motion for Partial Reconsideration[7] was likewise denied by the CTA Second Division in its October 29, 2009 Resolution.[8]

Unsatisfied, petitioner filed a Petition for Review before the CTA *En Banc.*[9]

On March 1, 2011, the CTA *En Banc* affirmed the decision of the CTA Second Division.[10]

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[7] *Id.* at 157-170.

[8] *Id.* at 172-178.

[9] *Id.* at 109-123.

[10] *Id.* at 52-82. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manak concurring.

Petitioner contended that it was not liable to pay Withholding Tax on Compensation on the ₱500,000.00 Director's Bonus to their directors, specifically, Rodolfo Bausa, Voltaire Gonzales, Felipe Yap, and Catalino Macaraig, Jr., because they were not employees and the amount was already subjected to Expanded Withholding Tax. The CTA *En Banc*, however, ruled that Section 5 of Revenue Regulation No. 12-86 expressly identified a director to be an employee.

As to transportation, subsistence and lodging, and representation expenses, the expenses would not be subject to withholding tax only if the same were reimbursement for actual expenses of the company. In the present case, the CTA *En Banc* declared that petitioner failed to prove that they were so.

As to deficiency expanded withholding taxes on compensation, petitioner failed to substantiate that the commissions earned totaling ₱905,428.36, came from reinsurance activities and should not be subject to withholding tax. Petitioner likewise failed to prove its direct loss expense, occupancy cost and service/ contractors and purchases.

As to deficiency final withholding taxes, "petitioner failed to present proof of remittance to establish that it had remitted the final tax on dividends paid as well as the payments for services rendered by the Malaysian entity."[11]

As to the imposition of delinquency interest under Section 249 (c) (3) of the 1997 National Internal Revenue Code *(NIRC)*, records reveal that petitioner failed to pay the deficiency taxes within thirty (30) days from receipt of the demand letter, thus, delinquency interest accrued from such non-payment.

Petitioner moved for partial reconsideration, but the CTA *En Banc* denied the same in its May 27, 2011 Resolution.[12]

Hence, this petition.[13]

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[11] *Id.* at 77.

[12] *Id.* at 84-86.

[13] *Id.* at 12-51.

The principal issue in this case is whether the CTA *En Banc* erred in holding petitioner liable for:

a. deficiency withholding taxes on compensation on directors' bonuses under Assessment No. ST-WC-97-0021-99;

b. deficiency expanded withholding taxes on transportation, subsistence and lodging, and representation expense; commission expense; direct loss expense; occupancy cost; and service/contractor and purchases under Assessment No. ST-EWT-97-0218-99;

c. deficiency final withholding taxes on payment of dividends and computerization expenses to foreign entities under Assessment No. ST-FT-97-0219-99; and

d. delinquency interest under Section 249 (c) (3) of the NIRC.

The Court finds no merit in the petition.

For taxation purposes, a director is considered an employee under Section 5 of Revenue Regulation No. 12-86,[14] to wit:

> An individual, performing services for a corporation, whether as an officer and director or merely as a director whose duties are confined to attendance at and participation in the meetings of the Board of Directors, is an employee.

The non-inclusion of the names of some of petitioner's directors in the company's Alpha List does not *ipso facto* create a presumption that they are not employees of the corporation, because the imposition of withholding tax on compensation hinges upon the nature of work performed by such individuals in the company. Moreover, contrary to petitioner's attestations, Revenue Regulation No. 2-98,[15] specifically, Section 2.57.2. A (9) thereof,[16] cannot be applied to this case as the latter is a

[14] Dated August 1, 1986.

[15] Dated April 17, 1998.

[16] (9) Fees of directors who are not employees of the company paying such fees, whose duties are confined to attendance at and participation in the meetings of the board of directors.

later regulation while the accounting books examined were for taxable year 1997.

As to the deficiency withholding tax assessment on transportation, subsistence and lodging, and representation expense, commission expense, direct loss expense, occupancy cost, service/contractor and purchases, the Court finds no cogent reason to deviate from the findings of the CTA *En Banc*. As correctly observed by the CTA Second Division and the CTA *En Banc*, petitioner was not able to sufficiently establish that the transportation expenses reflected in their books were reimbursement from actual transportation expenses incurred by its employees in connection with their duties as the only document presented was a Schedule of Transportation Expenses without pertinent supporting documents. Without said documents, such as but not limited to, receipts, transportation-related vouchers and/or invoices, there is no way of ascertaining whether the amounts reflected in the schedule of expenses were disbursed for transportation.

With regard to commission expense, no additional documentary evidence, like the reinsurance agreements contracts, was presented to support petitioner's allegation that the expenditure originated from reinsurance activities that gave rise to reinsurance commissions, not subject to withholding tax. As to occupancy costs, records reveal that petitioner failed to compute the correct total occupancy cost that should be subjected to withholding tax, hence, petitioner is liable for the deficiency.

As to service/contractors and purchases, petitioner contends that both parties already stipulated that it correctly withheld the taxes due. Thus, petitioner is of the belief that it is no longer required to present evidence to prove the correct payment of taxes withheld. As correctly ruled by the CTA Second Division and *En Banc*, however, stipulations cannot defeat the right of the State to collect the correct taxes due on an individual or juridical person because taxes are the lifeblood of our nation so its collection should be actively pursued without unnecessary impediment.

As to the deficiency final withholding tax assessments for payments of dividends and computerization expenses incurred by petitioner to foreign entities, particularly Matsui Marine & Fire Insurance Co. Ltd. (*Matsui*),[17] the Court agrees with CIR that petitioner failed to present evidence to show the supposed remittance to Matsui.

The Court likewise holds the imposition of delinquency interest under Section 249 (c) (3) of the 1997 NIRC to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.

It is worthy to note that tax revenue statutes are not generally intended to be liberally construed.[18] Moreover, the CTA being a highly specialized court particularly created for the purpose of reviewing tax and customs cases, it is settled that its findings and conclusions are accorded great respect and are generally upheld by this Court, unless there is a clear showing of a reversible error or an improvident exercise of authority.[19] Absent such errors, the challenged decision should be maintained.

WHEREFORE, the petition is **DENIED**. The March 1, 2011 Decision and the May 27, 2011 Resolution of the Court of Tax Appeals *En Banc*, in CTA E.B. No. 563, are **AFFIRMED**.

SO ORDERED.

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

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[17] Petitioner's Non-Resident Foreign corporation stockholder.

[18] *Commissioner of Internal Revenue v. Acosta*, G.R. No. 154068, August 3, 2007, 529 SCRA 177, 186.

[19] *Chevron Philippines*, *Inc. v. Commissioner of the Bureau of Customs*, G.R. No. 178759, August 11, 2008, 561 SCRA 710, 742.

SECOND DIVISION

[G.R. No. 198682. April 10, 2013]

FRANCISCO C. ADALIM, *petitioner, vs.* **ERNESTO TANIÑAS, JORGE ORITA, MA. IRMA DAIZ (deceased), YOLANDO DEGUINION, GRACE LIM, EMMA TANIÑAS, ISIDRO BUSA, MA. NALYN DOTINGCO, ESTER ULTRA, FRANCISCO ESPORAS, ENRICO BEDIASAY, JESUS CHERREGUINE,[*] AIDA EVIDENTE, RODRIGO TANIÑAS, VIRGILIO ADENIT, CLARITA DOCENA, ERENE DOCENA, GUIO BALICHA, LUZ BACULA, PERFECTO MAGRO, ANACLETO EBIT, DOLORES PEÑAFLOR, ERWENIA BALMES, CECILIO CEBUANO, MA. ELENA ABENIS, DANILO ALEGRE, and THE COURT OF APPEALS (FIFTH DIVISION),** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; THE REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; ADMINISTRATIVE INVESTIGATIONS SHALL BE CONDUCTED WITHOUT STRICT RECOURSE TO THE TECHNICAL RULES OF PROCEDURE AND EVIDENCE APPLICABLE TO JUDICIAL PROCEEDINGS; RESOLUTION OF THE MERITS OF THE APPEAL ALLOWED DESPITE PROCEDURAL LAPSES WHEN PUBLIC INTEREST SO REQUIRES.—** In a number of cases, we upheld the CSC's decision relaxing its procedural rules to render substantial justice. The Revised Rules on Administrative Cases in the Civil Service themselves provide that administrative investigations shall be conducted without strict recourse to the technical rules of procedure and evidence applicable to judicial proceedings. The case before the CSC involves the security of tenure of public employees protected by the Constitution. Public interest requires a resolution of the merits

[*] Sometimes referred to as "Jesus Cherriguinne" or "Jesus Cherriguine."

of the appeal instead of dismissing the same based on a rigid application of the CSC Rules of Procedure. Accordingly, both the CSC and the CA properly allowed respondent employees' appeal despite procedural lapses to resolve the issue on the merits.

2. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES LIKE THE CSC, WHEN ADOPTED AND AFFIRMED BY THE COURT OF APPEALS AND IF SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE ACCORDED RESPECT AND EVEN FINALITY BY THE COURT; EXCEPTIONS, NOT PRESENT.—** Basic is the rule that in petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised by the parties and passed upon by this Court. On the other hand, the issue of the AWOL of respondent employees is a question of fact. Time and again, this Court held that factual findings of quasi-judicial bodies like the CSC, when adopted and affirmed by the CA and if supported by substantial evidence, are accorded respect and even finality by this Court. While this Court has recognized several exceptions to this rule, we do not find any of these exceptions in the present case.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE EMPLOYEES; ABSENCE WITHOUT OFFICIAL LEAVE (AWOL) IS COMMITTED BY AN EMPLOYEE WHO LEFT OR ABANDONED HIS POST FOR A CONTINUOUS PERIOD OF THIRTY (30) CALENDAR DAYS OR MORE WITHOUT ANY JUSTIFIABLE REASON AND NOTICE TO HIS SUPERIOR; NOT A CASE OF; REINSTATEMENT OF THE RESPONDENT EMPLOYEES WITH PAYMENT OF BACK SALARIES, AFFIRMED IN CASE AT BAR.—** Adalim dropped respondent employees from the rolls due to AWOL using CSC Memorandum Circular No. 14 as basis. This means that the employees left or abandoned their posts for a continuous period of thirty (30) calendar days or more without any justifiable reason and notice to their superiors. Both the CSC and the CA found that respondent employees did not commit AWOL. Despite the unresolved mayoralty issue in Taft, Eastern Samar, respondent employees were continuously performing their functions in the municipal building during

the period that they were declared on AW OL, or during August, September and October 2005. x x x. The records further reveal that respondent employees never intended to go on leave or abandon their posts. x x x. As pointed out by the CA, during the period that respondent employees were declared on AWOL, the petition for *certiorari* against the writ of execution and the appeal on the election protest were both pending before the Comelec. The Comelec also issued a *Status Quo* order. Thus, the CA aptly found that respondent employees "in this particular situation were just victims of the ill-effects of the intense tug-of-war between Lim and Adalim for the mayoralty position in Taft, Eastern Samar." Thus, we find no reason to depart from the decision of the CA, which affirmed that of the CSC, ordering respondent employees' reinstatement with payment of back salaries.

APPEARANCES OF COUNSEL

Christopher Coles for petitioner.
Francisco Bagas for private respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This Petition for Review on *Certiorari*[1] seeks to reverse the Court of Appeals' Decision[2] dated 28 January 2011 and its Resolution[3] dated 6 September 2011 in CA-G.R. SP No. 110703. The Court of Appeals (CA) affirmed Civil Service Commission (CSC) Resolution No. 09-1197 dated 10 August 2009.[4]

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

[2] *Rollo*, pp. 78-91. Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier, concurring.

[3] *Id.* at 92-93.

[4] *Id.* at 68-77.

The Facts

During the 10 May 2004 elections, Diego Lim (Lim) was proclaimed Mayor of Taft, Eastern Samar. Petitioner Francisco C. Adalim (Adalim), a candidate for the same position, filed an election protest against Lim before the Regional Trial Court of Borongan, Eastern Samar, Branch 1 (RTC). On 5 August 2005, the RTC ruled in favor of Adalim and declared him as the winning candidate in the elections. On 10 August 2005, Lim appealed the RTC decision with the Commission on Elections (Comelec).

On 11 August 2005, the RTC granted Adalim's motion for execution pending appeal. Lim, however, continued to hold office in the municipal building. On 13 August 2005, Adalim issued a Memorandum directing all municipal employees "to log-in and log-out at the Office of the Mayor, 4th Floor, Cyrus Hotel." On 15 August 2005, Adalim issued another Memorandum stating that the local government unit of Taft, Eastern Samar was temporarily relocated at Cyrus Hotel. On the same day, Lim filed a Petition for *Certiorari* with Temporary Restraining Order or *Status Quo* Order before the Comelec against the motion for execution. Thereafter, the Comelec issued a twenty-day *Status Quo* Order effective 23 August to 12 September 2005.[5] On 10 October 2005, the Comelec denied Lim's petition for *certiorari*. Lim filed a Motion for Reconsideration.

On 24 October 2005, Adalim issued Memorandum No. 03-11-2005 directing all municipal employees to submit their Daily Time Records (DTRs); otherwise, they would not be paid their salaries. On 23 November 2005, the Office of the Municipal Treasurer issued a Certification listing the employees, which included respondent employees, with no DTRs for the months of August, September, and October 2005, to wit:

1. Grace C. Lim – Mun. Budget Officer
2. Ma. Irma D. Daiz – MPDCO/ Local Civil Registrar

x x x x x x x x x

4. Erwenia Balmes – Social Welfare Officer III

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[5] *Id.* at 52.

5. Dolores Peñaflor – Administrative Asst. II
6. Aida Evidente – Budgeting Aide
7. Emma Taniñas – Revenue Collector Clerk
8. Rodrigo V. Taniñas – Revenue Collector Clerk
9. Nalyn V. Dotingco – Nurse II
10. Clarita C. Docena – Midwife II

x x x   x x x   x x x

12. Elena Abenis – Midwife II
13. Francisco Esporas – Security Guard II
14. Guio Balicha – Security Guard I
15. Ernesto Taniñas – Security Guard I
16. Enrico Bediasay – Security Guard I
17. Luz S. Bacula – Day Care Worker
18. Jorge Orita – Community Affairs Asst.

x x x   x x x   x x x

20. Jesus Aquiatan Cherreguine – Administrative Aide III
21. Perfecto Magro – Administrative Aide III
22. Yolando Deguinion – Administrative Aide III
23. Anacleto Ebit – Administrative Aide I
24. Erene V. Docena – Agricultural Technologist
25. Ester D. Ultra – Agricultural Technologist
26. Danilo Alegre – Agricultural Technologist
27. Isidro Busa – Administrative Aide I
28. Virgilio Adenit – Administrative Aide I
29. Cecilio Cebuano – Administrative Aide I[6]

On the same day, Adalim issued memoranda dropping respondent employees from the rolls due to absence without official leave (AWOL).[7]

On 26 May 2006, respondent employees, except Isidro Busa and Ester Ultra, filed an appeal with the Civil Service Commission Regional Office (CSCRO) No. VIII. On 20 July 2006, Isidro

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[6] CA *rollo*, p. 34.

[7] Separate Memoranda issued by Adalim to respondent employees state: "In accordance with Section 2(a), Rule XII, CSC Memorandum Circular No. 15, s. 1999 and Section 63 of CSC Memorandum Circular No. 14, s. 1999, you are hereby separated from the service or dropped from the rolls of LGU employees, effective 5 days from receipt hereof, for having been continuously absent without approved leave (AWOL) since August 15, 2005 until the present, or for a period of 3 months and 7 days. x x x."

Busa and Ester Ultra filed a similar appeal. Respondent employees claimed that the memoranda dropping them from the rolls were issued without due process and without authority. They argued that the issue as to who won the mayoralty elections was not yet resolved at the time they were dropped from the rolls. Moreover, respondent employees denied that they were on AWOL. They alleged that they were regularly reporting for work in the municipal building until Adalim occupied it on 7 March 2006 and prevented them from entering.

In a Comment dated 9 July 2006, Adalim sought the dismissal of the appeal for being filed out of time, for failure to pay the appeal fee, and for lack of merit. Adalim alleged that he had the authority to issue the memoranda based on the writ of execution pending appeal issued by the RTC. Adalim further claimed that respondent employees were on AWOL because they failed to submit DTRs and approved leave of absences.

Subsequently, CSCRO No. VIII directed respondent employees to attach the proof of payment of their appeal fee, to which they complied. In an Order dated 27 October 2006, the CSCRO No. VIII granted respondent employees' appeal and ordered their reinstatement with payment of back salaries. The CSCRO No. VIII ruled that Adalim had no authority to drop respondent employees from the rolls since the issue on who won the mayoralty elections was not yet resolved during the period that respondent employees were declared on AWOL. The CSCRO No. VIII further found that respondent employees continued to report in the municipal building as evidenced by the police blotter. Respondent employees did not log in on the office logbook because they were denied access to the office logbook.

Adalim filed a motion for reconsideration but the same was denied by CSCRO No. VIII. On 17 January 2007, Adalim appealed to the CSC.

The Ruling of the Civil Service Commission

On the basis of Adalim's appeal alone, the CSC issued Resolution No. 07-1845[8] dated 27 September 2007, reversing the decision of the CSCRO No. VIII. The CSC found merit in Adalim's arguments and held that respondent employees indeed failed to report at the assigned temporary work station causing them to be on AWOL. Hence, respondent employees filed their motion for reconsideration.

In Resolution No. 09-0262[9] dated 24 February 2009, the CSC reversed Resolution No. 07-1845 and directed Adalim to reinstate respondent employees to their respective positions with payment of their salaries and benefits effective August 2005 up to their actual reinstatement. Adalim moved for reconsideration, which the CSC denied in its Resolution No. 09-1197[10] dated 10 August 2009. The dispositive portion of the CSC Resolution reads:

> WHEREFORE, the Motion for Reconsideration of Mayor Francisco Adalim is DENIED. Accordingly, CSC Resolution No. 09-0262 dated February 24, 2009 which directed Mayor Adalim to reinstate Tani[ñ]as, *et al.* to their respective positions and pay their salaries and benefits effective August 2005 up to their actual reinstatement, STANDS with modification that the ruling on reinstatement is not applicable to Ma. Irma D. Daiz who died on August 31, 2007 and Isidro Busa who retired on September 14, 2008. They are, however, still entitled to the salaries and benefits from August 2005 up to the termination of their relation with the Municipal Government of Taft.
>
> The Motion for Execution of Tani[ñ]as, *et al.* is GRANTED. Accordingly, Mayor Francisco Adalim is directed to implement the said decision within five (5) days from receipt hereof, otherwise, he may be cited for contempt and be held liable for Conduct Prejudicial to the Best Interest of the Service or Neglect of Duty.[11]

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[8] *Rollo,* pp. 48-58.

[9] *Id.* at 59-67.

[10] *Id.* at 68-77.

[11] *Id.* at 77.

Accordingly, Adalim filed a petition for review with the CA.

The Ruling of the Court of Appeals

In its 28 January 2011 Decision, the CA dismissed Adalim's petition for want of merit and affirmed both Resolution Nos. 09-0262 and 09-1197 of the CSC. The CA emphasized that:

> x x x this case involves an administrative proceeding, hence, the technical rules of procedure under the Rules of Court need not be strictly applied pursuant to Section 3, Rule 1 of the Uniform Rules on Administrative Cases in the Civil Service, which provides:
>
> > "Section 3. *Technical Rules in Administrative Investigations*. – Administrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings."[12]

Hence, this petition.

The Issues

Adalim seeks a reversal and assigns the following errors:

I.

THE HONORABLE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN GIVING DUE COURSE TO THE APPEAL OF [RESPONDENT EMPLOYEES] WITH THE CSC DESPITE THE FACT THAT IT WAS FILED OUT OF TIME OR AFTER MORE THAN SIX (6) MONTHS FROM THEIR RECEIPT OF THE DISMISSAL ORDER.

II.

THE HONORABLE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN GIVING DUE COURSE TO THE APPEAL OF [RESPONDENT EMPLOYEES] WITH THE RESPONDENT CSC DESPITE THE FACT THAT THE APPEAL FEE WAS NOT PAID UNTIL OCTOBER 27, 2007 OR ELEVEN (11) MONTHS AFTER THEIR RECEIPT OF THE DISMISSAL ORDER. WORSE, THE APPEAL FEE WAS PAID ON THE VERY SAME DAY WHEN THE CSC REGIONAL OFFICE NO. 8 PROMULGATED ITS DECISION.

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[12] *Id.* at 88.

III.

THE HONORABLE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE DECISION OF THE CSC DESPITE THE FACT THAT THE LATTER ADMITTED ISSUES NOT PRESENTED OR ALLEGED IN THE PLEADINGS.

IV.

THE HONORABLE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN GIVING DUE COURSE TO THE APPEAL OF [RESPONDENT EMPLOYEES] WITH THE CSC WHEN IT DECREED: "HOWEVER, THE ISSUE ON WHO IS THE DULY ELECTED MAYOR DURING THE PERIOD WHEN TANIÑAS, *ET AL.* WERE DECLARED ON ABSENCE WITHOUT OFFICIAL LEAVE (AWOL) WAS STILL UNRESOLVED BY THE COMELEC", THEREBY DISREGARDING THE WRIT OF EXECUTION PENDING APPEAL ISSUED ON AUGUST 11, 2005 BY THE REGIONAL TRIAL COURT ON THE ELECTION PROTEST CASE.[13]

The Ruling of the Court

The petition has no merit.

At the outset, Adalim assails the CSC's liberal application of its rules. In a number of cases, we upheld the CSC's decision relaxing its procedural rules to render substantial justice.[14] The Revised Rules on Administrative Cases in the Civil Service themselves provide that administrative investigations shall be conducted without strict recourse to the technical rules of procedure and evidence applicable to judicial proceedings.[15] The case before the CSC involves the security of tenure of public employees protected by the Constitution.[16] Public interest requires a resolution of the merits of the appeal instead of

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[13] *Id.* at 13-15.

[14] *Commission on Appointments v. Paler*, G.R. No. 172623, 3 March 2010, 614 SCRA 127 citing *Philippine Amusement and Gaming Corporation v. Angara*, 511 Phil. 486 (2005); *Rosales, Jr. v. Mijares,* 485 Phil. 209 (2004); *Constantino-David v. Pangandaman-Gania,* 456 Phil. 273 (2003).

[15] CSC Resolution No. 1101502 (2011), Sec. 3.

[16] *Rosales, Jr. v. Mijares*, *supra*.

dismissing the same based on a rigid application of the CSC Rules of Procedure.[17] Accordingly, both the CSC and the CA properly allowed respondent employees' appeal despite procedural lapses to resolve the issue on the merits.

Having settled the procedural issue, we resolve the main issue of whether respondent employees were validly dropped from the rolls by Adalim due to AWOL.

Basic is the rule that in petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised by the parties and passed upon by this Court. On the other hand, the issue of the AWOL of respondent employees is a question of fact.[18] Time and again, this Court held that factual findings of quasi-judicial bodies like the CSC, when adopted and affirmed by the CA and if supported by substantial evidence, are accorded respect and even finality by this Court.[19] While this Court has recognized several exceptions to this rule, we do not find any of these exceptions in the present case.

Adalim dropped respondent employees from the rolls due to AWOL using CSC Memorandum Circular No. 14[20] as basis. This means that the employees left or abandoned their posts for a continuous period of thirty (30) calendar days or more without any justifiable reason and notice to their superiors.[21]

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[17] *Id.*

[18] *Batangas State University v. Bonifacio*, 514 Phil. 209 (2004).

[19] *Binay v. Odeña*, G.R. No. 163683, 8 June 2007, 524 SCRA 248 citing *Asiatic Development Corporation v. Sps. Brogada*, 527 Phil. 496 (2006).

[20] Section 63 of CSC Memorandum Circular No. 14, s. 1999 provides:

Effect of absences without approved leave. - An official or an employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. He shall, however, be informed, at his address appearing on his 201 file or at his last known written address, of his separation from the service, not later than five (5) days from its effectivity x x x.

[21] *Petilla v. Court of Appeals,* 468 Phil. 395 (2004).

Both the CSC and the CA found that respondent employees did not commit AWOL. Despite the unresolved mayoralty issue in Taft, Eastern Samar, respondent employees were continuously performing their functions in the municipal building during the period that they were declared on AWOL, or during August, September and October 2005. The CA, adopting the findings of the CSC, held:

x x x Contrary to petitioner Adalim's allegations, in the midst of the political turmoil, respondents were seen continuously performing their functions at the municipal hall. This fact was confirmed by the municipal vice mayor, the sangguniang bayan members, the *barangay* treasurers, and reported in the police blotter of the Philippine National Police. The pieces of evidence submitted by the respondents only during the motion for reconsideration stage should not be taken against them. As they had explained, they were never given the opportunity by the CSC to file an answer to the appeal filed by Adalim, and that the motion for reconsideration was the first pleading that they had filed. x x x.[22]

The records further reveal that respondent employees never intended to go on leave or abandon their posts. The CSC held that:

After a thorough re-examination of the records, the Commission took note of the peculiar circumstances of the instant case taking into consideration the uncertain political landscape in the Municipal Government of Taft after the May 2004 national and local elections. For reporting to the wrong political camp, the movants, obviously, have become victims and were caught in the cross-fire, so to speak, between two political rivals x x x. The situation is further aggravated when the authorities (Regional Trial Court, Department of the Interior and Local Government and the Commission on Elections) who are supposed to settle the controversy issue conflicting decisions. **As such it is to be expected that the employees did not know whom to follow between Lim and Adalim because of the conflicting views.** x x x.[23] (Emphasis supplied)

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[22] *Rollo,* p. 88.

[23] *Id.* at 65-66.

As pointed out by the CA, during the period that respondent employees were declared on AWOL, the petition for *certiorari* against the writ of execution and the appeal on the election protest were both pending before the Comelec. The Comelec also issued a *Status Quo* order. Thus, the CA aptly found that respondent employees "in this particular situation were just victims of the ill-effects of the intense tug-of-war between Lim and Adalim for the mayoralty position in Taft, Eastern Samar."[24]

Thus, we find no reason to depart from the decision of the CA, which affirmed that of the CSC, ordering respondent employees' reinstatement with payment of back salaries.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 28 January 2011 and the Resolution dated 6 September 2011 in CA-G.R. SP No. 110703. Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 201443. April 10, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BETTY SALVADOR *Y* TABIOS, MONICO SALVADOR, MARCELO LLANORA, JR. *Y* BAYLON, ROBERT GONZALES *Y* MANZANO, RICKY PEÑA *Y* BORRES @ RICK, ROGER PESADO *Y* PESADO @ GER, JOSE ADELANTAR *Y* CAURTE, LOWHEN ALMONTE *Y* PACETE, JUBERT BANATAO *Y* AGGULIN @ KOBET, and MOREY DADAAN,** *accused-appellants.*

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[24] *Id.* at 88-90.

SYLLABUS

1. CRIMINAL LAW; KIDNAPPING FOR RANSOM; ELEMENTS. — *People v. Uyboco*, enumerated the elements of the crime of kidnapping for ransom, *viz*: In order for the accused to be convicted of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime, namely: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped and kept in detained is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF ACCUSED FOR THE CRIME OF KIDNAPPING FOR RANSOM; GUIDING DOCTRINES.— In the case at bar, the accused-appellants, who were indicted for forcibly abducting Albert, are all private individuals. Albert was taken on April 7, 2002 and his detention lasted for six days, during which period, threats to kill him and demand for ransom were made. In affirming the conviction of the accused-appellants, we are guided by four-settled doctrines enunciated in *People v. Martinez*, *viz*: (a) The trial court[']s evaluation of the credibility of witnesses must be accorded great respect owing to its opportunity to observe and examine the witnesses conduct and demeanor on the witness stand; (b) When there is no evidence to show that the prosecution witness is actuated by an improper motive, identification of the accused-appellants as the offenders should be given full faith and credit; (c) Conspiracy need not be established by direct proof of prior agreement by the parties to commit a crime but that it may be inferred from the acts of the accused-appellants before, during and after the commission

of the crime which indubitably point to a joint purpose, concerted action and community of interest; and (d) The respective alibis proffered by the accused-appellants cannot prevail over the unequivocal testimony of the victim categorically and positively pointing to them as his abductors, and for the defense of alibis, to be given full credit, they must be established and must not leave room for doubt.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE TEST TO DETERMINE THE VALUE OF THE TESTIMONY OF A WITNESS IS WHETHER SUCH IS IN CONFORMITY WITH KNOWLEDGE AND CONSISTENT WITH THE EXPERIENCE OF MANKIND; WHATEVER IS REPUGNANT TO THESE STANDARDS BECOMES INCREDIBLE AND LIES OUTSIDE OF JUDICIAL COGNIZANCE.— The accused-appellants all denied being personally acquainted with Albert or having knowledge of any grudge which the latter may harbour against them. The RTC and the CA found Albert's testimony on the participation of the accused-appellants as conspirators in the kidnapping incident, and the manner by which he had subsequently identified them, as clear and categorical. In their defense, Marcelo, Ricky, Jubert, Robert, Morey, Lowhen, Jose and Roger offered their respective alibis, which fail to persuade. The test to determine the value of the testimony of a witness is whether such is in conformity with knowledge and consistent with the experience of mankind; whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance. It defies logic to figure out why Engr. Vargas was informed that Robert was implicated in Albert's kidnapping only on October 2003, or around one and a half years after the latter's indictment. If Robert's alibi were true, it would have been more in accord with human experience if he promptly told Engr. Vargas about his predicament for the latter was then in the best position to corroborate the former's allegations. It is likewise perplexing why Robert, who had been driving for Engr. Vargas for five years, was in Taguig on April 11, 2002 and so lightly regarded his commitment to the latter that he would be back in two days. No explanations were offered to justify Robert's unreasonable omissions.

4. ID.; ID.; DEFENSE OF ALIBI; NOT PROVED; POSITIVE AND CATEGORICAL STATEMENTS OF THE VICTIM,

AGAINST WHOM NO ILL MOTIVE WAS ASCRIBED BY THE DEFENSE, GIVEN MORE CREDENCE , THAN THE TESTIMONIES OF PERSONS WHO ARE IN ONE WAY OR ANOTHER ARE RELATED TO THE ACCUSED.— Lowhen insisted that he assumed his 24-hour duty in Perma Wood Industries in Parañaque from 7:00 a.m. of April 10, 2002 to 7:45 a.m. of April 11, 2002. He got home at 8:00 a.m., ate breakfast, and thereafter proceeded to his sister Elsie's house where he slept in the sofa until 4:00 p.m. The testimonies of Pacete, De Guzman and Elsie were offered to support Lowhen's claims. However, we find more credence in the positive and categorical statements of Albert, against whom no ill motive was scribed by the defense, on one hand, than in the testimonies of persons, who are in one way or another are related to Lowhen. Further, there is no proof of absolute physical impossibility for Lowhen to be in Amparo Subdivision in the morning of April 11, 2002, considering that Parañaque is not very far off. In Albert's testimony, he merely made an estimate of the time in the morning of April 11, 2002, when Lowhen, along with six other men, went to the basement. Although Albert testified that it was around 6:00 a.m., he could have miscalculated the time considering that he no longer had a watch and they were in a basement. Besides, Lowhen was the link between Jubert and Morey, whose participations in the kidnapping incident on April 7, 2002 were clearly established. This renders dubious Lowhen's claim of having introduced Jubert and Morey to each other only on April 11, 2002, or four days after the latter two had taken part in the abduction of Pinky and Albert near the Coliseum.

5. **CRIMINAL LAW; KIDNAPPING FOR RANSOM; THAT NO RANSOM WAS ACTUALLY PAID DOES NOT NEGATE THE FACT OF THE COMMISSION OF THE CRIME, IT BEING SUFFICIENT THAT A DEMAND FOR IT WAS MADE.—** [W]e find that the RTC and the CA did not overlook essential facts or circumstances which may otherwise justify the acquittal of Marcelo, Ricky, Jubert, Robert, Morey, Lowhen, Jose and Roger for having conspired in kidnapping Albert for the purpose of extorting ransom. That no ransom was actually paid does not negate the fact of the commission of the crime, it being sufficient that a demand for it was made.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; IRREGULARITIES ATTENDING THE ARREST OF THE ACCUSED SHOULD HAVE BEEN TIMELY RAISED IN THE MOTIONS TO QUASH THE INFORMATIONS AT ANY TIME BEFORE THE ARRAIGNMENT, FAILING AT WHICH HE IS DEEMED TO HAVE WAIVED HIS RIGHTS TO ASSAIL THE SAME.— We note Marcelo, Ricky, Jose and Lowhen's claims of having been subjected to mauling, illegal arrest, intimidation and extortion attempts committed by the police authorities. It is settled that irregularities attending the arrest of the accused- appellants should have been timely raised in their respective motions to quash the Informations at any time before their arraignment, failing at which they are deemed to have waived their rights to assail the same. No such motions were filed by the accused-appellants. Further, without meaning to downplay or take the allegations of the accused-appellants lightly, we, however, note that these were unsubstantiated as to the identities of the offenders and uncorroborated by other pieces of evidence. To date, no complaints against the supposed abusive police officers had yet been filed by the accused-appellants. If the abuses were indeed committed, we exhort the accused-appellants to initiate the proper administrative and criminal proceedings to make the erring police officers liable. We stress that while the criminal justice system is devised to punish the offenders, it is no less the State's duty to ensure that those who administer it do so with clean hands.

7. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE VICTIM'S IN-COURT IDENTIFICATION IS MORE THAN SUFFICIENT TO ESTABLISH THE IDENTITIES OF THE ACCUSED-APPELLANTS AS AMONG THE MALEFACTORS, AND PREVIOUSLY EXECUTED AFFIDAVITS ARE GENERALLY CONSIDERED INFERIOR TO STATEMENTS THAT THE VICTIM GIVES IN OPEN COURT.— This Court has held that the most natural reaction of victims of criminal violence is to strive to see the features and faces of their assailants and observe the manner in which the crime is committed. It is also settled that the victim's in-court identification is more than sufficient to establish the identities of accused-appellants as among the malefactors, and previously executed affidavits are generally considered inferior to

statements that the victim gives in open court. Hence, we hold that notwithstanding Albert's failure to identify Betty and Monico from the police line-up presented on April 12, 2002, in which the spouses were allegedly included, no reasonable doubt is cast upon the complicity of the latter two in the kidnapping.

8. ID.; ID.; ID.; THERE IS NO ESTABLISHED DOCTRINE TO THE EFFECT THAT IN EVERY INSTANCE, NON-FLIGHT IS AN INDICATION OF INNOCENCE FOR IT IS POSSIBLE FOR THE CULPRITS TO PURSUE UNFAMILIAR SCHEMES TO CONFUSE THE POLICE AUTHORITIES.— [B]etty and Monico's postulation that if they were indeed involved, they should not have proceeded to the scene of the rescue operations and to the police station, likewise deserves scant consideration. There is no established doctrine to the effect that, in every instance, non- flight is an indication of innocence. It is possible for the culprits to pursue unfamiliar schemes or strategies to confuse the police authorities.

9. CRIMINAL LAW; CONSPIRACY; MERE PRESENCE AT THE *LOCUS CRIMINIS* CANNOT BY ITSELF BE A VALID BASIS FOR CONVICTION AND MERE KNOWLEDGE, ACQUIESCENCE TO OR AGREEMENT TO COOPERATE, IS NOT ENOUGH TO CONSTITUTE ONE AS A PARTY TO CONSPIRACY, ABSENT ANY ACTIVE PARTICIPATION IN THE COMMISSION OF THE CRIME; CONSPIRATOR AND ACCOMPLICE, DISTINGUISHED.— We stress though that conspiracy transcends companionship. Mere presence at the *locus criminis* cannot by itself be a valid basis for conviction, and mere knowledge, acquiescence to or agreement to cooperate is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime. In the case at bar, Monico's assistance extended to Albert when the latter descended the basement stairs and Betty's visit to the safehouse to bring food could not automatically be interpreted as the acts of principals and conspirators in the crime of kidnapping for ransom. *People of the Philippines v. Garcia* is instructive anent the distinctions between a conspirator and an accomplice, *viz*: In *People v. De Vera*[,] we distinguished a conspirator from an accomplice in this manner – Conspirators

and accomplices have one thing in common: they know and agree with the criminal design. Conspirators, however, know the criminal intention because they themselves have decided upon such course of action. Accomplices come to know about it after the principals have reached the decision, and only then do they agree to cooperate in its execution. Conspirators decide that a crime should be committed; accomplices merely concur in it. Accomplices do not decide whether the crime should be committed; they merely assent to the plan and cooperate in its accomplishment. Conspirators are the authors of a crime; accomplices are merely their instruments who perform acts not essential to the perpetration of the offense. x x x As we have held in *Garcia v. CA*, "in some exceptional situations, having community of design with the principal does not prevent a malefactor from being regarded as an accomplice if his role in the perpetration of the homicide or murder was, relatively speaking, of a minor character." x x x.

10. ID.; KIDNAPPING FOR RANSOM; ABSENT HIS KNOWLEDGE, CONSENT OR CONCURRENCE IN THE CRIMINAL DESIGN, THE OWNER OF A PLACE, WHICH WAS USED TO DETAIN KIDNAPPED VICTIMS, CANNOT NECESSARILY BE CONSIDERED AS EITHER A CONSPIRATOR OR AN ACCOMPLICE IN THE CRIME; BUT WHERE THE OWNERS OF THE HOUSE KNOWINGLY AND PURPOSELY PROVIDED THE VENUE TO DETAIN THE VICTIM, AND THEIR PRESENCE THEREIN DURING THE VICTIM'S ARRIVAL AND VISIT TO THE PLACE TO BRING FOOD TO THE VICTIM DURING HIS DETENTION, REASONABLY INDICATE THAT THEY WERE AMONG THOSE WHO AT THE OUTSET PLANNED, AND THEREAFTER CONCURRED WITH AND PARTICIPATED IN THE EXECUTION OF THE CRIMINAL DESIGN.— Monico's assistance to Albert when the latter descended the basement stairs and Betty's visit to the safehouse to bring Jollibee food items were not indispensable acts in the commission of the crime of kidnapping for ransom. If to be solely considered, these acts, being of minor importance, pertain to those committed by mere accomplices. Betty and Monico were not among those persons who forcibly abducted Albert while the

latter was in the vicinity of the Coliseum. Neither did the spouses perform positive acts to actively detain Albert. What spells the difference on why we still find the Betty and Monico as principals and co-conspirators in the kidnapping is the circumstance that their acts coincide with their ownership of the safehouse. Absent his knowledge, consent or concurrence in the criminal design, the owner of a place, which was used to detain kidnapped victims, cannot necessarily be considered as either a conspirator or an accomplice in the crime of kidnapping for ransom. However, in the case of Betty and Monico, their claim of ignorance relative to Albert's detention in the basement of the safehouse is belied by their presence therein. Albert positively and repeatedly testified on the matter. In a conspiracy to commit the crime of kidnapping for ransom, the place where the victim is to be detained is logically a primary consideration. In the case of Betty and Monico, their house in Lumbang Street, Amparo Subdivision has a basement. It can be reasonably inferred that the house fitted the purpose of the kidnappers. Albert's detention was accomplished not solely by reason of the restraint exerted upon him by the presence of guards in the safehouse, but by the circumstance of being put in a place where escape became highly improbable. In other words, Betty and Monico were indispensable in the kidnapping of Albert because they knowingly and purposely provided the venue to detain Albert. The spouses' ownership of the safehouse, Monico's presence therein during Albert's arrival on the evening of April 7, 2002 and Betty's visits to bring food reasonably indicate that they were among those who at the outset planned and thereafter concurred with and participated in the execution of the criminal design.

APPEARANCES OF COUNSEL

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

DECISION

REYES, *J.*:

This is an appeal[1] from the Decision[2] rendered by the Court of Appeals (CA) on February 25, 2011 in CA-G.R. CR-H.C. No. 03279 affirming, albeit with modifications, the conviction by the Regional Trial Court (RTC) of Quezon City, Branch 219 of Betty Salvador *y* Tabios (Betty), Monico Salvador (Monico), Marcelo Llanora, Jr. *y* Baylon (Marcelo), Robert Gonzales *y* Manzano (Robert), Ricky Peña *y* Borres @ Rick (Ricky), Roger Pesado *y* Pesado @ Ger (Roger), Jose Adelantar *y* Caurte (Jose), Lowhen Almonte *y* Pacete (Lowhen), Jubert Banatao *y* Aggulin @ Kobet (Jubert), and Morey Dadaan (Morey) (herein accused-appellants) for having conspired in kidnapping Albert Yam *y* Lee (Albert) for the purpose of extorting ransom. The RTC sentenced the accused-appellants to suffer the penalty of *reclusion perpetua* and ordered them to solidarily pay Albert the amount of PhP 100,000.00 as moral damages.[3] The CA Decision dated February 25, 2011 concurred with the RTC's factual findings but expressly stated in its dispositive portion the accused-appellants' non-eligibility for parole. The CA further ordered the accused-appellants to solidarily pay Albert PhP 50,000.00 as civil indemnity and PhP 100,000.00 as exemplary damages. The RTC and the CA, however, acquitted accused-appellants of kidnapping a certain Pinky Gonzales (Pinky), who, from the account of some of the prosecution witnesses, was likewise taken with Albert during the same abduction incident.

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[1] The Regional Trial Court, then presided by Judge Bayani V. Vargas, and the Fourth Division of the Court of Appeals convicted ten of the accused. Seven of them filed notices of appeal (*rollo*, pp. 29-31, 87-89; CA *rollo,* pp. 897-899). On the other hand, Jose Adelantar *y* Caurte, intending to seek executive clemency, filed a Motion to Withdraw Appeal (*rollo*, pp. 90-92). No notices of appeal were filed by Betty Salvador and Monico Salvador.

[2] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 2-28.

[3] CA *rollo,* p. 291.

The charges against the accused-appellants stemmed from the following Informations dated April 15, 2002:

(a) In Criminal Case No. Q-02-108834 against Betty, Monico, Marcelo, Robert, Ricky, Roger and nine other John Does for the kidnapping and serious illegal detention of Pinky allegedly lasting for six days, the Information, in part, reads:

That on or about April 7, 2002 at around 7:30 in the evening, in the vicinity of the Cainta Cockpit Arena, Cainta, Rizal, the above-named accused, conspiring, confederating and mutually helping one another, with the use of firearms, threats and intimidation did then and there, willfully, unlawfully and feloniously kidnap and take away **PINKY GONZALES *y* TABORA** against her will; That in the process, she was forced to board a Toyota Hi-Ace van which transported her, until finally she was brought to an undisclosed location in Caloocan City where she was kept for six (6) days; That she was finally rescued on April 12, 2002 by police operatives from the Philippine National Police.[4]

(b) In Criminal Case No. Q-02-108835 against Jose, Lowhen, Betty, Monico, Morey, Jubert, Marcelo, Robert, Ricky, Roger and nine other John Does for the kidnapping of and demanding from Albert USD 1,000,000.00 as ransom money, the Information states:

That on or about April 7, 2002 at around 7:30 in the evening, in the vicinity of the Cainta Cockpit Arena, Cainta, Rizal, the above-named accused, conspiring, confederating and mutually helping one another, with the use of firearms, threats and intimidation did then and there, willfully, unlawfully and feloniously kidnap and take away **ALBERT YAM *y* LEE**; That in the process, he was forced to board a Toyota Hi-Ace van which transported him, passing through the areas of U.P. Balara and Fairview in Quezon City and within the jurisdiction of this Honorable Court, until finally he was brought to an undisclosed location in Caloocan City where he was kept for six (6) days; That ransom in the amount of $1,000,000.00 was demanded in exchange for his safe release until he was finally rescued on April 12, 2002 by police operatives from the Philippine National Police.[5]

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

[5] *Id.* at 24.

During arraignment, the accused-appellants pleaded not guilty to the charges.

On June 14, 2002, pre-trial was terminated without the parties having entered into stipulations.

The Case for the Prosecution

During the trial, the prosecution witnesses, with their corresponding testimonies, were:

(a) Albert, married to Evangeline Lim-Yam (Evangeline), holds a Marketing degree from De La Salle University. He also took some units under the Ateneo de Manila University's Masters in Business Administration program. He is engaged in printing and financing business. He is also a breeder of fighting cocks and race horses. On February 2002, he took over, with a partner, the operations of the New Cainta Coliseum (Coliseum), a cockpit arena.

Albert testified[6] that the lens grade of his eye glasses is 275. With eye glasses on, his vision is normal. Without the glasses, he can clearly see objects one to two meters away from him, but beyond that, his vision becomes blurry.[7]

On April 7, 2002, at around 7:30 p.m., Albert rode his Toyota Prado (Prado) with Plate No. UTJ-112 and drove out of the Coliseum's parking lot. Ahead was a white Honda Civic car (Civic), while behind was a Toyota Hi-Ace van (Hi-Ace). Upon reaching Imelda Avenue, the Hi-Ace overtook the Civic. Albert was about to follow suit, but the Hi-Ace suddenly stopped and blocked the Civic. Six men with long firearms alighted from the Hi-Ace. Jubert and Morey approached the Civic, which was just about two to two and a half meters away from Albert,[8] pointed their guns at the driver, who turned out to be Pinky,[9]

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[6] *Id.* at 220-234.

[7] *Id.* at 233-234.

[8] *Id.* at 228.

[9] Yam testified that he knew Pinky as the cousin of a certain Ana, one of his staff in the Coliseum. He had seen Pinky around 15 times and had

and motioned for her to step out of the car and ride the Hi-Ace. Two men ran after the "watch-your-car" boy in a nearby parking lot, but Albert no longer noticed if the two still returned to the Hi-Ace.[10] Roger and Robert came near the Prado and gestured for Albert to likewise alight from the vehicle and ride the Hi-Ace.

When Albert rode the Hi-Ace, he saw Marcelo in the driver's seat and beside him was Ricky. Morey was behind the driver. So too were Jubert. Roger and Robert rode the Hi-Ace after Albert did.

Albert and Pinky were handcuffed together and made to wear dark sunglasses. The men took Albert's wallet containing PhP 9,000.00, his driver's license and other documents. They also took his Patek Philippe watch which costs PhP 400,000.00.

While inside the Hi-Ace, Albert and Pinky were ordered to duck their heads. Notwithstanding the position, Albert saw the lights emanating from the blue eagle figure at the Ateneo gym. He also heard one of the men telling the driver to pass by Balara. After around 20 minutes, Albert also noticed having passed by the vicinity of SM Fairview. They arrived in their destination 10 to 15 minutes after and were handcuffed separately. Albert and Pinky stayed in the house and were fed food mostly bought from Jollibee until they were rescued on April 12, 2002.

Albert described the house as "half constructed".[11] They were made to stay in the basement around three and a half by four meters in size, with a stairway, small sofa, bed, table and four chairs. Behind the table was a sink and a comfort room. There was a large window about three by five feet in size, but it was covered with a blanket and a plastic sack. Albert identified

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talked to her in some occasions. However, he was not aware that at the time he was about to be abducted, Pinky was the driver of the Civic, which was in between his Prado and the Hi-Ace in which some of the accused-appellants were then riding. (*Id.* at 227-228.)

[10] *Id.* at 228.

[11] *Id.* at 222.

Monico as the person who was beside him, pulling him up when he fell while descending the basement stairs.[12] Albert claimed that he was still handcuffed then and was made to wear dark eye glasses. The kidnappers allowed him to remove the dark eye glasses when he laid down in bed on the first night of their detention.[13] On April 8, 2002, his own eye glasses were returned to him upon his request.[14]

Albert told the men that he was the only person they should talk to if they wanted ransom money. The men inquired how much he can give. Albert replied that he can shell out PhP 500,000.00. The men asked for Albert's phone and pin number to be able to call the latter's wife. He was ordered to write a letter to his wife informing her that he was abducted and indicating therein the names of persons from whom she could borrow money to be paid to the accused-appellants as ransom. Albert also claimed that he got to talk, through the telephone, to the person, whom the accused-appellants seemed to consider as their boss. The boss demanded USD 1,000,000.00 for Albert's release. One of the persons posted as guards in the safehouse threatened Albert that the latter would be killed unless ransom money be paid by Friday, April 12, 2002.[15]

Albert had seen Jose a few times in the Coliseum. Albert also recalled that immediately prior to his abduction, Jose accompanied him to his Prado and had asked for "*balato*".[16] Albert identified Jose as the "tipster" who acted as a look-out during the abduction incident.[17] Albert likewise stated that he had seen Ricky in the Coliseum on April 7, 2002 and on several

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[12] *Id.* at 233; TSN, Vol. I, June 28, 2002, pp. 35-37; TSN, Vol. I, September 13, 2002, p. 35.

[13] TSN, Vol. I, June 28, 2002, p. 40; TSN, Vol. I, July 26, 2002, p. 24.

[14] TSN, Vol. I, June 28, 2002, p. 41.

[15] CA *rollo,* p. 225.

[16] *Id.*; TSN, Vol. I, July 5, 2002, p. 75.

[17] *Id.* at 230.

other instances as the latter worked as a "*kristo*" or bet taker.[18] Albert recognized Marcelo as a bettor.

Albert identified Betty as the person who brought them food and who, in one occasion, had inquired from the guard how Albert and Pinky were faring in the basement.[19]

On April 11, 2002, at around 6:00 a.m.,[20] seven persons came down to the basement to threaten Albert and Pinky.[21] Albert later identified them as Jubert and Morey,[22] Marcelo, Ricky, Lowhen and Jose,[23] and Nelson Ocampo *y* Ruiz @ Joselito Estigoy[24] (Nelson). Thereafter, the men left behind Nelson and Lowhen to remain as guards, who took their posts in the stairway.[25] At around lunch time, Betty gave food to one of the guards, who in turn handed the same to Albert and Pinky. Albert was then sitting in the sofa, which was just a little over a meter away from the stairway.[26]

Albert remembered having stayed in the basement until the early hours of April 12, 2002. On that day, he heard the ferocious barking of a dog, footsteps in the second floor, and then a gun shot. Albert and Pinky stayed inside the comfort room until a uniformed man brought them out. One person, who acted as among those guarding Albert and Pinky while they were detained, was killed in the rescue operations. He was subsequently identified as Nelson. Another guard left in

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[18] *Id.* at 227.

[19] *Id.* at 232-233; TSN, Vol. I, August 30, 2002, p. 59; TSN, Vol. I, September 13, 2002, pp. 36-37.

[20] TSN, Vol. I, July 5, 2002, p. 53.

[21] *Id.* at 42-45.

[22] *Id.* at 47.

[23] *Id.* at 50

[24] *Id.* at 51.

[25] *Id.* at 54.

[26] *Id.* at 55-58.

the evening of April 10, 2002 and he never went back.[27] Albert did not see Betty and Monico in the premises of the safehouse on the day the rescue operations were conducted by the police. He only saw the couple in Camp Crame around 5:00 p.m. while the former was making a statement.[28]

Albert and Pinky were brought to Camp Crame between 8:00 a.m. and 9:00 a.m. of April 12, 2002. Some time after lunch, a police line-up with about 15 men was presented.[29] Albert identified seven persons, to wit, Marcelo, Ricky, Jubert, Morey, Jose, Robert and Roger, as among his abductors. At that time, he was not yet able to pinpoint the rest of the accused-appellants because they were not presented to him in the police line-up.[30]

(b) Senior Inspector Arnold Palomo (S/Insp. Palomo), who is assigned at the Anti-Organized Crime for Businessmen's Concern Division of the Criminal Investigation and Detection Group (CIDG), Camp Crame, testified that on April 12, 2002, at around 6:30 a.m., he was in the vicinity of No. 3, Lumbang Street, Amparo Subdivision, Caloocan City, where they had just rescued Pinky, a victim of kidnapping. Around an hour later, Betty arrived and introduced herself as the owner of the house. She inquired why the police officers were shooting at her house. She was invited by the police to Camp Crame to answer queries anent why a crime was committed in her house. While in Camp Crame, Albert and Pinky identified her as the person who brought them food while they were detained in the safehouse. Betty was thus arrested.[31]

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[27] CA *rollo,* p. 231.

[28] *Id.* at 232; TSN, Vol. I, August 30, 2002, pp. 64-67.

[29] TSN, Vol. I, July 26, 2002, pp. 69-70.

[30] CA *rollo*, pp. 224-225, 230; TSN, Vol. I, July 5, 2002, pp. 71-73, 76; TSN Vol. I, August 30, 2002, pp. 26, 30, 67.

[31] *Id.* at 235-237; TSN, Vol. I, September 27, 2002, pp. 8-47.

(c) Police Inspector Marites Bugnay (P/Insp. Bugnay), Assistant Chief of the Firearms Identification Division of the Philippine National Police (PNP) Crime Laboratory, testified that at around 9:30 a.m. of April 12, 2002, she and her team, with six members, went to Amparo Subdivision where a rescue operation had just taken place. They recovered a 5.56 mm Elisco rifle without serial number, a 9 mm Chinese made pistol, two long and three short magazines for a caliber 5.56 mm rifle, 188 live ammunitions, 24 pieces of cartridges fired from four different caliber 5.56 mm rifles, two lifted latent prints, among others. She made a Spot Report of the physical evidence recovered by her team. P/Insp. Bugnay, however, stated that some of the police officers, who participated in the rescue operations, also carried caliber 5.56 mm firearms.[32]

(d) Evangeline, Albert's wife, testified[33] having received seven phone calls[34] between April 7, 2002 and April 11, 2002 from the kidnappers informing her that they took Albert and demanding USD 1,000,000.00 as ransom money.[35] On April 11, 2002, she was instructed by the kidnappers to go to Jollibee along EDSA Guadalupe. The kidnappers were supposed to hand to her a letter from her husband. A police operative acted as her driver. She and the police operative got to the place between 11:30 and 11:45 in the morning.[36] The kidnappers called her and ordered her driver to go to the restrooms to retrieve a letter taped in one of the toilet bowls. Evangeline went back to her car. While she was inside, three men tried to forcibly open her car. She panicked, bowed down and screamed. She was, however, only able to see the suspects from theirs chests down.[37] Thereafter, P/Insp. Ferdinand Vero (Major Vero) approached

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[32] *Id.* at 237-238; TSN, Vol. I, October 11, 2002, pp. 6-36.

[33] *Id.* at 238-242; TSN, Vol. I, November 8, 2002, pp. 6-93.

[34] TSN, Vol. I, November 8, 2002, p. 60.

[35] *Id.* at 18.

[36] *Id.* at 63.

[37] *Id.* at 40, 69-70.

the car and informed her that they were able to apprehend three suspects. She went home. The next morning, she received a call, got to talk to Albert, and thereafter proceeded to Camp Crame.

(e) PO1 Paul Pacris (PO1 Pacris) stated that he and four other police officers from the CIDG were the ones who assisted Evangeline when she met with Albert's kidnappers in Jollibee along EDSA Guadalupe. They arrived in the area at around 11:00 a.m. and after about two hours, they arrested Ricky, Jose and Marcelo who tried to forcibly open Evangeline's car. They recovered from Jose a .38 caliber Armscor with six live ammunitions. The policemen frisked the three without opposition from the latter.[38]

(f) PO3 Manuel Cube (PO3 Cube) corroborated[39] PO1 Pacris' testimony relative to the arrest of Ricky, Jose and Marcelo. PO3 Cube further stated that while it was not his team which arrested the suspects, after Jose and Ricky were turned over to them, they brought the two to Camp Crame.[40] While in the investigation room, he heard Jose and Ricky admit knowledge of Albert's abduction.[41] Jose and Ricky were then not assisted by counsel.[42] Chief Police Superintendent Zolio M. Lachica (Col. Lachica) briefed PO3 Cube and the other policemen that the arrested suspects divulged an information that the Hi-Ace with Plate No. WNW-180 used in Albert's abduction was going to pass by Road C-5, Commonwealth Avenue on April 12, 2002.[43] PO3 Cube, Major Vero and other police officers riding four to

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[38] CA *rollo*, pp. 242-243; TSN, Vol. I, November 22, 2002, pp. 14-38; TSN, Vol. I, December 13, 2002, pp. 6-25.

[39] *Id.* at 243-247; TSN, Vol. I, January 17, 2003, pp. 3-16; TSN, Vol. I, January 24, 2003, pp. 3-15; TSN, Vol. I, February 7, 2003, pp. 8-62.

[40] TSN, Vol. I, January 17, 2003, p. 15; TSN, Vol. I, February 7, 2003, pp. 37-38.

[41] TSN, Vol. I, January 17, 2003, p. 16.

[42] CA *rollo,* p. 246.

[43] TSN, Vol. I, January 24, 2003, pp. 5-6.

five vehicles went to the place. At around 5:45 a.m., they spotted the Hi-Ace, chased it and blocked it with a police car.[44] Robert and Roger were inside the Hi-Ace, and the former had a shotgun. After the policemen drew their guns, the suspects surrendered.

(g) PO2 Arvin Garces (PO2 Garces), a field operative and an in-house bomb technician assigned at the CIDG's Anti-Organized Crime and Businessmen's Concern Division, testified[45] that on April 12, 2002, between 8:00 a.m. and 8:30 a.m., he and 20 policemen went to *Sitio* GSIS, *Barangay* San Martin de Porres, Parañaque to arrest Lowhen, Jubert and Morey. Their team leader knocked on the door of the target house, which was partially open. Lowhen came out. Jubert and Morey were in the adjacent room, which was about five meters away from where Lowhen was.[46] PO2 Garces was uncertain though if the said adjacent room was part of the same house where Lowhen was found.[47] The three suspects were informed that they were being implicated for Albert's kidnapping and would thus be taken for investigation.

Following were among the object evidence likewise offered by the prosecution: (a) sketches prepared by Albert depicting the (1) exact location where the kidnapping took place,[48] (2) positions of Albert and Pinky relative to the kidnappers while inside the Hi-Ace,[49] and (3) interior of the basement room where Albert and Pinky were detained;[50] (b) dark glasses wrapped with black tape and handcuffs worn by Albert and Pinky while

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

[45] CA *rollo,* pp. 247-248; TSN, Vol. I, February 14, 2003, pp. 4-33; TSN, Vol. I, March 28, 2003, pp. 3-32.

[46] TSN, Vol. I, February 14, 2003, p. 13.

[47] *Id.* at 29.

[48] Records, p. 192.

[49] *Id.* at 193.

[50] *Id.* at 194.

they were detained;[51] (c) Albert's handwritten note dated April 10, 2002 addressed to "Vangie" and signed by "Boogs";[52] and (d) *Sinumpaang Salaysay*[53] and Supplemental Affidavit[54] executed by Albert on April 13, 2002 and April 15, 2002, respectively.

The Case for the Defense

The defense witnesses with their testimonies were:

(a) Marcelo, resident of Sta. Ana Compound, Manila East Road, Taytay, Rizal, testified that he owns a beer house and a billiard hall. He also renders mechanical services. He claimed that from 12:00 noon until 9:00 p.m. of April 7, 2002, he was repairing a motor bike at home. Marcelo was with a certain Bogs, the owner of the motor bike, and Jober, the former's helper.[55]

From April 8 to 9, 2002, Marcelo just stayed home with his daughter.[56]

On April 10, 2002, at around 7:00 a.m., Marcelo was in his bedroom making an accounting of the earnings of his beer house. He heard knocks at the door of his billiard hall. Thereafter, around six unidentified men entered, punched, tied him up, and threw him at the back of a white Revo without a plate. Even when Rosario, Marcelo's daughter, was slapped and kicked by the unidentified men after she inquired about their identities, she insisted that she be taken with her father. Marcelo and

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[51] *Id.* at 186-187.

[52] *Id.* at 195.

[53] Here, Albert identified nine of the accused-appellants, except Lowhen, as involved in his kidnapping; *id.* at 196-199.

[54] Here, Albert identified Lowhen as one of the two guards who watched over him on April 11, 2002, the fifth day of the former's detention; *id.* at 200. Albert did not see Lowhen yet in the CIDG office when the former executed his first affidavit, hence, the latter was not promptly pinpointed; CA *rollo,* p. 233.

[55] TSN, Vol. I, June 20, 2003, pp. 11-57; TSN, Vol. I, September 3, 2003, pp. 3-31.

[56] *Id.* at 42-43.

Rosario were brought to Camp Crame. They were made to sit down in a room with a hazy glass window. Rosario was thereafter ordered to leave the room and when she refused, she was dragged out. The men started showing Marcelo photographs and asking him questions. When he denied knowing any of the persons in the photographs, he was blindfolded with a packing tape and got kicked every time he refused to answer the men's queries. A plastic bag was likewise placed over his head making it difficult for him to breathe. His ordeal lasted for an hour, after which somebody told him that if he had PhP 100,000.00, he would be released.[57]

At around 5:00 p.m. or 6:00 p.m., Marcelo asked Rosario to go home and look for a lawyer. At around 10:00 a.m. of the following day, April 11, 2002, Rosario came back with a certain Atty. Platon. Marcelo narrated to Atty. Platon the circumstances surrounding his arrest.[58] Atty. Platon informed Marcelo that the latter was being charged of kidnapping.[59] Not long after, at around 10:30 a.m. to 11:00 a.m., a certain Dr. Arnold de Vera (Dr. de Vera) arrived and conducted an examination of Marcelo's injuries and bruises.[60] Marcelo asked Atty. Platon if he can file a complaint against the men who mauled him. Atty. Platon replied in the affirmative, but as of even date, no complaint had been filed yet as Marcelo had to attend to other pressing matters relative to the kidnapping case.[61] Atty. Platon and Dr. de Vera left while Marcelo and Rosario stayed in Camp Crame for two nights.[62]

On April 12, 2002, at around 3:00 p.m. or 4:00 p.m., Marcelo was brought to a building in Camp Crame and was made to stand up alongside nine people with whom he was not acquainted.

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

[58] *Id.* at 28-30.

[59] *Id.* at 32.

[60] *Id.* at 31; CA *rollo,* pp. 252-253.

[61] *Id.* at 46-48.

[62] *Id.* at 33.

There were cameras around and a Chinese man and a woman started pointing at them.[63]

Marcelo denied personal acquaintance with Albert,[64] PO1 Pacris,[65] Jubert, Monico and Betty.[66] He admitted having been to the Coliseum as he was into cock fighting. The Coliseum, located in Cainta, is only about two kilometers away from Taytay.[67]

Marcelo offered the testimony of Dr. de Vera,[68] a plastic surgeon from St. Luke's Medical Center, Quezon City, to prove that in the morning of April 11, 2002, the former was already under the CIDG's custody. The foregoing is contrary to the prosecution's claim that between 11:30 a.m. and 12:00 noon of the said date, Marcelo was arrested in Jollibee along EDSA Guadalupe while trying to forcibly open Evangeline's car. Dr. de Vera stated that in the afternoon of April 10, 2002, Marcelo's daughter called asking for his help as her father was allegedly being manhandled. Dr. de Vera went to the CIDG office in the morning of April 11, 2002. He made a visual examination of Marcelo's body and saw hematoma in the sternum and fresh abrasions in both hands of the latter, but he did not reduce his observations into writing.[69] To stop Marcelo's manhandling, Dr. de Vera sought audience with the PNP Chief, but the latter was not around.[70]

During cross-examination, Dr. de Vera stated that once in a while, he sings and drinks in Marcelo's beer house in Taytay.[71]

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[63] *Id.* at 34-35.

[64] TSN, Vol. I, September 3, 2003, pp. 9-10.

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

[66] *Id.* at 27.

[67] *Id.* at 15.

[68] TSN, Vol. I, October 1, 2003, pp. 5-28.

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

[70] *Id.* at 12.

[71] *Id.* at 14.

SPO2 Eduardo Peñales' testimony was dispensed with since the parties stipulated that he was the officer who, on April 10, 2002, at around 8:35 a.m., received and recorded in the logbook of the Taytay Police Station a report from a certain Jover Porras *y* Perla that Marcelo was abducted by unidentified men earlier at 7:20 a.m.[72]

(b) Ricky is a "*kristo*" or bet taker in Araneta Coliseum and U-Cap Cockpit in Mandaluyong, and "*mananari*" or gaffer residing in San Luis Street, Valenzuela, Metro Manila.[73] He was still asleep in bed with his wife on April 10, 2002, at around 9:45 a.m.[74] when he heard somebody knocking on the door. When he opened it, a man pointed a gun at him and told him not to ask any questions but just to go with them. There were two men and they brought him to a white Revo where he saw three other people. The owner of the house saw Ricky being taken.[75]

Ricky was brought to Camp Crame, was asked if he knew certain persons from the photographs shown to him, and was mauled when he replied in the negative.[76]

In the morning of April 12, 2002 while still detained in Camp Crame, one of the men, who forcibly took Ricky from his rented room on April 10, 2002, informed the latter that if he had PhP 20,000.00, he would be released. In the afternoon of April 12, 2002, Ricky was handcuffed and placed in a police line-up without being informed of the reason for his inclusion therein.[77]

Ricky denied being among those who abducted Albert on April 7, 2002 and being present in the safehouse in Amparo

[72] *Id.* at 29-41.

[73] TSN, Vol. II, November 5, 2003, p. 3.

[74] *Id.* at 7, 14.

[75] *Id.* at 9-14.

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

[77] *Id.* at 21-22.

Subdivision, Caloocan at 6:00 a.m. of April 11, 2002.[78] He did not know Albert personally and had not seen him before. However, Ricky admitted having been to the Coliseum and knowing that Albert was renting the same.[79] Ricky was unaware of any grudge Albert, PO1 Pacris or PO3 Cube may have against him.[80] Ricky did not have any document to prove that he was detained in Camp Crame on April 10, 2002 and his Booking and Arrest Sheet were both dated April 12, 2002.[81]

Ricky's wife, May, testified[82] that after the former was taken by the unidentified men, she went to Valenzuela Police Station and an officer opined that her husband may be in Camp Crame.[83] She went as suggested and found her husband, who assured her that he would be released.[84] She went home but got back to Camp Crame at 12:00 noon of April 11, 2002, during which time she was not anymore allowed to talk to Ricky.[85] She stayed in Camp Crame until past 10:00 p.m. and saw from TV Patrol that Ricky was involved in a kidnapping incident. She got to talk to her husband only on April 13, 2002.[86]

During cross-examination, May stated that Ricky was with her at around 7:00 p.m. of April 7, 2002.[87]

Ritchelda Tugbo (Tugbo), a 63-year old widow and Ricky's landlady, testified[88] that at around 9:30 a.m. of April 10, 2002,

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[78] *Id.* at 23.

[79] *Id.* at 28.

[80] *Id.* at 40-43.

[81] *Id.* at 45.

[82] TSN, Vol. II, December 3, 2003, pp. 5-49.

[83] *Id.* at 17.

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

[85] *Id.* at 22.

[86] *Id.* at 25-27.

[87] *Id.* at 29, 33.

[88] *Id.* at 50-66.

while she was eating breakfast, three unidentified men entered her house and took Ricky from his rented room.[89]

Sabina Poliquit (Poliquit), an unemployed 50-year old widow, and Rodolfo Buado (Buado), a 60-year old retired employee, who were both Ricky's neighbors, corroborated Tugbo's statements.[90]

(c) Jose is a trainer gaffer, breeder of fighting cocks, part-time private martial during derbies, and a resident of San Isidro, Fairview, Quezon City. During the trial, he stated[91] that in the evening of April 9, 2002, he went to U-Cap Cockpit in Mandaluyong, where a derby sponsored by a certain Pol Estrellado was being held, to find prospective buyers of fighting cocks and to place bets.[92] He left the place at around 1:00 a.m. of April 10, 2002. While waiting for a cab, a white Revo stopped in front of him, and three gun-toting men alighted therefrom.[93] He was shoved in the front seat in between the driver and another man. While inside the Revo, Jose's eyes were covered with packing tape. His wallet, money, watch, necklace and ring were taken, and the men stepped on his head to keep him down. A plastic bag was placed over his head making it difficult for him to breathe, and he was repeatedly punched when he denied involvement in Albert's kidnapping.[94]

When Jose regained consciousness, he did not know where he was but there was a boy of around 16 years of age removing the packing tape from his eyes. Adelantar only learned that he was in Camp Crame when he was brought to a room with a police line-up at around 6:00 p.m. of April 12, 2002.[95] He insisted that from April 10, 2002 onwards, he was held by the

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[89] *Id.* at 53-55.

[90] TSN, Vol. II, December 10, 2003, pp. 5-37.

[91] TSN, Vol. II, February 11, 2004, pp. 8-67.

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

[93] *Id.* at 15-17, 34.

[94] *Id.* at 17-21.

[95] *Id.* at 21-23.

police in Camp Crame, hence, he could not have been present at 6:00 a.m. of April 11, 2002 in the safehouse where Albert was detained, and at 11:00 a.m. of the same day in Jollibee along EDSA Guadalupe.[96] The boy who removed the packing tape from his eyes could attest to the foregoing, but Jose did not know his name and had not seen him anymore.[97] Further, Jose had never been to the Coliseum and had not personally met Albert and Pinky.[98] Jose alleged that he and the rest of the accused-appellants were mere fall guys.[99] Jose claimed that he only met Marcelo after they were both placed in the police line-up and in the same detention cell.[100] Jose admitted that he was acquainted with Ricky, whom he had recommended to be a "*kristo*" in Araneta Cockpit.[101] Out of fear, Jose had neither informed his lawyer that he was mauled by the policemen nor filed any action against them.[102]

(d) Betty and her husband Monico have been residing for about 33 years in 224 Malanting Street, Amparo Subdivision, Caloocan City. Betty, an elementary school graduate, is a housewife tending a sari-sari store and a piggery. Monico is a drilling contractor and plumber. Betty and Monico own the house in Lumbang Street, Amparo Subdivision, Caloocan City, where Albert and Pinky were detained from April 7 to 12, 2002.

Betty testified[103] that due to her busy schedule, she had not visited their house in Lumbang Street during the alleged period of Albert and Pinky's detention. Betty and Monico had rented out for PhP 3,000.00 per month the said house to Roger since

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[96] *Id.* at 27-29.

[97] *Id.* at 56-57.

[98] *Id.* at 30-31, 61, 64.

[99] *Id.* at 52-53.

[100] *Id.* at 39.

[101] *Id.* at 63.

[102] *Id.* at 41-43.

[103] TSN, Vol. II, February 18, 2004, pp. 17-40; TSN, Vol. II, March 3, 2004, pp. 3-36.

the late afternoon of April 7, 2002. Roger was recommended to the spouses by a certain Pidok Igat (Igat), their acquaintance. Betty saw Roger once but the latter was wearing sunglasses.[104]

Betty stated that from April 7 to 12, 2002, Monico was contracted to build a deep well in Narra Street, Amparo Subdivision, Caloocan City. In the morning of April 12, 2002, Igat told her that the house in Lumbang Street was being fired at by the policemen. She first instructed Monico to report the incident to the police, then, she ran towards the said house. She was still at a certain distance from the house when the policemen held her by the arms after finding out that she owned it. She denied knowledge of the kidnapping incident, but she was still invited by the police officers to go with them to Camp Crame.[105]

Betty was not allowed to go home but was detained by the police in Camp Crame. At around 6:00 p.m. of April 12, 2002, after Albert and Pinky arrived, Betty, Roger, Jose, Marcelo, Ricky and other suspects were placed in a police line-up composed of ten people. Monico, Jubert and Morey were not among those in the line-up yet. Albert and Pinky did not pinpoint Betty from the line-up, but a police officer insisted that she be included because she owned the safehouse. Betty identified the officer as SPO1 Polero, but she was uncertain of the name, albeit describing the latter as the one who took Albert and Pinky's statements.[106] Betty did not see Albert and Pinky being brought out of the house during the rescue operations on April 7, 2002. Betty did not personally know Albert, but first saw him in Camp Crame in the evening of April 12, 2002.[107]

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[104] TSN, Vol. II, February 18, 2004, pp. 30-34.

[105] *Id.* at 35-40.

[106] TSN, Vol. II, March 3, 2004, pp. 4-9; In a Counter-Affidavit executed by Monico, the police officer taking Albert's sworn statements was identified as PO1 Arturo M. Fallero, TSN, Vol. II, June 16, 2004, p. 28.

[107] *Id.* at 17.

During cross-examination, Betty stated that Monico and Jubert were included in the police line-up.[108]

(e) Monico stated[109] that he received PhP 3,000.00 from Roger and handed it to Betty as rental for their house in Lumbang Street, Amparo Subdivision, Caloocan City. The said house is about four streets away from Betty's sari-sari store and piggery in Malanting Street. The amount was a mere deposit and he was promised that before the end of the month, PhP 6,000.00 would be paid as rental.[110] Monico did not visit the house from April 7 to 11, 2002, hence, he did not know if Roger actually occupied it. Within the same period, Monico was not able to talk to Igat, who was the person who referred Roger to him and Betty.[111]

Monico testified that he was in Betty's store in the night of April 7, 2002 and denied having assisted Albert in descending to the basement of the safehouse.[112]

When their house in Lumbang Street was fired at by the police in the early morning of April 11, 2002, he was instructed by Betty to report the matter to the authorities. He went to the Novaliches Police, but was informed that Amparo Subdivision is not within the said station's jurisdiction. Monico got to Bagong Silang Police Station at around 9:00 a.m., and an officer took notes while talking to him, but the former was not sure if it was a blotter. Monico was instructed to wait. At around 3:00 p.m., a superior officer arrived, asked Monico questions and informed the latter that he knew about the shooting incident. He stayed in the police station until 6:00 p.m. The officer told Monico that the latter would be brought to Camp Crame to be interviewed and will be allowed to go home after.[113] In Camp Crame, Monico

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[108] *Id.* at 25.

[109] TSN, Vol. II, June 16, 2004, pp. 3-30.

[110] *Id.* at 7.

[111] *Id.* at 13.

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

[113] *Id.* at 9-12.

was informed that he was being implicated in Albert and Pinky's kidnapping. Although he and Betty denied any involvement in the charges against them, to date, for lack of opportunity on their part as they are both detained, no complaints had been filed against the officers who implicated them.[114]

(f) Jubert, a carpenter and a college undergraduate from Asibanglan, Pinukpok, Kalinga Province, testified[115] that he came to Manila to look for a job on January 2002.[116] For two months, from February to March 2002, he was among those who worked in constructing the Globe Telecommunications tower in Sucat. He resided in the house of his uncle, Daniel Balanay (Balanay), in Bicutan, Taguig.[117]

Jubert met Lowhen, a resident of Parañaque, while applying for a job to make cabinets for Perma Wood Industries on March 27, 2002.[118]

At around 4:00 p.m. of April 11, 2002, Jubert went to Lowhen's house to inquire about the requirements in applying as a security guard, but the latter was not home yet. Lowhen arrived at around 5:00 p.m. Morey, whom Jubert met for the first time, was also there. Lowhen bought drinks for the three of them and Jubert stayed overnight in the house of Morey, which was just about 50 meters away. While they were sleeping, men barged in, ordered them to lay face down, and handcuffed them. Jubert and Morey were taken out of the house where they saw Lowhen, who was likewise boarded into a car. Out of fear of the men who seemed angry, Lowhen, Jubert and Morey were no longer able to ask why they were being taken. They were brought to Camp Crame. Jubert denied being among those who abducted Albert and Pinky on April 7, 2002, and guarding the latter two who were detained in the basement of Betty and

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

[115] TSN, Vol. II, March 17, 2004. pp. 12-43.

[116] *Id.* at 15.

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

[118] *Id.* at 20, 38.

Monico's house in Amparo Subdivision, Caloocan City.[119] Jubert insisted that on April 7, 2002, he was fixing the house of his uncle, Balanay, in Bicutan, Taguig, and with him were the latter's brother and two ladies.[120] However, none of the mentioned persons executed affidavits to corroborate Jubert's claim as to his whereabouts on April 7, 2002.[121] Jubert vehemently denied having seen Albert prior to April 12, 2002, the day the former was arrested.[122]

(g) Robert, a farmer from Isabela, a driver since 1986, and resident of Western Bicutan, Taguig since 1990, alleged[123] that on April 7, 2002, he was in Bontoc, Mountain Province.[124] From March 4 to April 8, 2002, he was driving for Engineer Raymundo Vargas, Sr. (Engr. Vargas), a contractor engineer.[125] Robert offered as evidence a certification, dated November 6, 2003, issued by the Pines Community Developers and General Services Corporation, signed by Engr. Vargas, stating that he was employed from February 10, 1987 to April 8, 2002, and five cash vouchers showing that he was paid for his services.[126] The cash voucher for the payment of PhP 2,500.00, dated April 8, 2002, which was allegedly received by Robert himself,[127] contained erasures. Engr. Vargas justified the erasures by stating that the typewriter, which was initially used, did not yield very clear impressions on paper.[128] Copies of the cash vouchers

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[119] *Id.* at 20-25.

[120] *Id.* at 30, 35-37.

[121] *Id.* at 37.

[122] *Id.* at 32-34.

[123] TSN, Vol. II, September 15, 2004, pp. 7-38.

[124] *Id.* at 15.

[125] *Id.* at 16, 24.

[126] *Id.* at 17-20, 29.

[127] *Id.* at 36.

[128] TSN, Vol. II, October 13, 2004, p. 60.

were, however, secured by his wife only much later upon his lawyer's instructions.[129]

On April 11, 2002, Robert was arrested in his house in Bicutan by CIDG officers contrary to the prosecution's claim that he was riding the Hi-Ace with Roger and carrying a shotgun when seized by the police in Commonwealth Avenue, Quezon City on April 12, 2002.[130] Robert is not engaged in cockfighting.

Angelita Alto (Alto), a member of the *Barangay* Auxiliary Force of Western Bicutan, Taguig, testified[131] that at around 7:45 a.m. of April 11, 2002, a van parked in the corner of Sunflower and Calantas Streets, Western Bicutan, Taguig, and persons clad in dark suits alighted therefrom.[132] They proceeded to Robert's house where Alto's cousin stays as a boarder. The men kicked and broke the door, handcuffed, blindfolded and took Robert to the van. Alto was about three meters away from where the events transpired. When the van left, Alto took two pictures of the broken door, called up Robert's wife and recorded the events in page 1056 of the *barangay*'s logbook.[133]

Engr. Vargas from Baguio City corroborated[134] Robert's claim that they were together in Bontoc, Mountain Province from February 10 to April 8, 2002. It takes 12 to 14 hours to reach Manila from Bontoc.[135] Robert was with Engr. Vargas on April 7, 2002, but the former went to Baguio at 10:00 a.m. of the following day supposedly to collect rentals. Robert said he would be back in two days, but no longer showed up after. Engr. Vargas only found out in October 2003 that Robert was being

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[129] TSN, Vol. II, September 15, 2004, p. 37.

[130] *Id.* at 21, 33.

[131] *Id.* at 41-76; TSN, Vol. II, October 13, 2004, pp. 4-35.

[132] TSN, Vol. II, September 15, 2004, pp. 46-47, 67.

[133] *Id.* at 47-52.

[134] TSN, Vol. II, October 13, 2004, pp. 40-66.

[135] *Id.* at 65.

implicated in a kidnapping incident after being informed by the latter's wife.[136]

(h) Roger, a businessman residing in Signal Village, Bicutan, Taguig, claimed[137] that on April 11, 2002, at around 6:00 a.m., he was walking along Bravo Street in Signal Village.[138] He was on his way to his brother's wake when he was taken by four armed men wearing civilian clothes, whom he later found out were police officers from the CIDG.[139] He only met his co-accused-appellants in Camp Crame on April 11, 2002.[140] He saw Albert for the first time on April 12, 2002 when the police line-up was presented to the latter.[141]

(i) Morey, a warehouse care taker from *Barangay* Sinakbat, Bacong, Benguet, stated[142] that he was in Burnham, Baguio City tending coconuts on April 7, 2002. The warehouse closed at 6:00 p.m., after which he went to his uncle's house in Trinidad, Benguet.[143]

At 1:00 p.m. of April 8, 2002, Morey and a certain Harris Batawang (Batawang) left Baguio for Manila. Morey was contracted to watch over a house bought by Batawang in GSIS Village, Parañaque. They got to Manila at around 9:00 p.m., spent the night in Parañaque, and the following morning, Batawang called Lowhen and introduced him to Morey.[144]

On April 10, 2002, Morey and Batawang bought materials for the repair of the latter's house. At 2:00 p.m. of the following

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[136] *Id.* at 49-54.

[137] TSN, Vol. II, November 17, 2004, pp. 5-26.

[138] *Id.* at 7, 12.

[139] *Id.* at 7, 13, 25.

[140] *Id.* at 13.

[141] *Id.* at 18.

[142] TSN, Vol. II, February 23, 2005, pp. 7-46.

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

[144] *Id.* at 14-16.

day, Batawang returned to Baguio to recruit workers to help Morey in repairing the former's house.[145]

In the evening of April 11, 2002, Lowhen called Morey and informed him that the latter has a province mate who was staying in the former's house. Lowhen was referring to Jubert. Morey went to Lowhen's house. The three drunk the gin bought by Lowhen. Lowhen slept at 11:00 p.m., leaving Morey and Jubert behind. Morey and Jubert slept in Batawang's house. The following day, men barged into Batawang's house and handcuffed Morey and Jubert. The men asked if the two knew a certain Lito, ordered them to surrender their guns, and ransacked Batawang's house. Lowhen, Morey and Batawang were boarded into a Revo and brought to Camp Crame.[146]

Morey denied being acquainted with the other accused-appellants apart from Lowhen and Morey. Morey initially saw Albert during the first day of hearing of the kidnapping case.[147]

(j) Lowhen, a resident of Parañaque City, stated[148] that he had been employed by Regioner Security and Investigation Agency (Regioner) as a guard since 1993. He was posted in Perma Wood Industries Corporation in Marian Road 2, Parañaque from March 4 to April 11, 2002. He worked on a 24-hour shift, usually starting at 7:00 a.m.[149]

On April 10, 2002, Lowhen reported for work in Perma Wood Industries at 7:30 a.m.[150] He offered an uncertified photocopy of his daily time record (DTR) from March 16 to 31, 2002 with his signature on it.[151] Anent the DTR from April 1 to 15, 2002,

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

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

[147] *Id.* at 34.

[148] TSN, Vol. II, April 6, 2005, pp. 5-127; TSN, Vol. II, April 20, 2005, pp. 2-16; TSN, Vol. II, April 27, 2005, pp. 5-39; TSN, Vol. II, May 11, 2005, pp. 5-9.

[149] TSN, Vol. II, April 6, 2005, pp. 9-11.

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

[151] *Id.* at 12-13, 18.

it was unsigned by Lowhen because at that time, he was already arrested by CIDG officers.[152] Logbook entries signed by Lowhen and a certain "S/G Pacete RA," the outgoing guard, indicating that the former assumed his posts at 7:00 a.m. of April 4, 6, 8 and 10, 2002 were likewise presented.[153] Lowhen got off from work at 7:45 a.m. of April 11, 2002,[154] but was no longer able to assume duties the next day because he was already taken by the CIDG officers.[155] He just walked and got home at 8:00 a.m., ate breakfast and went to visit a certain Roger Batersal (Batersal) in Malugay Street, Parañaque to have a picture frame repaired. Batersal, Lowhen's brother-in-law, was then having coffee, so Lowhen went inside the house, laid down in the sofa, turned on the television and slept till 4:00 p.m. The picture frame was already assembled and Lowhen went home where he saw Jubert waiting for him.[156] Jubert asked Lowhen about the requirements in applying for a security guard position. Lowhen bought gin and while the two were drinking, he found out that Jubert speaks Kalinga and Ilocano. Lowhen called Morey, who hailed from Baguio and who was then a boarder in the house of the former's brother. Morey joined the drinking session but Lowhen left at around 11:00 p.m. as the latter was already dizzy and still had to assume his post at 7:00 a.m. of the following day.[157]

At 6:30 a.m. of April 12, 2002, Lowhen's wife woke him up, but he went back to sleep. Thereafter, Lowhen heard noises from the gate of the house, then somebody shouted ordering for men to get out. When Lowhen opened his eyes, a man wearing black was pointing a long firearm at him. Lowhen went out of the house and was directed to place his hands behind his head and lie face down on the floor. The men

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[152] *Id.* at 21-24.

[153] *Id.* at 34-52.

[154] *Id.* at 54, 59.

[155] *Id.* at 54-55.

[156] *Id.* at 59-60.

[157] *Id.* at 68-74.

searched Lowhen's house. Lowhen, Morey and Jubert were taken to the nearby United Parañaque Subdivision and after about 15 to 20 minutes, they were boarded into a green Revo without a plate. Lowhen's wife wanted to tag along but she was informed that she could no longer be accommodated in the Revo, but she could just proceed on her own to Camp Crame.[158]

When they reached Camp Crame, Lowhen, Jubert and Morey were separated from each other.[159] Lowhen was brought into a room and a police officer asked him if he knew a certain Lito. Lowhen replied in the negative, then he was questioned if he knew that a man and a woman had been kidnapped. The officer stepped out of the room, but he came back later with a bald Chinese man.[160] The Chinese man stood near the door, looked at the officer, shook his head, then left. The officer tapped Lowhen's shoulder and asked the latter to cooperate with the police by being a star witness, for which he would be paid PhP 10,000.00 a month, or be hanged. The officer typed an affidavit, but Lowhen refused to receive it. Lowhen told the officer that he could not do what was demanded of him, then the latter left. Lowhen remained in the room until 6:30 p.m. of April 12, 2002 when he was put alongside more than 10 other persons in a police line-up.[161] Albert did not point at Lowhen in the line-up.[162] Prior to April 11, 2002, Lowhen did not personally know Albert.[163]

During cross-examination, Lowhen stated that he was on duty in the early morning of April 11, 2002, hence, he could not have been in the basement of the safehouse where Albert was detained at around the same time.[164]

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[158] *Id.* at 76-82.

[159] *Id.* at 84.

[160] *Id.* at 93-95.

[161] *Id.* at 97-104.

[162] *Id.* at 110.

[163] *Id.* at 125.

[164] TSN, Vol. II, April 27, 2005, p. 33.

Redentor Pacete (Pacete), a construction worker who used to work as a reliever guard at Regioner, testified[165] that he met Lowhen when they were both assigned in Perma Wood Industries.[166] Pacete's signatures were affixed in Regioner's logbook indicating the times he assumed his posts before or after Lowhen.

Domingo De Guzman (De Guzman), Lowhen's supervisor in Regioner, was called by the defense to the witness stand to point out to the court that he was the one who photocopied the logbook entries and the DTR referred to by Lowhen and Pacete in their testimonies.[167] However, the originals cannot anymore be presented to the court because Regioner had ceased its operations in 2004 and the records were no longer available.[168] De Guzman brought two index cards, prepared by Regioner's secretary, indicating Lowhen's assignments from April 27, 1993 to April 11, 2002,[169] and 27 payroll sheets likewise including Lowhen's name covering the period from February 1, 2000 to April 15, 2002.[170]

The testimony[171] of Elsie Batersal (Elsie), Lowhen's sister, to the effect that her brother went to her house at around 8:30 a.m. of April 11, 2002 and slept there until 4:00 p.m., was dispensed with after the prosecution agreed to stipulate and admit the same.

The Ruling of the RTC

The RTC rendered a Decision[172] on September 27, 2007. In Criminal Case No. Q-02-108834, the accused-appellants were

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[165] TSN, Vol. II, May 11, 2005, pp. 10-29.

[166] *Id.* at 18, 22.

[167] TSN, Vol. II, July 13, 2005, pp. 38, 40-41.

[168] *Id.* at 32.

[169] *Id.* at 32-33, 47-50.

[170] *Id.* at 35.

[171] *Id.* at 68-71.

[172] CA *rollo,* pp. 218-291.

acquitted from the charges of kidnapping and serious illegal detention of Pinky. The accused-appellants were, however, convicted of conspiring the kidnapping of, and demanding of ransom from Albert in Criminal Case No. Q-02-108835. The RTC imposed upon the accused-appellants the penalty of *reclusion perpetua* and a solidary obligation to pay Albert the amount of PhP 100,000.00 as moral damages. The RTC ratiocinated that:

> Very critical in this case is the testimony of Albert Yam. He testified about how the kidnapping was perpetrated; he testified that a Toyota Hi-Ace van with eight (8) occupants blocked the path of the Honda Civic car colored white driven by Pinky Gonzales; he (Albert Yam) was driving a Toyota Prado vehicle that was behind the Honda Civic car of Pinky Gonzales; Albert Yam identified and named before this court four (4) of those who alighted from the van; he testified that accused Morey Dadaan and accused Jubert Banatao after going down from their van, approached the Honda Civic car of Pinky Gonzales; he also identified and named Roger Pesado accompanied by Robert Gonzales who went down from their van and approached his car; he testified that it was Roger Pesado who told him (Albert Yam) to come out of his vehicle; he further testified about he and Pinky Gonzales being boarded in the Toyota Hi-Ace van and identified accused Marcelo Llanora as the driver of the van, Ricky Peña who is seated beside the driver x x x. Albert Yam also testified that after their kidnapping ordeal, he learned that accused Jose Adelantar acted as look out when they were being kidnapped along the road coming from the Cainta cockpit; x x x he also testified that when the ransom was being demanded, seven (7) of their kidnappers went down to talk to him and in court gave the name[s] of six (6) of the accused, namely: Jubert Banatao, Morey Dadaan, Marcelo Llanora, Ricky Peña, Jose Adelantar and Lowhen Almonte; Albert also testified that at the instance when he fell down the steps of the stairs, it was the accused Monico Salvador who was escorting him and held him; in his testimony, he stated that accused Betty Salvador brought the food that they ate and on one occasion, saw her asking another accused about their condition; x x x Albert Yam testified that the ransom demanded by the accused is in the amount of One Million Dollars and there were possibly fifteen (15) people who were involved in the kidnapping; he further testified about the rescue operation and was able to identify seven (7) of the accused

in the police line-up but mentioned in his testimony the names of eight (8) accused as among those whom he identified in the police line-up; x x x Albert Yam explained in his testimony that he also identified the accused Lowhen Almonte after the police line-up because said accused was not among those included during the police line-up and this is in accordance with a Supplemental Affidavit which Albert Yam identified in court. x x x The Court was able to deduce from the testimony of Albert Yam that Monico Salvador and Betty Salvador who are admittedly the owners of the place where Albert Yam and Pinky Gonzales were kept during the kidnapping ordeal, were not present at the precise time that the rescue was conducted by the police.

x x x x x x x x x

Where there is no evidence, as in this case, to indicate that the prosecution witness was actuated by improper motive, the presumption is that he is not so actuated and that his testimony is entitled to full faith and credit. Also jurisprudence holds that if an accused had really nothing to do with a crime, it would be against the natural order of events and human nature and against the presumption of good faith that a prosecution witness would falsely testify against him. x x x

x x x x x x x x x

Direct Proof of previous agreement to commit an offense is not necessary to prove conspiracy. It may be deduced from the mode, method and manner in which the offense is perpetrated, or inferred from the acts of the accused when such acts point to a joint purpose and design, concerted action and community of interest. x x x

x x x x x x x x x

Here, we find a closeness of personal association and a concurrence towards a common [un]lawful purpose. x x x

x x x There were very minor loose ends in the chain of events and the testimony of these other witnesses beside[s] Albert Yam completed the narration of facts for the prosecution. These other witnesses, most of whom are police officers[,] provided the proof[s] for the prosecution as to how the kidnapping case was solved and why the accused were apprehended.

x x x x x x x x x

Denial is a self[-]serving negative defense that cannot be given greater weight than the declaration of a credible witness who testifies on affirmative matters. x x x

Settled is the rule that the defense of alibi is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters. x x x

x x x x x x x x x

Among the documentary evidence presented which gives credence to the testimony of Albert Yam are the three (3) sketches which he prepared x x x for the prosecution. x x x [T]wo (2) pieces of dark glasses wrapped with black tape x x x, the two sets of handcuffs x x x, and the handwritten note of Albert Yam addressed to his wife x x x. Elisco 5.56 mm rifle, 9mm pistol, Armscor cal. 38 revolver, a shotgun, magazines for the firearms, live cartridges/ammunition and spent shells x x x.

x x x It must be emphasized that Pinky Gonzales never testified in court so how could the prosecution establish that she is indeed a kidnap victim. x x x[173] (Citations omitted and underscoring ours)

The Appeals Filed Against the RTC Decision and the Office of the Solicitor General's (OSG) Opposition Thereto

The accused-appellants interposed separate appeals[174] essentially reiterating their respective factual claims, which were in turn refuted[175] by the OSG.

The OSG argued that the supposed eye defect ascribed to Albert was not severe as to hinder his ability to identify his kidnappers. The dark eye glasses, which the kidnappers had ordered Albert to put on, were loose and even slipped as he descended the basement stairs, giving him the chance to see Monico. Besides, Albert's eye glasses were returned to him on April 8, 2002. Further, it is settled that when thrust into exceptional circumstances, victims of crimes strive to remember

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[173] *Id.* at 283-290.

[174] *Id.* at 197-215; 292-305; 392-430; 530-561; 667-691.

[175] Please see the Consolidated Brief for the Appellee; *id.* at 723-765.

the important details and to see the faces of their assailants. Anent Betty and Monico's claim that it was unnatural for a person involved in the commission of an offense to proceed to the scene and report the matter to the police, the OSG interpreted the foregoing as defensive acts intended to mislead the authorities in the conduct of the investigation.

Jubert offered no corroborative testimonies regarding his whereabouts from April 7 to 11, 2002.

Robert's alibi that he was in Bontoc, Mountain Province driving for Engr. Vargas should be supported by clear and convincing evidence. The said alibi weighs weaker *vis-á-vis* Albert's positive testimony relative to Robert's participation in the abduction. Engr. Vargas only testified on Robert's employment. Alto merely witnessed the circumstances of Robert's arrest on April 11, 2002.

Lowhen's post in Perma Wood Industries was not that far from the locations where the acts of kidnapping were committed, hence, no physical impossibility to get from one place to the other. The logbook, index cards and payroll sheets offered by Lowhen had no evidentiary value for being mere photocopies. Lowhen claimed that Albert did not identify him from the police line-up. However, Albert testified that he did not see Lowhen from the line-up. Besides, even if Lowhen was indeed included in the line-up, Albert, at that time, had just been rescued, thus, stressed and confused. Albert had modified his initial lapse by categorically stating in his amended affidavit that Lowhen was among those who went to the basement in the early morning of April 11, 2002.

The OSG emphasized that Albert remained unfazed and unwavering in his testimony and so were the rest of the prosecution witnesses. The OSG likewise stressed that the RTC's evaluation of the credibility of the witnesses is entitled to the highest respect and should be upheld in the absence of proof that the said court had overlooked facts which if duly regarded, may alter the result of the case.

The Ruling of the CA

On February 25, 2011, the CA rendered the herein assailed Decision denying the appeal of the accused-appellants. However, the CA modified the RTC ruling by expressly stating the accused-appellants' non-eligibility for parole. Further, the accused-appellants were ordered to solidarily pay Albert PhP 50,000 as civil indemnity and PhP 100,000.00 as exemplary damages. The CA declared that:

> The crucial issue in this case involves the assessment of credibility of witnesses. Could the version succinctly narrated by the victim, his wife and the police officers who participated in the operation for the rescue of the kidnap victims possibly be concocted as so alleged by the appellants?
>
> x x x [U]nless otherwise specifically required, the testimony of a single eyewitness if credible and trustworthy is sufficient to support a finding of guilt beyond reasonable doubt. And since the determination of credibility is within the province of the trial court which has the opportunity to examine and observe the demeanor of witnesses, appellate courts will not generally interfere in this jurisdiction. x x x
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> x x x x x x x x x
>
> The most crucial evidence submitted in this case was the positive testimony of kidnap victim Albert Yam recognizing appellants as his abductors. Common experience tells us that when extraordinary circumstances take place, it is natural for persons to remember many of the important details. x x x [T]he most natural reaction of victims of criminal violence is to strive to see the features and faces of their assailants and observe the manner in which the crime is committed.
>
> Yam positively identified appellants as his captors. x x x
>
> x x x x x x x x x
>
> The evidence also shows that the accused-appellants acted in concert in perpetrating the kidnapping. x x x
>
> x x x x x x x x x

x x x [T]he fact that accused Betty Salvador's role was limited to giving victims their food is immaterial whether she acted as a principal or as an accomplice because the conspiracy and her participation therein have been established. In fact, she was the owner of the safehouse where the victims were kept. In conspiracy, the act of one is the act of all and the conspirators shall be held equally liable for the crime.

x x x x x x x x x

x x x [P]olice officers are presumed to have acted regularly in the performance of their official functions in the absence of clear and convincing proof to the contrary or proof that they were moved by ill will. x x x.[176] (Citations omitted and underscoring ours)

Incidents after the Rendition of the CA Decision

The records of this case were elevated to us pursuant to the Resolution[177] issued by the CA on February 9, 2012 giving due course to the notices of appeal filed by the accused-appellants, except Betty and Monico.

In compliance with our Resolution[178] dated July 2, 2012, a Supplemental Brief[179] was filed by the Public Attorney's Office (PAO) in behalf of the accused-appellants, except Betty and Monico. In lieu of a supplemental brief, the OSG filed a Manifestation[180] stating that it is adopting the arguments it had previously raised in the Consolidated Brief[181] filed with the CA.

The Issue

Whether or not the CA gravely erred in finding the accused-appellants guilty beyond reasonable doubt of the crime of kidnapping for ransom despite the prosecution's failure to

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[176] *Rollo*, pp. 22-25.

[177] CA *rollo*, pp. 912-913.

[178] *Rollo*, p. 39.

[179] *Id.* at 70-80.

[180] *Id.* at 83-86.

[181] CA *rollo*, pp. 723-772.

overthrow the constitutional presumption of innocence in their favor.[182]

The Supplemental Brief filed by the PAO once again presented the accused-appellants' factual claims in the proceedings below relative to the alleged mauling, irregular arrests and extortion attempts committed by CIDG officers against Marcelo and Ricky. The PAO stressed anew the alibis that on April 7, 2002, Morey was in his uncle's warehouse in Baguio, Robert was in Bontoc, Mountain Province driving for Engr. Vargas, while Lowhen assumed his security guard duties in Perma Wood Industries in Parañaque. The PAO also maintained that Roger was arrested at 6:00 a.m. of April 11, 2002 in Bicutan, and not on April 12, 2002 in Commonwealth Avenue.

Our Ruling

The instant appeal lacks merit.

The CA correctly found that the essential elements comprising the crime of kidnapping for ransom were present and that the accused-appellants conspired in its commission.

People v. Uyboco,[183] enumerated the elements of the crime of kidnapping for ransom, *viz*:

> In order for the accused to be convicted of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime, namely: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public

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[182] *Rollo*, p. 71.

[183] G.R. No. 178039, January 19, 2011, 640 SCRA 146.

authority; (c) serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped and kept in detained is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial.[184]

In the case at bar, the accused-appellants, who were indicted for forcibly abducting Albert, are all private individuals. Albert was taken on April 7, 2002 and his detention lasted for six days, during which period, threats to kill him and demand for ransom were made.

In affirming the conviction of the accused-appellants, we are guided by four-settled doctrines enunciated in *People v. Martinez*,[185] *viz:*[186]

(a) The trial court[']s evaluation of the credibility of witnesses must be accorded great respect owing to its opportunity to observe and examine the witnesses conduct and demeanor on the witness stand;

(b) When there is no evidence to show that the prosecution witness is actuated by an improper motive, identification of the accused-appellants as the offenders should be given full faith and credit;[187]

(c) Conspiracy need not be established by direct proof of prior agreement by the parties to commit a crime but that it may be inferred from the acts of the accused-appellants before, during and after the commission of the crime which indubitably point to a joint purpose, concerted action and community of interest; and

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

[185] 469 Phil. 558 (2004).

[186] *Id.* at 572-574.

[187] *See also People of the Philippines v. Garcia*, 424 Phil. 158, 184 (2002). (Citations omitted)

(d) The respective alibis proffered by the accused-appellants cannot prevail over the unequivocal testimony of the victim categorically and positively pointing to them as his abductors, and for the defense of alibis, to be given full credit, they must be clearly established and must not leave room for doubt.[188]

The accused-appellants all denied being personally acquainted with Albert or having knowledge of any grudge which the latter may harbour against them. The RTC and the CA found Albert's testimony on the participation of the accused-appellants as conspirators in the kidnapping incident, and the manner by which he had subsequently identified them, as clear and categorical.

Albert testified:

PROS. FADULLON:

Q: Mr. Witness, will you please tell this Honorable Court where you were on April 7, 2002 between the hours of 7:00 and 7:30 in the evening?

A: I was at the New Cainta Coliseum.

x x x x x x x x x

Q: Will you please tell us, Sir, if you recall if there was anything unusual that happened that evening as you were leaving the New Cainta Coliseum on your way home?

A: I was kidnapped that evening.

x x x x x x x x x

Q: Now, Sir, will you please tell this Honorable Court what happened when you notice that the Toyota Hi-Ace van stopped abruptly the path of the Honda Civic car?

A: I saw six (6) men coming down from the Hi-Ace with long firearms.

x x x x x x x x x

Q: Now tell us, Sir, what happened when six (6) men armed with long firearms alighted from the vehicle, Toyota Hi-Ace van?

A: I saw two (2) of those people went to the white car and motioned the driver with a gun pointed motioning the driver of the white vehicle to go down.

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[188] See also *People v. Bautista,* G.R. No. 188601, June 29, 2010, 622 SCRA 524, 545.

Q: You mentioned earlier that there were six (6) armed men who alighted. You accounted for, two (2) went to the driver side of the white Honda Civic car, what about the others, do you know what happened?

A: They were there and two (2) of them I think ran after the watch-your-car boy and two of them went to my car, Sir.[189]

When asked to identify the two men who approached the Civic, Albert pointed to Jubert and Morey. Albert named those who approached his Prado as Roger and Robert. Roger and Robert gestured for him to alight from the Prado and brought him to the Hi-Ace, where he saw Marcelo in the driver's seat and Ricky in the front passenger's seat.[190]

At around 6:00 a.m. of April 11, 2002, seven men went to the basement of the safehouse where Albert and Pinky were detained. They threatened Albert with bodily harm should he not accede to their demand for ransom. Albert identified them as Jubert, Morey, Marcelo, Ricky, Lowhen, Jose and Nelson. Five of the men left but Nelson and Lowhen were left behind to guard Albert and Pinky.[191]

The overt acts of the accused-appellants Jubert, Morey, Marcelo, Ricky, Robert, Roger, Lowhen and Jose were undoubtedly geared towards unlawfully depriving Albert of his liberty and extorting ransom in exchange for his release.

Albert was able to identify Marcelo, Ricky, Jubert, Morey, Jose, Lowhen, Robert and Roger from a police line-up of around 15 persons presented to him in Camp Crame on April 12, 2002.[192] During cross-examination, Albert clarified that Lowhen was not among the seven persons he had identified as among his captors from the initial police line-up of 15 persons presented to him. Albert justified the omission by stating that he saw Lowhen

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[189] TSN, Vol. I, June 28, 2002, pp. 4-11.

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

[191] TSN, Vol. I, July 5, 2002, pp. 42, 45-54.

[192] *Id.* at 71-74.

only after the line-up was presented and after he had already executed his April 12, 2002 affidavit.[193]

In their defense, Marcelo, Ricky, Jubert, Robert, Morey, Lowhen, Jose and Roger offered their respective alibis, which fail to persuade.

Marcelo claimed that from 12:00 noon to 9:00 p.m. of April 7, 2002, he was at home repairing a motor bike. On his part, Jubert insisted that he was fixing his uncle's house in Bicutan, Taguig on the same day. Morey averred that he was in a coconut warehouse in Burnham, Baguio City, and he left the place at around 6:00 p.m. to go to his uncle's house in Trinidad, Benguet. Noticeably, Marcelo, Jubert and Morey offered no corroborative evidence to support their bare allegations.

Ricky and his wife, May, alleged that they were likewise at home on April 7, 2002. However, May's testimony does not carry much weight in view of her relation to Ricky.

Robert posited that he was in Bontoc, Mountain Province driving for Engr. Vargas from February 10, 2002 to April 8, 2002. Robert left at 10:00 a.m. of April 8, 2002 on the pretext that he would just collect rentals in Baguio. He informed Engr. Vargas that he would be back in two days. Robert testified and Alto corroborated his statement that the former was arrested by CIDG officers in Bicutan, Taguig on April 11, 2002.

The test to determine the value of the testimony of a witness is whether such is in conformity with knowledge and consistent with the experience of mankind; whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance.[194] It defies logic to figure out why Engr. Vargas was informed that Robert was implicated in Albert's kidnapping only on October 2003, or around one and a half years after the latter's indictment. If Robert's alibi were true, it would have been more in accord with human experience if he promptly told

[193] TSN, Vol. I, August 30, 2002, pp. 26, 29-30.

[194] *People v. Patano,* 447 Phil. 168, 186 (2003), citing *People v. San Juan*, 383 Phil. 689, 703 (2000).

Engr. Vargas about his predicament for the latter was then in the best position to corroborate the former's allegations. It is likewise perplexing why Robert, who had been driving for Engr. Vargas for five years, was in Taguig on April 11, 2002 and so lightly regarded his commitment to the latter that he would be back in two days. No explanations were offered to justify Robert's unreasonable omissions.

Lowhen insisted that he assumed his 24-hour duty in Perma Wood Industries in Parañaque from 7:00 a.m. of April 10, 2002 to 7:45 a.m. of April 11, 2002. He got home at 8:00 a.m., ate breakfast, and thereafter proceeded to his sister Elsie's house where he slept in the sofa until 4:00 p.m. The testimonies of Pacete, De Guzman and Elsie were offered to support Lowhen's claims. However, we find more credence in the positive and categorical statements of Albert, against whom no ill motive was ascribed by the defense, on one hand, than in the testimonies of persons, who are in one way or another are related to Lowhen. Further, there is no proof of absolute physical impossibility for Lowhen to be in Amparo Subdivision in the morning of April 11, 2002, considering that Parañaque is not very far off. In Albert's testimony, he merely made an estimate of the time in the morning of April 11, 2002, when Lowhen, along with six other men, went to the basement. Although Albert testified that it was around 6:00 a.m., he could have miscalculated the time considering that he no longer had a watch and they were in a basement. Besides, Lowhen was the link between Jubert and Morey, whose participations in the kidnapping incident on April 7, 2002 were clearly established. This renders dubious Lowhen's claim of having introduced Jubert and Morey to each other only on April 11, 2002, or four days after the latter two had taken part in the abduction of Pinky and Albert near the Coliseum.

Jose and Roger proffered nary an explanation anent where they were on April 7, 2002. Jose anchored his defense upon his presence at U-Cap Cockpit in Mandaluyong from the night of April 9, 2002 until 1:00 a.m. of April 10, 2002. While waiting for a cab going home, Jose claimed that CIDG officers arrested

him and brought him to Camp Crame where he remained under the police's custody. He thus claimed that contrary to Albert's claim, he could not have been in the basement of the safehouse at 6:00 a.m. of April 11, 2002. On the other hand, Roger alleged that at around 6:00 a.m. of April 11, 2002, while he was walking along Bravo Street, Signal Village, Bicutan, Taguig on his way to his brother's wake, he was arrested by CIDG officers. However, like in the cases of Marcelo, Jubert and Robert, Jose and Roger's averments were bare and unsupported by any corroborative evidence.

All told, we find that the RTC and the CA did not overlook essential facts or circumstances which may otherwise justify the acquittal of Marcelo, Ricky, Jubert, Robert, Morey, Lowhen, Jose and Roger for having conspired in kidnapping Albert for the purpose of extorting ransom. That no ransom was actually paid does not negate the fact of the commission of the crime, it being sufficient that a demand for it was made.[195]

We note Marcelo, Ricky, Jose and Lowhen's claims of having been subjected to mauling, illegal arrest, intimidation and extortion attempts committed by the police authorities.

It is settled that irregularities attending the arrest of the accused-appellants should have been timely raised in their respective motions to quash the Informations at any time before their arraignment, failing at which they are deemed to have waived their rights to assail the same.[196] No such motions were filed by the accused-appellants.

Further, without meaning to downplay or take the allegations of the accused-appellants lightly, we, however, note that these were unsubstantiated as to the identities of the offenders and uncorroborated by other pieces of evidence. To date, no complaints against the supposed abusive police officers had yet

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[195] *Supra* note 187, at 177-178, citing *People v. Salimbago*, 373 Phil. 56, 75 (1999).

[196] See *People v. Pepino*, G.R. No. 183479, June 29, 2010, 622 SCRA 293, 303.

been filed by the accused-appellants. If the abuses were indeed committed, we exhort the accused-appellants to initiate the proper administrative and criminal proceedings to make the erring police officers liable. We stress that while the criminal justice system is devised to punish the offenders, it is no less the State's duty to ensure that those who administer it do so with clean hands.

Betty and Monico are to be held as co-conspirators because they knowingly provided the venue for Albert's detention.

In implicating Monico, Albert testified:

PROS. FADULLON:

Q: And you said you were first handcuffed according to you, you were handcuffed with Miss Gonzales and removed it and a new set of handcuffs were placed on you. Will you please tell us what happened after that?

A: So with my both hands handcuffed, this time I was asked to get out of the vehicle and I was led to a sort of like underground house something like that, I had to go down a couple of steps.

Q: What happened, Sir, as you were going down, as you were led inside, what you claimed to be an underground house and as you were going down several steps?

A: Because I was handcuffed and I didn't know where to go to pass at that time, I fell and a person held on my arm.

Q: What happened to your glasses as you claimed you fell as you were going downstairs?

A: My glasses went down also, Sir.

Q: <u>And you said that there was a person who held on to you, how close or how far that person from you, Sir?</u>

A: <u>He was just beside me, Sir.</u>

Q: And this person can you give us his description?

A: About 50s, about 5'9" and has a [sic] very coarse hands, Sir.

Q: This person whom according to you held on to you as you slipped you were being led downstairs, if you will see him again, will you be able to recognize him, Sir?

x x x x x x x x x

[Witness pointed to Monico in the courtroom.]

x x x x x x x x x

Q: What happened, Sir, when you slipped and this person now identified as accused Monico Salvador held on to you, what happened after that?

A: He held me up and led me to the stair[way] proceeding down to the house, Sir.[197] (Underscoring ours)

When asked during cross examination about what transpired while he was descending the basement stairs, Albert stated:

ATTY. MALLABO:

Q: Now, immediately after you catch [sic] the glasses, what exactly did you do?

A: I told him, "*Pare, alalayan mo naman ako ng maayos pababa pala tayo nun.*"

Q: You told him that you should be carefully assisted. You told him that because you were not in a position to see where you were walking?

A: Yes, Sir.

x x x x x x x x x

Q: Now, did you try to get hold of the hands of Monico Salvador after the incident?

A: Yes, sir.

Q: And you found out that the hands were "*magaspang*"?

A; Yes, Sir.

Q: And that would make you very sure that he was the one who assisted you?

A: Even more sure because I saw him also.

Q: Now, after you get [sic] hold of that [sic] glasses you said to him, "*Alalayan mo naman ako.*"?

A: Because I fell already. So, I said, "*Pare alalayan mo naman ako ng maayos.*" That was when he was here beside me.

Q: Besides [sic] you?

A: Yes.

Q: I thought that he was at your back holding your armpit?

A: He was here beside me. How do you carry somebody?

Q: If he was beside you, you were only able to recognize the left portion of his face?

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[197] TSN, Vol. I, June 28, 2002, pp. 34-37.

A: I was able to see his face, Sir.
Q: The whole face?
A: Yes, Sir.
Q: I thought that he was beside you?
A: He was beside me.
Q: Did you go in front of him and tried to look at the features of his face?

x x x x x x x x x

A: I can see him even on my side.
Q: My question is, did you go in front of the person who assisted you?
A: No, I did not face him.[198] (Underscoring ours)

When asked who handed him the food that he ate while in detention, Albert answered:

PROS. FADULLON:

Q: Now Mr. Witness, on that day, April 11, 2002[,] right after in the early morning, do you remember if there was any other incident that happened in that place where you and Miss Gonzales were being kept?
A: At lunch time[,] I saw a woman who brought down some foods, Sir.
Q: Lunch time of what date?
A: April 11, 2002, Sir.
Q: April 11 at around lunch time a woman brought down your food?
A: Yes, Sir.
Q: Where were you at that time, Mr. Witness, when this woman according to you came down and brought down your food?
A: At the sofa, Sir.
Q: Tell us, Mr. Witness, what happened when this woman brought down your food?
A: She gave the food to the guard and the guard gave the food to us, Sir.
Q: How far away from this woman Sir when you saw her handing the foods to one of the guard[s]?
A: The stairway was just beside the sofa so you can see her, Sir.

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[198] TSN, Vol. I, September 20, 2002, pp. 15-19.

Q: That would be again approximately 2 meters or little over a meter?
A: Yes, Sir.
Q: Can you give us the description of this woman Sir who according to you came down and brought down handed over your food in [sic] one of the guards?
A: She was in [her] 50's, Sir.

x x x x x x x x x

[Yam pointed to Betty in the courtroom.]

PROS. CHUA CHENG:

Q: Do you know, Mr. Witness, what kind of food that this accused you identified as Betty Salvador served that lunch time?
A: Jollibee, Sir.
Q: Tell us, Sir when for the first time you see accused Betty Salvador?
A: The night before, Sir.
Q: The night before referring to what date[,] Sir?
A: April 10, Sir.
Q: Could you tell us under what circumstances did you see the accused Betty Salvador?
A; I was having a conversation with the guard who was at the stairway at that time when I heard a woman asking questions to the guard, Sir.
Q: What question did she ask to the guard if you remember[,] Sir?
A: "*Kumusta sila[?]*".
Q: After that[,] what happened?
A: She gave the food to the guard, Sir.
Q: What food was this given to you that evening?
A: That was the only time Jollibee was not serve[d], it was corn[ed] beef, Sir.

PROS. FADULLON:

Q: That would be dinner time of April 10, 2002?
A: Yes, Sir.[199] (Underscoring ours)

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[199] TSN, Vol. I, July 5, 2002, pp. 54-60.

During cross examination, Albert testified having seen Betty, thus:

ATTY. MALLABO:

Q: Now, how did you see her at the time that she uttered the words, "*Kumusta na sila?*"
A: She was in front of me.
Q: Right in front of you?
A: I mean, she was going up the stairway. I can see her.
Q: So you want to tell us that she went down?
A: I did not say she went down. She was up there in the stairway coming down and she was about to talk to the guard who was guarding us. So, when she saw the guard and said, "*Kumusta sila?*"[,] I was right there at the edge of the, at the foot of the stairway. So, I saw her.
Q: So you saw her?
A: Yes, sir.[200]

Albert categorically stated that on the night of April 7, 2002, Monico assisted him in descending the stairs leading to the basement of the safehouse. Albert likewise named Betty as the woman who brought him and Pinky corned beef for dinner on April 10, 2002, and food items from Jollibee for lunch on April 11, 2002.

This Court has held that the most natural reaction of victims of criminal violence is to strive to see the features and faces of their assailants and observe the manner in which the crime is committed.[201] It is also settled that the victim's in-court identification is more than sufficient to establish the identities of accused-appellants as among the malefactors,[202] and previously executed affidavits are generally considered inferior to statements that the victim gives in open court.[203] Hence, we

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[200] TSN, Vol. I, September 20, 2002, p. 21.

[201] *Supra* note 185, at 570.

[202] See *People v. Jalosjos*, 421 Phil. 43, 73-74 (2001); *supra* note 196, at 302.

[203] *Supra* note 196, at 302.

hold that notwithstanding Albert's failure to identify Betty and Monico from the police line-up presented on April 12, 2002, in which the spouses were allegedly included, no reasonable doubt is cast upon the complicity of the latter two in the kidnapping. Further, Betty and Monico's postulation that if they were indeed involved, they should not have proceeded to the scene of the rescue operations and to the police station, likewise deserves scant consideration. There is no established doctrine to the effect that, in every instance, non-flight is an indication of innocence.[204] It is possible for the culprits to pursue unfamiliar schemes or strategies to confuse the police authorities.[205]

We stress though that conspiracy transcends companionship.[206] Mere presence at the *locus criminis* cannot by itself be a valid basis for conviction, and mere knowledge, acquiescence to or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime.[207]

In the case at bar, Monico's assistance extended to Albert when the latter descended the basement stairs and Betty's visit to the safehouse to bring food could not automatically be interpreted as the acts of principals and conspirators in the crime of kidnapping for ransom.

People of the Philippines v. Garcia[208] is instructive anent the distinctions between a conspirator and an accomplice, *viz*:

> In *People v. De Vera*[,] we distinguished a conspirator from an accomplice in this manner –
>
> > Conspirators and accomplices have one thing in common: they know and agree with the criminal design. Conspirators, however, know the criminal intention because they themselves

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[204] *People v. Garalde*, 401 Phil. 174, 211 (2000). (Citation omitted)

[205] *Supra* note 194.

[206] *Id.* at 191.

[207] See *People v. Montenegro*, 479 Phil. 663, 674 (2004).

[208] 424 Phil. 158 (2002).

> have decided upon such course of action. Accomplices come to know about it after the principals have reached the decision, and only then do they agree to cooperate in its execution. Conspirators decide that a crime should be committed; accomplices merely concur in it. Accomplices do not decide whether the crime should be committed; they merely assent to the plan and cooperate in its accomplishment. Conspirators are the authors of a crime; accomplices are merely their instruments who perform acts not essential to the perpetration of the offense.
>
> x x x x x x x x x

x x x As we have held in *Garcia v. CA*, "in some exceptional situations, having community of design with the principal does not prevent a malefactor from being regarded as an accomplice if his role in the perpetration of the homicide or murder was, relatively speaking, of a minor character." x x x.[209] (Citations omitted)

Monico's assistance to Albert when the latter descended the basement stairs and Betty's visit to the safehouse to bring Jollibee food items were not indispensable acts in the commission of the crime of kidnapping for ransom. If to be solely considered, these acts, being of minor importance, pertain to those committed by mere accomplices. Betty and Monico were not among those persons who forcibly abducted Albert while the latter was in the vicinity of the Coliseum. Neither did the spouses perform positive acts to actively detain Albert. What spells the difference on why we still find the Betty and Monico as principals and co-conspirators in the kidnapping is the circumstance that their acts coincide with their ownership of the safehouse.

Absent his knowledge, consent or concurrence in the criminal design, the owner of a place, which was used to detain kidnapped victims, cannot necessarily be considered as either a conspirator or an accomplice in the crime of kidnapping for ransom. However, in the case of Betty and Monico, their claim of ignorance relative to Albert's detention in the basement of the safehouse is belied by their presence therein. Albert positively and repeatedly testified on the matter.

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[209] *Id.* at 188-189.

In a conspiracy to commit the crime of kidnapping for ransom, the place where the victim is to be detained is logically a primary consideration. In the case of Betty and Monico, their house in Lumbang Street, Amparo Subdivision has a basement. It can be reasonably inferred that the house fitted the purpose of the kidnappers. Albert's detention was accomplished not solely by reason of the restraint exerted upon him by the presence of guards in the safehouse, but by the circumstance of being put in a place where escape became highly improbable. In other words, Betty and Monico were indispensable in the kidnapping of Albert because they knowingly and purposely provided the venue to detain Albert. The spouses' ownership of the safehouse, Monico's presence therein during Albert's arrival on the evening of April 7, 2002 and Betty's visits to bring food reasonably indicate that they were among those who at the outset planned, and thereafter concurred with and participated in the execution of the criminal design.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant appeal is **DENIED**. Accordingly, the Decision dated February 25, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 03279 is hereby **AFFIRMED** with **MODIFICATION** insofar as the amount of civil indemnity awarded to Albert Yam *y* Lee, to be solidarily paid by the accused-appellants, is increased from PhP 50,000.00 to PhP 75,000.00 in accordance with prevailing jurisprudence.[210]

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[210] *Supra* note 188.

THIRD DIVISION

[G.R. No. 204700. April 10, 2013]

EAGLERIDGE DEVELOPMENT CORPORATION, MARCELO N. NAVAL and CRISPIN I. OBEN, *petitioners, vs.* **CAMERON GRANVILLE 3 ASSET MANAGEMENT, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; MACHINE COPY OF THE COMPLAINT IS ACCEPTANCE AS RULE 65 OF THE RULES OF COURT PROVIDES THAT ONE MAY ATTACH TO THE PETITION MERE MACHINE COPIES OF OTHER RELEVANT DOCUMENTS AND PLEADINGS.— [C]ontrary to petitioners' assertion, a reading of the CA Resolution dated November 27, 2012 shows that the appellate court merely noted the belated attachment of a machine copy, not a certified true copy, of the complaint to petitioners' motion for reconsideration. Although not expressly stated, the machine copy of the complaint is in fact acceptable, as Rule 65 provides that one may attach to the petition mere machine copies of other relevant documents and pleadings.

2. ID.; CIVIL PROCEDURE; PRODUCTION OR INSPECTION OF DOCUMENTS OR THINGS; THE GRANT OF A MOTION FOR PRODUCTION OF DOCUMENT ALTHOUGH DISCRETIONARY ON THE PART OF THE TRIAL COURT, CANNOT BE ARBITRARILY OR UNREASONABLY DENIED BECAUSE TO DO SO WOULD BAR ACCESS TO RELEVANT EVIDENCE THAT MAY BE USED BY A PARTY-LITIGANT AND HENCE, IMPAIR HIS FUNDAMENTAL RIGHT TO DUE PROCESS; TEST TO DETERMINE RELEVANCY AND SUFFICIENCY OF DOCUMENTS IS REASONABLENESS AND PRACTICABILITY. — The provision on production and inspection of documents is one of the modes of discovery sanctioned by the Rules of Court in order to enable not only the parties, but also the court to discover all the relevant and

material facts in connection with the case pending before it. Generally, the scope of discovery is to be liberally construed so as to provide the litigants with information essential to the fair and amicable settlement or expeditious trial of the case. All the parties are required to lay their cards on the table so that justice can be rendered on the merits of the case. Although the grant of a motion for production of document is admittedly discretionary on the part of the trial court judge, nevertheless, it cannot be arbitrarily or unreasonably denied because to do so would bar access to relevant evidence that may be used by a party-litigant and hence, impair his fundamental right to due process. The test to be applied by the trial judge in determining the relevancy of documents and the sufficiency of their description is one of reasonableness and practicability.

3. ID.; EVIDENCE; PRESENTATION OF EVIDENCE; WHEN PART OF A WRITING OR RECORD IS GIVEN IN EVIDENCE BY ONE PARTY, THE WHOLE OF THE SAME SUBJECT MAY BE INQUIRED INTO BY THE OTHER, AND WHEN A DETACHED WRITING OR RECORD IS GIVEN IN EVIDENCE, ANY OTHER WRITING OR RECORD NECESSARY TO ITS UNDERSTANDING MAY ALSO BE GIVEN IN EVIDENCE; PETITIONERS MUST BE ALLOWED TO INSPECT THE LSPA WHICH IS A PART OF THE DEED OF ASSIGNMENT PRODUCED IN COURT BY THE RESPONDENT AND MARKED AS ONE OF ITS DOCUMENTARY EXHIBITS.— As respondent Cameron's claim against the petitioners relies entirely on the validity of the *Deed of Assignment*, it is incumbent upon respondent Cameron to allow petitioners to inspect all documents relevant to the *Deed*, especially those documents which, by express terms, were referred to and identified in the *Deed* itself. The *LSPA*, which pertains to the same subject matter – the transfer of the credit to respondent is manifestly useful to petitioners' defense. Furthermore, under Section 17, Rule 132 of the 1997 Rules of Court, when part of a writing or record is given in evidence by one party, the whole of the same subject may be inquired into by the other, and when a detached writing or record is given in evidence, any other writing or record necessary to its understanding may also be given in evidence. Since the *Deed of Assignment* was produced in court by respondent and marked as one of its documentary exhibits,

the *LSPA* which was made a part thereof by explicit reference and which is necessary for its understanding may also be inevitably inquired into by petitioners. In this light, the relevance of the *LSPA* sought by petitioners is readily apparent. Fair play demands that petitioners must be given the chance to examine the *LSPA*. Besides, we find no great practical difficulty, and respondent did not allege any, in presenting the document for inspection and copying of the petitioners.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; COMMITTED BY THE TRIAL COURT WHEN IT DENIED THE MOTION FOR PRODUCTION OF THE LSPA DESPITE THE EXISTENCE OF GOOD CAUSE, AND THE RELEVANCY AND MATERIALITY FOR IT'S THE PRODUCTION.— Section 13 of the SPV Law clearly provides that "in the transfer of the Non-Performing Loans (NPLs), the provisions on subrogation and assignment of credits under the New Civil Code shall apply." The law does not exclude the application of Article 1634 of the New Civil Code to transfers of NPLs by a financial institution to a special purpose vehicle. Settled is the rule in statutory construction that "when the law is clear, the function of the courts is simple application." Besides, it is within the power of an SPV to restructure, condone, and enter into other forms of debt settlement involving NPLs. Also, Section 19 of the SPV Law expressly states that redemption periods allowed to borrowers under the banking law, the rules of court and/or other laws are applicable. Hence, the equitable right of redemption allowed to a debtor under Article 1634 of the Civil Code is applicable. Therefore, as petitioners correctly pointed out, they have the right of legal redemption by paying Cameron the transfer price plus the cost of money up to the time of redemption and the judicial costs. Certainly, it is necessary for the petitioners to be informed of the actual consideration paid by the SPV in its acquisition of the loan, because it would be the starting point for them to negotiate for the extinguishment of their obligation. As pointed out by the petitioners, since the Deed of Assignment merely states "*For value received*", the appropriate information may be supplied by the *LSPA*. It is self-evident that in order to be able to intelligently match the price paid by respondent for the acquisition of the loan, petitioner must be provided with the necessary information to enable it

to make a reasonably informed proposal. Because of the virtual refusal and denial of the production of the *LSPA*, petitioners were never accorded the chance to reimburse respondent of the consideration the latter has paid. Consequently, this Court finds and so holds that the denial of the *Motion for Production* despite the existence of "good cause," relevancy and materiality for the production of the *LSPA* was unreasonable and arbitrary constituting grave abuse of discretion on the part of the trial court. Hence, *certiorari* properly lies as a remedy in the present case.

5. **ID.; ID.; ID.; THE EXERCISE OF DISCRETION PERTAINING TO DISCOVERY WILL BE SET ASIDE WHERE THERE IS ABUSE, OR THE TRIAL COURT'S DISPOSITION OF MATTERS OF DISCOVERY WAS IMPROVIDENT AND AFFECTED ADVERSELY THE SUBSTANTIAL RIGHT OF A PARTY.—** Discretionary acts will be reviewed where the lower court or tribunal has acted without or in excess of its jurisdiction, where an interlocutory order does not conform to the essential requirements of law and may reasonably cause material injury throughout subsequent proceedings for which the remedy of appeal will be inadequate, or where there is a clear or serious abuse of discretion. The exercise of discretion pertaining to discovery will be set aside where there is abuse, or the trial court's disposition of matters of discovery was improvident and affected adversely the substantial rights of a party. After all, the discretion conferred upon trial courts is a sound discretion which should be exercised with due regard to the rights of the parties and the demands of equity and justice.

6. **ID.; CIVIL PROCEDURE; PRODUCTION OR INSPECTION OF DOCUMENTS OR THINGS; THE RULES ON DISCOVERY IS ACCORDED BROAD AND LIBERAL INTERPRETATION TO ENABLE THE PARTIES TO OBTAIN THE FULLEST POSSIBLE KNOWLEDGE OF THE ISSUES AND FACTS, INCLUDING THOSE KNOWN ONLY TO THEIR ADVERSARIES, IN ORDER THAT TRIALS MAY NOT BE CARRIED ON IN THE DARK.—** Indeed, the insistent refusal of respondent to produce the *LSPA* is perplexing and unacceptable to this Court. Respondent even asserts that if petitioner EDC thinks that the *LSPA* will bolster its defense, then it should secure a copy of the document from

the Bangko Sentral ng Pilipinas and not from respondent, because allegedly the document was not marked by respondent as one of its exhibits. In light of the general philosophy of full discovery of relevant facts, the unreceptive and negative attitude by the respondent is abominable. The rules on discovery are accorded broad and liberal interpretation precisely to enable the parties to obtain the fullest possible knowledge of the issues and facts, including those known only to their adversaries, in order that trials may not be carried on in the dark. Undoubtedly, the trial court had effectively placed petitioners at a great disadvantage inasmuch as respondent effectively suppressed relevant documents related to the transaction involved in the case *a quo*. Furthermore, the remedies of discovery encouraged and provided for under the Rules of Court to be able to compel the production of relevant documents had been put to naught by the arbitrary act of the trial court.

7. ID.; ID.; ID.; COURTS, AS ARBITERS AND GUARDIANS OF TRUTH AND JUSTICE, MUST NOT COUNTENANCE ANY TECHNICAL PLOY TO THE DETRIMENT OF AN EXPEDITIOUS SETTLEMENT OF THE CASE OR TO A FAIR, FULL AND COMPLETE DETERMINATION ON ITS MERITS.— It must be remembered that "litigation is essentially an abiding quest for truth undertaken not by the judge alone, but jointly with the parties. Litigants, therefore, must welcome every opportunity to achieve this goal; they must act in good faith to reveal documents, papers and other pieces of evidence material to the controversy." Courts, as arbiters and guardians of truth and justice, must not countenance any technical ploy to the detriment of an expeditious settlement of the case or to a fair, full and complete determination on its merits.

APPEARANCES OF COUNSEL

Leynes Lozada-Marquez for petitioners.
Espina and Yumul-Espina for respondent.

DECISION

LEONEN, *J.*:

All documents mentioned in a Deed of Assignment transferring the credit of the plaintiff in a pending litigation should be accessible to the defendant through a Motion for Production or Inspection of Documents under Rule 27 of the Rules of Court. Litigation is not a game of skills and stratagems. It is a social process that should allow both parties to fully and fairly access the truth of the matters in litigation.

Before this Court is a Petition under Rule 45, seeking to review the August 29, 2012[1] and November 27, 2012[2] Resolutions of the Third Division of the Court of Appeals. The Resolutions dismissed petitioners' Rule 65 Petition and affirmed the Resolutions dated March 28, 2012[3] and May 28, 2012[4] of the Regional Trial Court, Branch 60, Makati City denying petitioners' motion for production/inspection.

The pertinent facts are as follows:[5]

Petitioners Eagleridge Development Corporation (EDC), and sureties Marcelo N. Naval (Naval) and Crispin I. Oben (Oben) are the defendants in a collection suit initiated by Export and Industry Bank (EIB) through a Complaint[6] dated February 9, 2005, and currently pending proceedings before the Regional Trial Court (RTC), Branch 60, Makati City.[7]

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[1] *Rollo*, p. 59.

[2] *Id.* at 61-65. Resolution penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Rebecca De Guia-Salvador and Samuel H. Gaerlan, *concurring*.

[3] *Id.* at 109-111.

[4] *Id.* at 112-122.

[5] *Id.* at 3-57. Petition for Review on *Certiorari* dated December 20, 2012.

[6] *Id.* at 227-232.

[7] Docketed as Civil Case No. 05-213.

By virtue of a *Deed of Assignment*[8] dated August 9, 2006, EIB transferred EDC's outstanding loan obligations of P10,232,998.00 to respondent Cameron Granville 3 Asset Management, Inc. (Cameron), a special purpose vehicle, thus:

For value received and pursuant to the (a) Loan Sale and Purchase Agreement dated as of 7 April 2006 (the "LSPA"), made and executed by **Export and Industry Bank**, as Seller ("Seller"), and by **Cameron Granville Asset Management (SPV-AMC), Inc.** (the "Purchaser"), and (b) the Deed of Absolute Sale dated 9 August 2006 (the "Deed") made and executed by and between Seller and Purchaser, Seller hereby absolutely sells, assigns and conveys to Purchaser, on a "without recourse" basis, all of its rights, title and interests in the following Loan:

EAGLERIDGE DEVELOPMENT CORPORATION with an outstanding loan obligation of Php 10,232,998.00 covered by an unregistered Deed of Assignment of Receivables.

x x x x x x x x x

Defined terms used but not otherwise defined herein have the meaning given to them in the LSPA.[9]

Thereafter, Cameron filed its *Motion to Substitute/Join* EIB dated November 24, 2006, which was granted by the trial court.

On February 22, 2012, petitioners filed a *Motion for Production/Inspection*[10] of the *Loan Sale and Purchase Agreement (LSPA)* dated April 7, 2006 referred to in the *Deed of Assignment*.

Respondent Cameron filed its *Comment*[11] dated March 14, 2012 alleging that petitioners have not shown "good cause" for the production of the *LSPA* and that the same is allegedly irrelevant to the case *a quo*.

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[8] *Supra* note 1 at 134.

[9] *Id.*

[10] *Id.* at 123-133.

[11] *Id.* at 136-143.

In response, petitioners filed on March 26, 2012 their *Reply*.[12] Petitioners explained that the production of the *LSPA* was for "good cause". They pointed out that the claim of Cameron is based on an obligation purchased after litigation had already been instituted in relation to it. They claimed that pursuant to Article 1634 of the New Civil Code[13] on assignment of credit, the obligation subject of the case *a quo* is a credit in litigation, which may be extinguished by reimbursing the assignee of the price paid therefor, the judicial costs incurred and the interest of the price from the day on which the same was paid. Article 1634 provides:

> When a credit or other incorporeal right in litigation is sold, the debtor shall have a right to extinguish it by reimbursing the assignee for the price the latter paid therefor, the judicial costs incurred by him, and the interest on the price from the day on which the same was paid.

As petitioners' alleged loan obligations may be reimbursed up to the extent of the amount paid by Cameron in the acquisition thereof, it becomes necessary to verify the amount of the consideration from the *LSPA,* considering that the *Deed of Assignment* was silent on this matter.

In its Resolution[14] dated March 28, 2012, the trial court denied petitioners' motion for production for being utterly devoid of merit. It ruled that there was failure to show "good cause" for the production of the *LSPA* and failure to show that the *LSPA* is material or contains evidence relevant to an issue involved in the action.

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[12] *Id.* at 144-165.

[13] A credit or other incorporeal right shall be considered in litigation from the time the complaint concerning the same is answered. The debtor may exercise his right within thirty days from the date the assignee demands payment from him.

[14] By Acting Presiding Judge J. Cedrick O. Ruiz.

Aggrieved, petitioners filed on April 25, 2012, their *Motion for Reconsideration.*[15] They argued that the application of Article 1634 of the Civil Code is sanctioned by Section 12, Article III of Republic Act No. 9182, otherwise known as the Special Purpose Vehicle Law (SPV Law). Section 12 provides:

SECTION 12. *Notice and Manner of Transfer of Assets.* – (a) No transfer of NPLs to an SPV shall take effect unless the FI concerned shall give prior notice, pursuant to the Rules of Court, thereof to the borrowers of the NPLs and all persons holding prior encumbrances upon the assets mortgaged or pledged. Such notice shall be in writing to the borrower by registered mail at their last known address on file with the FI. The borrower and the FI shall be given a period of at most ninety (90) days upon receipt of notice, pursuant to the Rules of Court, to restructure or renegotiate the loan under such terms and conditions as may be agreed upon by the borrower and the FIs concerned.

(b) The transfer of NPAs from an FI to an SPV shall be subject to prior certification of eligibility as NPA by the appropriate regulatory authority having jurisdiction over its operations which shall issue its ruling within forty-five (45) days from the date of application by the FI for eligibility.

(c) After the sale or transfer of the NPLs, the transferring FI shall inform the borrower in writing at the last known address of the fact of the sale or transfer of the NPLs.

They alleged that the production of the *LSPA* – which would inform them of the consideration for the assignment of their loan obligation – is relevant to the disposition of the case.

Respondent Cameron filed its *Comment/Opposition*[16] dated April 30, 2012 reiterating that the production of the *LSPA* was immaterial, to which, petitioners filed, on May 14, 2012, their *Reply*.[17] Petitioners insisted the materiality of inquiring about the contents of the *LSPA,* as the consideration for any transfer

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[15] *Supra* note 1 at 166-18.

[16] *Id.* at 182-193.

[17] *Id.* at 194-204.

of the loan obligation of petitioner EDC should be the basis for the claim against them.

The trial court denied petitioners' motion for reconsideration in its Resolution dated May 28, 2012.

On July 27, 2012, petitioners filed their Petition for *Certiorari* with the Court of Appeals (CA), to nullify and/or set aside the RTC's Resolutions dated March 28, 2012 and May 28, 2012.

In its Resolution dated August 29, 2012, the CA (Third Division) dismissed the petition for lack of petitioner Oben's verification and certification against forum shopping and failure to attach a copy of the complaint.

Petitioners' subsequent motion for reconsideration[18] dated September 20, 2012, was likewise denied in the CA's November 27, 2012 Resolution.

Hence this instant petition.

The resolution of this case revolves around the following issues: (1) whether the CA erred in dismissing the petition on technicality, *i.e.* on a defective verification and certification against forum shopping and the attachment to the petition of a mere machine copy of the complaint; and (2) whether the RTC gravely abused its discretion in denying the production and/or inspection of the *LSPA*.

We agree with petitioner, that the appellate court erred in ruling that Oben's Verification and Certification was defective for lack of a Board Resolution authorizing Oben to sign on behalf of petitioner EDC. Oben executed and signed the Verification and Certification in his personal capacity as an impleaded party in the case, and not as a representative of EDC. We note that an earlier Verification and Certification signed by Naval, for himself and as a representative of EDC, and a Secretary Certificate containing his authority to sign on behalf of EDC, were already filed with the appellate court

[18] *Id.* at 206-226.

together with the petition for *certiorari*.[19] As such, what was only lacking was Oben's Verification and Certification as pointed out in the August 29, 2012 Resolution of the CA.

On the other hand, contrary to petitioners' assertion, a reading of the CA Resolution dated November 27, 2012 shows that the appellate court merely noted the belated attachment of a machine copy, not a certified true copy, of the complaint to petitioners' motion for reconsideration. Although not expressly stated, the machine copy of the complaint is in fact acceptable, as Rule 65 provides that one may attach to the petition mere machine copies of other relevant documents and pleadings.[20] More importantly, the CA's dismissal of the petition for *certiorari* was anchored on its finding that there was no grave abuse of discretion on the part of the RTC in denying the production of the LSPA, that the errors committed by Judge Ruiz were, if at all, mere errors of judgment correctible not by the extraordinary writ of *certiorari* and an ordinary appeal would still be available in the action below for sum of money.[21]

An appeal would not have adequately remedied the situation because, in that case, the court would have rendered its decision without giving the petitioners the opportunity to make use of the information that the *LSPA* would have supplied as a result of the court allowing the production of the *LSPA*. If, on appeal, public respondent reversed its decision, the reversal would result

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[19] *Id.* at 66-108.

[20] *Heirs of Sofia Nanaman Lonoy v. Secretary of Agrarian Reform,* G.R. No. 175049, 572 SCRA 185, 203, November 27, 2008. *Garcia, Jr. V. CA,* G.R. No. 171098, 546 SCRA 595, 604, February 26, 2008.; *OSM Shipping Philippines, Inc. V. NLRC,* G.R. No. 138193, 446 Phil. 793, 803, March 5, 2003.

Section 1, Rule 65. *Petition for Certiorari. – xxx*

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

[21] *Supra* note 1 at 61-65.

in the case being retried in the lower court, which would unnecessarily delay the resolution of the case and burden the parties with additional litigation expense.

Having resolved the issue on the supposed technical defects, we go on to discuss the second issue.

Section 1, Rule 27 of the 1997 Rules of Court, states:

> Section 1. Motion for production or inspection; order. – Upon motion of any party showing good cause therefor, the court in which an action is pending may a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; xxx

The provision on production and inspection of documents is one of the modes of discovery sanctioned by the Rules of Court in order to enable not only the parties, but also the court to discover all the relevant and material facts in connection with the case pending before it.[22]

Generally, the scope of discovery is to be liberally construed so as to provide the litigants with information essential to the fair and amicable settlement or expeditious trial of the case.[23] All the parties are required to lay their cards on the table so that justice can be rendered on the merits of the case.[24]

Although the grant of a motion for production of document is admittedly discretionary on the part of the trial court judge, nevertheless, it cannot be arbitrarily or unreasonably denied because to do so would bar access to relevant evidence that may

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[22] *Republic v. Sandiganbayan,* G.R. No. 90478, November 21, 1991, 204 SCRA 212.

[23] *Fortune Corporation vs. Court of Appeals*, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 373. *Republic v. Sandiganbayan,* G.R. No. 90478, November 21, 1991, 204 SCRA 212.

[24] *Koh v. IAC*, 228 Phil. 258, 263 (1986).

be used by a party-litigant and hence, impair his fundamental right to due process.[25]

The test to be applied by the trial judge in determining the relevancy of documents and the sufficiency of their description is one of reasonableness and practicability.[26]

According to the trial court, there is no need for the production of the *LSPA* in order to apprise the petitioners of the amount of consideration paid by respondent in favor of EIB and that it is enough that the *Deed of Assignment* has been produced by Cameron showing that it has acquired the account of the petitioners pursuant to the SPV Law.[27]

We find the Petition impressed with merit.

The question was whether respondent had acquired a valid title to the credit, *i.e.*, EDC's outstanding loan obligation, and whether it had a right to claim from petitioners. In fact, petitioners had maintained in their motions before the trial court the nullity or non-existence of the assignment of credit purportedly made between respondent and EIB (the original creditor).

As respondent Cameron's claim against the petitioners relies entirely on the validity of the *Deed of Assignment,* it is incumbent upon respondent Cameron to allow petitioners to inspect all documents relevant to the *Deed*, especially those documents which, by express terms, were referred to and identified in the *Deed* itself. The *LSPA,* which pertains to the same subject matter – the transfer of the credit to respondent is manifestly useful to petitioners' defense.

Furthermore, under Section 17, Rule 132 of the 1997 Rules of Court, when part of a writing or record is given in evidence by one party, the whole of the same subject may be inquired into by the other, and when a detached writing or record is

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[25] *Alberto v. COMELEC*, 370 Phil. 230, 237-238 (1999).

[26] *Lime Corporation of the Philippines v. Moran,* 59 Phil. 175, 180 (1933).

[27] *Supra* note 1 at 109-111.

given in evidence, any other writing or record necessary to its understanding may also be given in evidence. Since the *Deed of Assignment* was produced in court by respondent and marked as one of its documentary exhibits, the *LSPA* which was made a part thereof by explicit reference and which is necessary for its understanding may also be inevitably inquired into by petitioners.

In this light, the relevance of the *LSPA* sought by petitioners is readily apparent. Fair play demands that petitioners must be given the chance to examine the *LSPA*. Besides, we find no great practical difficulty, and respondent did not allege any, in presenting the document for inspection and copying of the petitioners.

Incidentally, the legal incidents of the case *a quo* necessitates the production of said *LSPA*.

Section 13 of the SPV Law clearly provides that "in the transfer of the Non-Performing Loans (NPLs), the provisions on subrogation and assignment of credits under the New Civil Code shall apply." The law does not exclude the application of Article 1634 of the New Civil Code to transfers of NPLs by a financial institution to a special purpose vehicle. Settled is the rule in statutory construction that "when the law is clear, the function of the courts is simple application." Besides, it is within the power of an SPV to restructure, condone, and enter into other forms of debt settlement involving NPLs.

Also, Section 19 of the SPV Law expressly states that redemption periods allowed to borrowers under the banking law, the rules of court and/or other laws are applicable. Hence, the equitable right of redemption allowed to a debtor under Article 1634 of the Civil Code is applicable.

Therefore, as petitioners correctly pointed out, they have the right of legal redemption by paying Cameron the transfer price plus the cost of money up to the time of redemption and the judicial costs.

Certainly, it is necessary for the petitioners to be informed of the actual consideration paid by the SPV in its acquisition of

the loan, because it would be the starting point for them to negotiate for the extinguishment of their obligation. As pointed out by the petitioners, since the *Deed of Assignment* merely states *"For value received"*, the appropriate information may be supplied by the *LSPA*. It is self-evident that in order to be able to intelligently match the price paid by respondent for the acquisition of the loan, petitioner must be provided with the necessary information to enable it to make a reasonably informed proposal. Because of the virtual refusal and denial of the production of the *LSPA*, petitioners were never accorded the chance to reimburse respondent of the consideration the latter has paid.

Consequently, this Court finds and so holds that the denial of the *Motion for Production* despite the existence of "good cause," relevancy and materiality for the production of the *LSPA* was unreasonable and arbitrary constituting grave abuse of discretion on the part of the trial court. Hence, *certiorari* properly lies as a remedy in the present case.

Discretionary acts will be reviewed where the lower court or tribunal has acted without or in excess of its jurisdiction, where an interlocutory order does not conform to the essential requirements of law and may reasonably cause material injury throughout subsequent proceedings for which the remedy of appeal will be inadequate, or where there is a clear or serious abuse of discretion.[28] The exercise of discretion pertaining to discovery will be set aside where there is abuse, or the trial court's disposition of matters of discovery was improvident and affected adversely the substantial rights of a party.[29] After all, the discretion conferred upon trial courts is a sound discretion which should be exercised with due regard to the rights of the parties and the demands of equity and justice.[30]

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[28] *Fortune Corporation v. Hon. Court of Appeals, supra* at 370.

[29] See *Producers Bank of the Philippines v. CA*, 349 Phil. 310 (1998).

[30] *Santos v. Phil. National Bank,* 431 Phil. 368 (2002).

Indeed, the insistent refusal of respondent to produce the *LSPA* is perplexing and unacceptable to this Court. Respondent even asserts that if petitioner EDC thinks that the *LSPA* will bolster its defense, then it should secure a copy of the document from the Bangko Sentral ng Pilipinas and not from respondent, because allegedly the document was not marked by respondent as one of its exhibits.[31]

In light of the general philosophy of full discovery of relevant facts, the unreceptive and negative attitude by the respondent is abominable. The rules on discovery are accorded broad and liberal interpretation precisely to enable the parties to obtain the fullest possible knowledge of the issues and facts, including those known only to their adversaries, in order that trials may not be carried on in the dark.[32]

Undoubtedly, the trial court had effectively placed petitioners at a great disadvantage inasmuch as respondent effectively suppressed relevant documents related to the transaction involved in the case *a quo*. Furthermore, the remedies of discovery encouraged and provided for under the Rules of Court to be able to compel the production of relevant documents had been put to naught by the arbitrary act of the trial court.

It must be remembered that "litigation is essentially an abiding quest for truth undertaken not by the judge alone, but jointly with the parties. Litigants, therefore, must welcome every opportunity to achieve this goal; they must act in good faith to reveal documents, papers and other pieces of evidence material to the controversy."[33] Courts, as arbiters and guardians of truth and justice, must not countenance any technical ploy to the detriment of an expeditious settlement of the case or to a fair, full and complete determination on its merits.

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[31] *Supra* note 1 at 136-143.

[32] *Security Bank Corporation v. CA*, G.R. No. 135874, January 25, 2000, 323 SCRA 330.

[33] *Id.* at 341.

WHEREFORE, the instant petition is **GRANTED.** The August 29, 2012 and November 27, 2012 resolutions of the Court of Appeals are **REVERSED** and **SET ASIDE**, and respondents are **ORDERED** to produce the Loan Sale and Purchase Agreement dated April 7, 2006, including its annexes and/or attachments, if any, in order that petitioners may inspect and/or photocopy the same.

SO ORDERED.

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

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— Mere presence at the *locus criminis* cannot by itself be a valid basis for conviction, and mere knowledge, acquiescence to or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime. *(Id.)*

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COURTS

As arbiters and guardians of truth and justice — Court must not countenance any technical ploy to the detriment of an expeditious settlement of the case or to a fair, full and complete determination on its merits. (Eagleridge Dev't. Corp. *vs*. Cameron Granville 3 Asset Mgt., Inc., G.R. No. 204700, April 10, 2013) p. 693

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— Involvement of a single object in both the illegal sale as the crime charged and the illegal possession as the crime proved is indispensable, such that only the prohibited drugs alleged in the information to be the subject of the illegal sale is considered competent evidence to support the conviction of the accused for the illegal possession. *(Id.)*

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Illegal dismissal — 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 up to the time of actual reinstatement. (Reyes *vs*. RP Guardians Security Agency, Inc., G.R. No. 193756, April 10, 2013) p. 598

Separation pay — Separation pay of one month for every year of service should be paid to an illegally dismissed employee where reinstatement is no longer feasible because the employer had already ceased operation of its business. (Reyes *vs*. RP Guardians Security Agency, Inc., G.R. No. 193756, April 10, 2013) p. 598

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Burden of proof — He who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts; however, in the course of trial in a civil case, once plaintiff makes out a prima facie case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's prima facie case, otherwise, a verdict must be returned in favor of plaintiff. (Dantis *vs*. Maghinang, Jr., G.R. No. 191696, April 10, 2013) p. 575

— In civil cases he who alleges a fact has the burden of proving it and a mere allegation is not evidence. *(Id.)*

Chain of custody —May eliminate the grave mischiefs of planting or substitution of evidence and the unlawful and malicious prosecution of the weak and unwary that they are intended to prevent; such strict compliance is also consistent with the doctrine that penal laws shall be construed strictly against the Government and liberally in favor of the accused. (People of the Phils. *vs*. Gonzales *y* Santos, G.R. No. 182417, April 3, 013) p. 121

— Non-compliance with the procedures thereby delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs provided there were justifiable grounds for the non-compliance, and provided that the integrity of the evidence of the *corpus delicti* was preserved. *(Id.)*

— The different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation are: First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the

apprehending officer; Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. (People of the Phils. *vs*. Quesido *y* Badarang, G.R. No. 189351, April 10, 2013) p. 549

— The duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. *(Id.)*

Hearsay evidence rule —Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. (Dantis *vs*. Maghinang, Jr., G.R. No. 191696, April 10, 2013) p. 575

Preponderance of evidence — Required to be established in civil cases; preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term greater weight of the evidence or greater weight of the credible evidence. (Chua *vs*. B.E. San Diego, Inc., G.R. No. 165863, April 10, 2013) p. 386

Presentation of evidence — When part of a writing or record is given in evidence by one party, the whole of the same subject may be inquired into by the other, and when a detached writing or record is given in evidence, any other writing or record necessary to its understanding may also be given in evidence. (Eagleridge Dev't. Corp. *vs*. Cameron Granville 3 Asset Mgt., Inc., G.R. No. 204700, April 10, 2013) p. 693

Production or inspection of documents — Grant of a motion for production of document is admittedly discretionary on the part of the trial court, nevertheless, it cannot be arbitrarily or unreasonably denied because to do so would bar access to relevant evidence that may be used by a party-litigant and hence, impair his fundamental right to due process. (Eagleridge Dev't. Corp. *vs.* Cameron Granville 3 Asset Mgt., Inc., G.R. No. 204700, April 10, 2013) p. 693

— The rules on discovery are accorded broad and liberal interpretation precisely to enable the parties to obtain the fullest possible knowledge of the issues and facts, including those known only to their adversaries, in order that trials may not be carried on in the dark. *(Id.)*

Secondary evidence — Secondary evidence is admissible only when the original has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. (Dantis *vs.* Maghinang, Jr., G.R. No. 191696, April 10, 2013) p. 575

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of — No need to appeal decision of the Deputy Ombudsman to the Office of the Ombudsman under Sec. 7 Rule III of A.O. No. 7 as the former was acting for and in behalf of the latter. (Alejandro *vs.* Office of the Ombudsman Fact-Finding and Intelligence Bureau, G.R. No. 173121, April 03, 2013) p. 32

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (ACT NO. 3135)

Foreclosure proceedings — Extrajudicial foreclosure of mortgage is a proceeding which is not adversarial as the executive judge merely performs his administrative function. (Ingles *vs.* Hon. Estrada, G.R. No. 141809, April 08, 2013) p. 271

Writ of possession — A writ of possession is simply an order by which the sheriff is commanded by the court to place a person in possession of a real or personal property; a writ of possession may be issued in favor of a purchaser in a foreclosure sale either (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond; within the one-year redemption period, the purchaser may apply for a writ of possession by filing a petition in the form of an ex parte motion under oath, in the registration or cadastral proceedings of the registered property. (Sps. Tolosa *vs.* United Coconut Planters Bank, G.R. No. 183058, April 03, 2013) p. 134

— As a rule, a petition for the issuance of a writ possession may not be consolidated with any other ordinary action; exception. (Ingles *vs.* Hon. Estrada, G.R. No. 141809, April 08, 2013) p. 271

— Issuance thereof is a ministerial duty of the court which the new owner may obtain through an ex-parte motion. (Darcen *vs.* V.R. Gonzales Credit Enterprises, Inc., G.R. No. 199747, April 03, 2013) p. 197

— The ministerial duty of the court to issue an ex-parte writ ceases once it appears that there is a third party in possession of the subject property. *(Id.)*

— The ministerial duty of the RTC remains until the issues raised in the annulment of the writ are settled by the court of competent jurisdiction. (Sps. Tolosa *vs.* United Coconut Planters Bank, G.R. No. 183058, April 03, 2013) p. 134

— The ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage. *(Id.)*

FORUM SHOPPING

Certificate of non-forum shopping — When all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule. (Heirs of Lazaro Gallardo *vs*. Soliman, G.R. No. 178952, April 10, 2013) p. 428

— When the failure of some of the parties to sign the certification shall not be a valid ground to dismiss the certiorari petition. (Ingles *vs*. Hon. Estrada, G.R. No. 141809, April 08, 2013) p. 271

INJUNCTION

Preliminary injunction — A preliminary injunction is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts. (Solid Builders, Inc. *vs*. China Banking Corporation, G.R. No. 179665, April 03, 2013) p. 96

— Foreclosure of mortgaged property is not an irreparable damage that will merit for the debtor-mortgagor the extraordinary provisional remedy of preliminary injunction. *(Id.)*

— In the absence of a clear legal right, the issuance of the injunctive writ is not proper and constitutes grave abuse of discretion. *(Id.)*

— Petitioner's default or failure to settle its obligation is a breach of contractual obligation which tainted its hands and disqualified it from availing of the equitable remedy of preliminary injunction. *(Id.)*

— To be entitled to an injunctive writ, petitioner has the burden of establishing the following requisites: (1) a right *in esse* or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage. *(Id.)*

— To reverse the decision of the Court of Appeals and reinstate the writ of preliminary injunction issued by the trial court will allow to circumvent the guidelines and conditions provided by the En Banc Resolution in A.M. No. 99-10-05-0 dated February 20, 2007 and prevent mortgagee from foreclosing on the mortgaged properties based simply on the allegation that the interest on the loan is unconscionable. *(Id.)*

JUDGES

Discipline of — Nature of administrative sanctions is akin to liabilities in criminal cases. (Decena *vs*. Judge Malanyaon, A.M. No.RTJ-10-2217, April 08, 2013) p. 252

Practice of law — Prohibits sitting judges from engaging in the private practice of law or giving professional advice to clients. (Decena *vs*. Judge Malanyaon, A.M. No.RTJ-10-2217, April 08, 2013) p. 252

JUDGMENTS

Execution of — At the time of the execution sale on March 15, 1972, the applicable rule is Rule 39, Section 18 of the 1964 Rules of Court; the foregoing rule does not require written notice to the judgment obligor. (Marcelino and Vitaliana Dalangin *vs*. Perez, G.R. No.178758, April 03, 2013) p. 80

Validity of — A decision should state clearly and distinctly the facts and the law on which it based. (Sombol *vs*. People of the Phils., G.R. No. 194564, April 10, 2013) p. 607

JUSTIFYING CIRCUMSTANCES

Self-defense — Accused's plea of self-defense fails where he failed to prove the existence of unlawful aggression. (Sombol *vs*. People of the Phils., G. R. No. 194564, April 10, 2013) p. 607

— For unlawful aggression to be present, there must be an actual physical assault, or at least a threat to inflict real imminent injury, not merely threatening and intimidating action, upon a person. *(Id.)*

KIDNAPPING FOR RANSOM

Commission of — Elements are: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped and kept in detained is a minor, the duration of his detention is immaterial. (People of the Phils. *vs*. Salvador *y* Tabios, G.R. No. 201443, April 10, 2013) p. 637

— Prosecution of the accused; guiding doctrines. *(Id.)*

— The fact that no ransom was actually paid does not negate the fact of the commission of the crime, it being sufficient that a demand for it was made. *(Id.)*

LITIS PENDENTIA

As a ground for a motion to dismiss — The requisites in order that an action may be dismissed on the ground of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interest in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. (Film Dev't. Council of the Phils. *vs*. SM Prime Holdings, Inc., G.R. No. 197937, April 03, 2013) p. 169

Principle of — The theory is that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action; tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be

used to substantiate the complaint in the other. (Film Dev't. Council of the Phils. *vs*. SM Prime Holdings, Inc., G.R. No. 197937, April 03, 2013) p. 169

LOANS

Contract of — An escalation clause is void where it grants the creditor the power to impose an increased rate of interest without a written notice to the debtors and their written consent; one-sided impositions do not have the force of law between the parties, because such impositions are not based on the parties' essential quality. (Sps. Juico *vs*. China Banking Corp., G.R. No. 187678, April 10, 2013) p. 495

— An escalation clause is void where the creditor unilaterally determines and imposes an increase in the stipulated rate of interest without the express conformity of the debtor; lenders have no carte blanche authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets. *(Id.)*

— Escalation clause is not void per se but the same is violative of the principle of mutuality of contracts, thus void, where it grants the creditor an unbridled right to adjust the interest independently and upwardly, completely depriving the debtor of the right to assert to an important modification in the agreement. *(Id.)*

— Escalation clauses, to be valid, the following should be present: Firstly, as a matter of equity and consistent with P.D. No. 1684, the escalation clause must be paired with a de-escalation clause; Secondly, so as not to violate the principle of mutuality, the escalation must be pegged to the prevailing market rates, and not merely make a generalized reference to any increase or decrease in the interest rate in the event a law or a Central Bank regulation is passed; Thirdly, consistent with the nature of contracts, the proposed modification must be the result of an agreement between the parties. (Sps. Juico *vs*. China Banking Corp., G.R. No. 187678, April 10, 2013; *Sereno, C.J., concurring opinion*) p. 495

— Increases in interest rates unilaterally imposed by the creditor bank without the debtor's assent violates the principle of mutuality of contracts. *(Id.)*

— Modifications in the rate of interest for loans pursuant to an escalation clause must be the result of an agreement between the parties; otherwise, the same has no binding effect. (Sps. Juico *vs.* China Banking Corp., G.R. No. 187678, April 10, 2013) p. 495

MANDAMUS

Petition for — Proper when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act that the law specifically enjoins as a duty resulting from an office, trust, or station. (Datu Andal Ampatuan, Jr. *vs.* Sec. Leila De Lima, G.R. No. 197291, April 03, 2013) p. 153

MORTGAGES

Foreclosure of mortgage — Foreclosure proceedings initiated by government-owned Financial Institutions shall continue until a judgment therein becomes final and executory, without a restraining order, temporary or permanent injunction against it being issued; if property is occupied by a party other than the judgment debtor, the court must order a hearing to determine the nature of the adverse possession before it issues a writ of possession. (Royal Savings Bank *vs.* Asia, G.R. No. 183658, April 10, 2013) p. 485

— The obligation of a court to issue a writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial, once it appears that there is a third party who is in possession of the property and is claiming a right adverse to that of the debtor/mortgagor. *(Id.)*

NOTARIES PUBLIC

2004 Rules on Notarial Practice — A person shall not perform a notarial act if the person involved as signatory to the instrument or document (1) is not in the notary's presence

personally at the time of the notarization and (2) is not personally known to the notary public or otherwise identified by the notary public through a competent evidence of identity. (Jandoquile *vs*. Atty. Revilla, Jr., A.C. No. 9514, April 10, 2013) p. 337

— The Notary Public need not require a valid identification card if he personally knows the affiants. *(Id.)*

OBLIGATIONS

Mixed conditional obligation — The rule in a mixed conditional obligation is that when the condition was not fulfilled but the obligor did all in his power to comply with the obligation, the condition should be deemed satisfied. (International Hotel Corp. *vs*. Joaquin, Jr., G.R. No. 158361, April 10, 2013) p. 361

Obligations with a penal clause — The equitable reduction of the penalty stipulated by the parties in their contract will be based on a finding by the court that such penalty is iniquitous or unconscionable. (Solid Builders, Inc. *vs*. China Banking Corporation, G.R. No. 179665, April 03, 2013) p. 96

Quantum meruit — Contractor is allowed to recover the reasonable value of the services rendered despite the lack of a written contract. (International Hotel Corp. *vs*. Joaquin, Jr., G.R. No. 158361, April 10, 2013) p. 361

Substantial performance — Principle of substantial performance is applicable when the nature of the breach or omission is not material. (International Hotel Corp. *vs*. Joaquin, Jr., G.R. No. 158361, April 10, 2013) p. 361

Suspensive condition — Requisites are: (a) the intent of the obligor to prevent the fulfillment of the condition, and (b) the actual prevention of the fulfillment. (International Hotel Corp. *vs*. Joaquin, Jr., G.R. No. 158361, April 10, 2013) p. 361

OMBUDSMAN

Jurisdiction — Concurrent jurisdiction over administrative cases which are within the jurisdiction of the regular courts or administrative agencies. (Alejandro *vs*. Office of the Ombudsman Fact-Finding and Intelligence Bureau, G.R. No. 173121, April 03, 2013) p. 32

Powers — Has disciplinary authority over all elective and appointive officials of the government and its subdivisions, instrumentalities and agencies. (Alejandro *vs*. Office of the Ombudsman Fact-Finding and Intelligence Bureau, G.R. No. 173121, April 03, 2013) p. 32

PARTIES TO CIVIL ACTIONS

Indispensable parties — Non-joinder of indispensable parties is not a ground for the dismissal of an action; at any stage of a judicial proceeding and/or at such times as are just, parties may be added on the motion of a party or on the initiative of the tribunal concerned. (Heirs of Faustino Mesina *vs*. Heirs of Domingo Fian, Sr., G.R. No. 201816, April 08, 2013) p. 327

PLEADINGS

Amended complaint — Mutual agreement of the parties to allow its admission, justified. (Sps. Raymundo *vs*. Land Bank of the Phils., G.R. No. 195317, April 03, 2013) p. 147

PRESUMPTIONS

Presumption of integrity of evidence — Integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. (People of the Phils. *vs*. Octavio *y* Florendo, G.R. No. 199219, April 03, 2013) p. 184

Presumption of regularity in the performance of official duties — Presumption of regularity of the execution sale and the sheriff's performance of his official functions prevail in the absence of evidence to the contrary and in light of the self-serving allegations and bare denials of petitioners to

the effect that they were not served with notice of the sheriff's sale, and given that the entire record covering the sale could no longer be located. (Marcelino and Vitaliana Dalangin *vs.* Perez, G.R. No.178758, April 03, 2013) p. 80

PRE-TRIAL

Failure to appear — Dismissal of the complaint on the ground of failure of the party to attend the mediation proceedings is too severe where there was no finding that the absence of respondent was in willful or flagrant disregard of the rules on mediation, that the absence was intended to effect a delay in litigation, or that respondent lacked interest in a possible amicable settlement of the case. (Sandoval Shipyards, Inc. *vs.* Philippine Merchant Marine Academy (PMMA), G.R. No. 188633, April 10, 2013) p. 535

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Certificate of title —A person, who claims that he has a better right to the property or prays for its recovery, must prove his assertion by clear and convincing evidence and is duty bound to identify sufficiently and satisfactorily the property. (Chua *vs.* B.E. San Diego, Inc., G.R. No. 165863, April 10, 2013) p. 386

— An amendment/alteration effected without notice to the affected owners would not be in compliance with the law or the requirements of due process. *(Id.)*

Section 48 thereof —Petitioner's counterclaim is a permissible direct attack to the validity of respondents' torrens title; as such counterclaim, it involves a cause of action separate from that alleged in the complaint. (Firaza, Sr. *vs.* Sps. Ugay, G.R. No. 165838, April 03, 2013) p. 24

— Proscribes a collateral attack to a certificate of title and allows only a direct attack thereof; attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement; conversely,

an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof; a counterclaim is essentially a complaint filed by the defendant against the plaintiff and stands on the same footing as an independent action. *(Id.)*

PROSECUTION OF OFFENSES

Criminal prosecutions — The public prosecutors are solely responsible for the determination of the amount of evidence sufficient to establish probable cause to justify the filing of appropriate criminal charges against a respondent. (Datu Andal Ampatuan, Jr. *vs*. Sec. Leila De Lima, G.R. No. 197291, April 03, 2013) p. 153

PUBLIC OFFICIALS AND EMPLOYEES

Dishonesty — Falsification of time records constitutes dishonesty; dishonesty is the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. (Judge Rufon *vs*. Genita, A.M. No. P-12-3044 [Formerly A.M. OCAIPI No. 09-3267-P], April 08, 2013) p. 242

— Gross dishonesty or serious misconduct is classified as a grave offense and the penalty imposable is dismissal. *(Id.)*

Grave misconduct — Committed by Barangay Chairman when it interfered with police operations. (Alejandro *vs*. Office of the Ombudsman Fact-Finding and Intelligence Bureau, G.R. No. 173121, April 03, 2013) p. 32

— Misconduct is considered grave if accompanied by corruption, a clear intent to violate the law, or a flagrant disregard of established rules, which must all be supported by substantial evidence. *(Id.)*

RAPE

Qualified rape — Elements are: (a) the victim is a female over 12 years but under 18 years of age; (b) the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and (c) the offender has carnal knowledge of the victim either through force, threat, or intimidation. (People of the Phils. *vs*. Vitero, G.R. No. 175327, April 03, 2013) p. 49

— The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. *(Id.)*

REALTY INSTALLMENT BUYER ACT (R.A. NO. 6552)

Application — Defaulting buyer who has paid at least two years of installments has the right of either to avail of the grace period to pay or, the cash surrender value of the payments made. (Moldex Realty, Inc. *vs*. Saberon, G.R. No. 176289, April 08, 2013) p. 314

ROBBERY WITH HOMICIDE

Commission of — The following are the elements thereof: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is *animo lucrandi*; and (4) by reason of the robbery or on the occasion thereof, homicide is committed. (People of the Phils. *vs*. Diu *y* Kotsesa, G.R. No. 201449, April 03, 2013) p. 218

SALES

Contract of — The manner of payment of the purchase price is an essential element before a valid and binding contract of sale could exist. (Dantis *vs*. Maghinang, Jr., G.R. No. 191696, April 10, 2013) p. 575

STATUTE OF FRAUDS

Application — No basis for the application of the statute of frauds absent a perfected contract of sale. (Dantis *vs*. Maghinang, Jr., G.R. No. 191696, April 10, 2013) p. 575

STATUTORY CONSTRUCTION

Ejusdem generis — Where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned; the purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. (Pelizloy Realty Corp. *vs*. Province of Benguet, G.R. No. 183137, April 10, 2013) p. 466

SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE (P.D. NO. 957)

Application of — Lack of a certificate of registration and a license to sell on the part of a subdivision developer does not result to the nullification or invalidation of the contract to sell it entered into with a buyer. (Moldex Realty, Inc. *vs*. Saberon, G.R. No. 176289, April 08, 2013) p. 314

SUMMARY PROCEEDINGS

Rule on — No appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code; aggrieved party may file a petition for certiorari to question abuse of discretion amounting to lack of jurisdiction. (Rep. of the Phils. *vs*. Narceda, G.R. No. 182760, April 10, 2013) p. 458

TAXATION

Local taxation — Phrase "other places of amusement" in Section 140 of the Local Government Code, construed. (Pelizloy Realty Corp. *vs*. Province of Benguet, G.R. No. 183137, April 10, 2013) p. 466

— The power of the province to tax is limited to the extent that such power is delegated to it either by the Constitution or by statute. *(Id.)*

— The power to tax when granted to a province is to be construed in *strictissimi juris*. *(Id.)*

Percentage tax — It is a tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services. (Pelizloy Realty Corp. *vs*. Province of Benguet, G.R. No. 183137, April 10, 2013) p. 466

Withholding taxes — An individual, performing services for a corporation, whether as an officer and director or merely as a director whose duties are confined to attendance at and participation in the meetings of the Board of Directors, is an employee; imposition of withholding tax on compensation hinges upon the nature of work performed by such individuals in the company. (First Lepanto Taisho Ins. Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 197117, April 10, 2013) p. 616

— Failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent per annum. *(Id.)*

— Imposition of deficiency withholding taxes on transportation, commission expense, and occupancy cost and deficiency final withholding taxes on its payment of dividends and computerization expenses to foreign entities, affirmed. *(Id.)*

— The taxpayer is still required to present evidence to prove correct taxes withheld notwithstanding the parties stipulation thereon; stipulations cannot defeat the right of the state to collect the correct tax dues on an individual or juridical person because taxes are the lifeblood of our nation so its collection should be actively pursued without unnecessary impediment. *(Id.)*

VERIFICATION

Requirement of — If one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been in good faith or are true and correct. (Ingles *vs*. Hon. Estrada, G.R. No. 141809, April 08, 2013) p. 271

— Personal knowledge and authentic records need not concur in a verification as they are to be taken separately. (Heirs of Faustino Mesina *vs*. Heirs of Domingo Fian, Sr., G.R. No. 201816, April 08, 2013) p. 327

Rule on — If the petitioner is a juridical entity, it must be shown that the person signing in behalf of the corporation is duly authorized to represent said corporation. (Boardwalk Business Ventures, Inc. *vs*. Villareal, G.R. No. 181182, April 10, 2013) p. 443

WITNESSES

Credibility of — Factual findings of the trial court, especially when affirmed by the Court of Appeals are entitled to great weight and respect since the trial court was in the best position as the original trier of the facts in whose direct presence and under whose keen observation the witnesses rendered their respective versions. (People of the Phils. *vs*. Quesido *y* Badarang, G.R. No. 189351, April 10, 2013) p. 549

(People of the Phils. *vs*. Tolentino *y* Catacutan, G.R. No. 187740, April 10, 2013) p. 520

(People of the Phils. *vs*. Diu *y* Kotsesa, G.R. No. 201449, April 03, 2013) p. 218

— Failure of the rape victim to shout for help, although her siblings were sleeping beside her and her parents were on the other room, does not detract from the credibility of her claims where she proved to the satisfaction of the court that there was a real threat to her life and her family posed by an armed accused-assailant. (People of the Phils. *vs*. Tolentino *y* Catacutan, G.R. No. 187740, April 10, 2013) p. 520

— Testimonies of the police officers who conducted the buy-bust operation are generally accorded full faith and credit, in view of the presumption of regularity in the performance of public duties; hence, when lined against an unsubstantiated denial or claim of frame-up, the testimony of the officers who caught the accused red-handed is given more weight and usually prevails. (People of the Phils. *vs*. Quesido *y* Badarang, G.R. No. 189351, April 10, 2013) p. 549

— The victim's in-court identification is more than sufficient to establish the identities of accused-appellants as among the malefactors, and previously executed affidavits are generally considered inferior to statements that the victim gives in open court. (People of the Phils. *vs*. Salvador *y* Tabios, G.R. No. 201443, April 10, 2013) p. 637

— There is no established doctrine to the effect that in every instance, non-flight is an indication of innocence for it is possible for the culprits to pursue unfamiliar schemes or strategies to confuse the police authorities. *(Id.)*

— There is no standard form of human behavioral response when one is confronted with a frightful experience. (People of the Phils. *vs*. Vitero, G.R. No. 175327, April 03, 2013) p. 49

— When a woman, especially a girl-child, says she had been raped, she says in effect all that is necessary to prove that rape was really committed. (People of the Phils. *vs*. Tolentino *y* Catacutan, G.R. No. 187740, April 10, 2013) p. 520

State witness — Discharge of the co-accused to become a state witness under two modes, distinguished. (Datu Andal Ampatuan, Jr. *vs*. Sec. Leila De Lima, G.R. No. 197291, April 03, 2013) p. 153

— The discharge by the trial court of one or more of several accused with their consent so that they can be witnesses for the State is made upon motion by the Prosecution before resting its case; trial court must ascertain if the

following conditions fixed by Section 17 of Rule 119 are complied with, namely: (a) there is absolute necessity for the testimony of the accused whose discharge is requested; (b) there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (c) the testimony of said accused can be substantially corroborated in its material points; (d) said accused does not appear to be most guilty; and (e) said accused has not at any time been convicted of any offense involving moral turpitude. *(Id.)*

— Two modes by which a participant in the commission of a crime may become a state witness are: (a) by discharge from the criminal case pursuant to Section 17 of Rule 119 of the Rules of Court; and (b) by the approval of his application for admission into the Witness Protection Program of the DOJ in accordance with Republic Act No. 6981 (Witness Protection, Security and Benefit Act). *(Id.)*

Testimony of — The test to determine the value of the testimony of a witness is whether such is in conformity with knowledge and consistent with the experience of mankind; whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance. (People of the Phils. *vs.* Salvador *y* Tabios, G.R. No. 201443, April 10, 2013) p. 637

— The testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward, and worthy of credence by the trial court. (People of the Phils. *vs.* Diu *y* Kotsesa, G.R. No. 201449, April 03, 2013) p. 218

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